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OF THE FIRST SESSION OF THE NINETEENTH CONGRESS:

TOGETHER WITH

AN APPENDIX,

CONTAINING THE MOST

IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS

TO WHICH THE SESSION HAS GIVEN BIRTH:

TO WHICH ARE ADDED,

THE LAWS ENACTED DURING THE SESSION,

WITH A COPIOUS INDEX TO THE WHOLE.

VOLUME II.

Washington:

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Register of Debates in Congress.

NINETEENTH CONGRESS.....FIRST SESSION:

COMMENCING DECEMBER 5, 1825, AND ENDING MAY 22, 1826.

DEBATES IN THE SENATE.

MONDAY, DECEMBER 5, 1825.

AGREEABLY to the provision of the Constitution, fixing the period for the meeting of Congress, the two Houses assembled in their respective Chambers, in the Capitol, this day, and commenced the First Session of the Nineteenth Congress.

IN THE SENATE,

At twelve o'clock, the VICE PRESIDENT OF THE UNITED STATES, ex officio PRESIDENT OF THE SENATE, took the Chair, and called the Senate to order. The roll of the Members being then called over, it appeared that a quorum was present.

On motion, a Committee was ordered to be appointed, jointly, with such Committee as should be appointed by the House of Representatives, to wait on the President of the United States, and inform him that the two Houses of Congress are assembled, and ready to receive any communication he might have to make; and Mr. SMITH, of Md. and Mr. LLOYD, of Mass. were appointed the Committee on the part of the Senate.

The usual orders, for furnishing the Members with a certain number of newspapers, &c. were adopted, and

The Senate adjourned to 12 o'clock to-morrow.

TUESDAY, DECEMBER 6, 1825.

Mr. SMITH, of Md. reported, from the Joint Committee, that they had waited on the President of the United States, agreeably to order, and that the President informed the Committee that he would make a communication to the two Houses this day.

Soon after which,

A Message was received from the President of the United States, by the hands of Mr. J. ADAMS, Jun. his private Secretary; which was read, and 3,000 copies ordered to be printed, together with 1,500 of the accompanying documents. (*See Appendix.*)

WEDNESDAY, DECEMBER 7, 1825.

The following resolution, submitted yesterday, by Mr. DICKERSON, was taken up:

"*Resolved*, That the Thirtieth Rule for conducting the business of the Senate be so amended, that, instead of a Committee of Commerce and Manufactures, there be two Standing Committees, one of Commerce, and one of Manufactures."

Mr. LLOYD, of Mass. was in expectation that the honorable gentleman who had submitted the resolution, would give his reasons for the measure; which had his entire concurrence. The object of appointing Committees, Mr. L. said, was to investigate the subjects brought before them, to digest them and present them in a condensed and luminous form, that the Senate might act on them with less labor and more confidence. He thought it wrong to refer two subjects, which often came in collision with each other, to the same committee. He had the honor, last year, to be on the Committee of Commerce and Manufactures, and had received every mark of politeness and attention from the gentlemen composing that committee; yet he could declare that, on all questions relating to Commerce, excepting those concerning Light-houses, Breakwaters, and one or two others, he had the misfortune to be in a minority. It was well known, that the two great national objects of Commerce and Manufactures, in legislating on them, frequently came in collision with each other, and it must frequently happen that those who advocate the one would be opposed to the other. Commerce, Mr. L. said, was the leading interest of the country: it furnished all the revenue; it gave three times the amount necessary to meet the expenditure of the country; and, considering its vast importance, he should decide upon passing the resolution.

Mr. DICKERSON, of N. J. offered a few remarks in favor of the motion. He thought it improper to blend two subjects so distinct from each other as Commerce and Manufactures, especially as there were Members sufficient to fill all necessary Committees. Mr. B. bore testimony to the advantage the Committee on Commerce and Manufactures had derived from the experience and information of the gentleman from Massachusetts, and concluded by expressing his strong conviction that it was the interest of the country that the two subjects should be separated.

Mr. FINDLAY, of Penn. thought the subject of Agriculture of as much importance as either Commerce or Manufactures, and proposed so to modify the resolution that it should read, one of Commerce, and one of Manufactures and Agriculture.

Mr. DICKERSON objected to the proposed amendment, on the ground that there was no Committee of Agriculture, and it would be inexpedient to combine it with the Committee on Manufactures: for, although the two subjects were in many respects connected with each other, yet the different views which would be taken of them by the gentlemen composing the committee, would occasionally clash.

Mr. HAYNE, of South Carolina, said, it was easy to perceive that the gentleman from New Jersey looked to Manufactures as a separate and distinct interest. If it had been otherwise, he would have accepted the amendment proposed by the gentleman from Pennsylvania. Mr. H. said he protested against such a doctrine. Experience had proved that much benefit had been derived from committing to one committee the subjects of commerce and manufactures, and he would advocate any motion to add the subject of agriculture—willing that those three great national interests should be inseparably connected. Mr. H. thought, if they were to legislate with a view to have separate and individual interests on those subjects, great misery to the country at large would be the result. It would be impossible for them to legislate wisely on manufactures, if they had not, at the same time, a distinct view of the effect on the commerce of the country. To illustrate the advantage of combining the two subjects in one committee, on which gentlemen conversant with each would be appointed, Mr. H. adverted to the great benefit which the Committee of Commerce and Manufactures had, at the last session, in its deliberations on the tariff bill, derived from the counsels of the honorable gentleman from Massachusetts, (Mr. LLOYD.) This fact was well known—for the value of his knowledge and experience on that Committee was the subject of remark at the time. What, said Mr. H. was the object of legislating on manufactures? Was it to provide articles for the domestic use of the country? No—it was to make them a subject of commerce, by exporting what was manufactured, or effecting the importation of the produce of other nations, and it would be impossible for them to pass a law which would affect the manufactures of the country, which would not have a direct operation on its commerce. He hoped these great objects would go on together, and that the proposition to separate them would not prevail.

Mr. SMITH said nothing was more common than to introduce innovations in legislation; the subjects of manufactures and commerce had been for a series of years connected in one committee, and there was then no complaint, because these two great objects are so similar, that, in attempting to do much good to one, there is danger of injuring the other. A similar innovation took place in the other House; a Committee of Manufactures was instituted, and they went on for the promotion of that particular object without regard to the other; and, if the Senate followed the example of the other House, they must expect the same result. Commerce and Manufactures ought ever to go hand in hand, so as not to destroy or distress each other; and in the Committee there should be gentlemen who were favorable to manufactures, and others who were favorable to commerce, so as to check any motion or attempt to injure either the one or the other.

Mr. ROWAN observed that an Agricultural Society might be necessary for the ten miles square, as the soil was decidedly capable of great improvement. He thought they had better leave agriculture as it is—it was not within the scope of the powers of this body. The power to regulate commerce was expressly given, and the connexion between that and manufactures led to the establishment of a Committee of Commerce and Manufactures—but he should always vote against any proposition tending to regulate Agriculture.

Mr. HOLMES, of Maine, said the duties of the Committee on Commerce and Manufactures were well understood, because they had been defined by practice, but, as regarded the duties of a Committee on Agriculture, he could not imagine what they could be, and he thought that they ought to be defined before such a committee was established.

Mr. FINDLAY said there were several cases in which such a committee could act; it was impossible to tell what business might arise, and he thought the duties of that committee as well defined as those of any of the Standing Committees.

The question was then taken on Mr. FINDLAY's amendment, and lost.

The question was then taken on Mr. DICKERSON's motion to create two committees, and carried; Yeas 20, Nays 9.

Mr. JOHNSON, of Kentucky, submitted the following resolution:

Resolved, That a committee be appointed to inquire into the expediency of abolishing imprisonment for debt.

Mr. J. moved the immediate consideration of this resolution; but, some opposition being made to this course, he withdrew the motion.

The Senate adjourned to Friday.

FRIDAY, DECEMBER 9, 1825.

Agreeably to notice, Mr. NOBLE asked, and, having obtained leave, introduced a bill for the relief of Clark McPherrin.

Mr. N. stated that Clark McPherrin was a soldier on the Peace Establishment, stationed at Fort Howard, who became deranged and left the post, and was found eighteen days afterwards, half a mile from the Fort, under a haystack, frostbitten to such a degree as to require the amputation of both feet. His case had been represented to the War Department, but there was no law in existence to afford him relief; this had induced Mr. N. to introduce the bill.

The bill was read and passed to a second reading. Mr. N. moved a second reading of the bill to-day, but the motion was objected to, and lost of course.

Mr. HAYNE submitted the following resolution:

Resolved, That uniform laws throughout the United States, on the subject of Bankruptcy, ought to be established.

ROADS AND CANALS.

The Senate then proceeded to the consideration of the following resolution, submitted by Mr. RUGGLES on Wednesday last:

Resolved, That there be added to the thirtieth rule for conducting the business of the Senate, the following:

"And a committee, to consist of five members, on Roads and Canals."

Mr. RUGGLES said he was not aware it was necessary to offer any remarks on the proposed amendment to the rule. The subject of Roads and Canals had been before Congress every session for a considerable time, and this session it formed a part of the President's Message, and it was necessary that a Standing Committee should be appointed as well for the reference of that portion of the Message, as to inquire into the matters relating to the subject, which would come before them from other quarters. A few days ago, the duties of the Committee on Commerce and Manufactures had been divided: those of a Committee on Roads and Canals would be equally laborious, and it was of importance that a committee should be appointed.

Mr. HOLMES, of Maine, said, the Senate would not probably be aware of the extent to which they would go in establishing a rule of this kind. They had heretofore been satisfied with appointing a committee from session to session; but if they were all agreed on the subject of Roads and Canals, it would be proper to have a Standing Committee; that is, if the Senate agreed not only that the General Government had the power to construct Roads and Canals, but that it would always be expedient to do so. If, however, the Members of the Senate were not all of opinion that they possessed the power, it would be better to go on as they had done heretofore, and refer the subject to a Select Committee.

The question was then taken on the resolution, and lost—yeas 14, nays 19.

The Senate then proceeded to the consideration of the following resolution, submitted by Mr. FINDLAY:

"*Resolved*, That the 30th rule of the Senate be amended, by adding thereto 'a Committee on Agriculture.'"

Mr. FINDLAY said, that, when he brought forward the subject on a former day, it was urged in opposition, that the subject of Agriculture was not within the scope of that body, and that they could not, therefore, legislate respecting it beyond the District of Columbia. Mr. F. said, it was his opinion that the three great branches of domestic industry, Commerce, Manufactures, and Agriculture, were all equally entitled to the care and protection of the Government. The Senate had directed the establishment of a Committee on Manufactures as well as on Commerce, and he saw no reason why Agriculture should not receive the same attention from the Senate. It might be alleged, that the connexion between Commerce and Agriculture rendered a committee on the latter subject unnecessary. To this position he thought there might be exceptions. In legislating on Commerce, certain laws might be passed, which might operate to the depression of Agriculture; laws encouraging to a great extent the importation of articles in a raw state which might come in competition with the home materials which Agriculture furnished in abundance. Things could not be in this state without the Agriculturists having a right to complain, and all their complaints would amount to nothing at all, if there were no committee to which their petitions could be referred. All subjects coming before the Senate that might particularly interfere with the interests of Agriculture, ought to be referred to such a committee, who would report a modification of the laws, or suggest new ones. Mr. F. concluded by saying, he had submitted this resolution from the dictates of duty, and he did not think it necessary to say any thing further on the subject.

Mr. HOLMES, of Maine, wished very much that the gentleman from Pennsylvania had informed them what such a committee would have to do. Could any of them know what its duties would consist in? Could he point out any one thing it could report upon; any thing relating to the raising of cotton or of cattle? What power would the committee have? Was it to afford information to the people on the subject of agriculture, or to bring in reports on which Congress was to act? Mr. H. said he was opposed to the appointment of a committee of information; but, if the gentleman would point out any one thing which properly belonged to such a committee, or shew how the committee was to act, he did not know but he should be disposed to indulge him with his vote; but he confessed he could, himself, think of no one thing: it was perhaps, owing to his want of understanding on the subject, but he could not see what the committee would have to do. If he were one of that committee, and that gentleman were the chairman, and could give no further information on the subject than he had now done to the Senate, he should, certainly, be greatly at a loss what to do.

Mr. FINDLAY, in reply, referred to the article of spirits—foreign spirits might come in competition with domestic ones, and affect the agriculturist in the grain-growing States: a prohibition of foreign potatoes might be proposed, which would also interest the agricultural interest; and many other questions might be mentioned which it would be proper to refer to a committee on the subject. But, supposing the committee had nothing to do, then the gentleman certainly could not imagine that any thing of consequence could result from the appointment of it.

Mr. WOODBURY, of New Hampshire, observed, that he should vote for the resolution now before the Senate, notwithstanding the strong opposition to it which had been manifested. Yet he would not have risen to offer any remarks upon its passage, but for the circumstance, that, on Wednesday, he had voted against the amendment proposed to the Committee on Manufactures, and, consequently, without explanation, an inference might be drawn by some of inconsistency between the two voter. That amendment, however, was resisted by him upon the sole and identical principle which, in his opinion, operated with the greatest force in favor of the present resolution—the principle of inexpediency, in referring the subjects of manufactures and agriculture to the same committee, and an inexpediency as great as to continue to refer commerce and manufactures to the same committee. All the arguments, so eloquently urged on that day by the gentlemen from Massachusetts and New Jersey, for a separate committee on each of the two last subjects, applied in equal vigor for a separate committee on agriculture. Not that he believed the interests of all these cardinal branches of industry were not inseparably connected—for he cordially united with the gentleman from South Carolina in that particular; but it was a connection in their importance to society, and in favor due from the Government; nor that he believed they were not sisters, as happily expressed by the gentleman from Maryland—but sisters, chiefly, in the affections of this House. They could be received separately; and, like those sciences having one common bond, must be examined in detail—peculiar talents could, in distinct committees, be brought to bear on the investigation of each; and, by a proper analysis and scrutiny of subjects of legislation, the same utility is attained as by a proper division of labor in the common affairs of life. That there was no employment for such a committee, had been again pressed by the ingenious gentleman from Maine: but, in addition to the answer given by the mover of the resolution, he would suggest, that all questions of direct taxes on land; all internal duties and excises; and all imposts, no less than questions of foreign and internal commerce, have a powerful, and, often, an immediate influence on the interests of agriculture. And, in a territory like ours, of between two and three millions of square miles; with two-thirds of its population exclusively engaged in agriculture; with annual exports from agriculture of about forty millions; and with, probably, fifteen millions of our duties paid, in the end, by the tillers of the soil, who consume, and not by the merchants, who import—it is impossible not to find subjects peculiarly proper, in some stage of their progress through this House, to be referred to such a committee. True it is, that the subject, as heretofore, might be referred to other committees; and it is equally true, that all subjects, whatever, might be referred to a Committee of the whole House. True it is, also, that the duties of such a committee are not specifically defined; nor are the duties of any other committee; but depend on the express object of the committee, and the nature of subjects coming before Congress. If those concerning agriculture are now small, he hoped the prosperity of it would long keep them small. But, that her interests were daily touched, directly or indirectly, and might be considered by reports of other committees being referred to the committee before any final measures are taken, will be manifest, by adverting, not only to the effect of the tariff, as before named, on some kinds of produce, but to the duties on sugar, as affecting the agriculture of that section suited to the cane; on hemp, as affecting another section; on woollen and cotton goods, as affecting the produce of other sections; tobacco, another. As a strong illustration how agriculture may be affected by duties on articles consumed merely, and not grown here, something more than half a million in value of salt is annually imported, paying a duty of twenty cents per bushel, and a large proportion of it being consumed by the farmers of the North, this duty is a tax on them. The hardy yeomanry of the country may ask, in time, to be heard on these, and similar topics: and, though groaning under no such tithes and poor-rates as to require for relief the cumbrous system of British Corn Laws; though not wont to be so clamorous

as those engaged in some other pursuits; though not thundering at your doors so often with petitions, memorials, and remonstrances; yet they have the same constitutional right to notice, are as deeply interested in all the legitimate objects of national legislation; and, as Lords of the Soil, were known, by every hearer, to yield in no human excellence to the Lords of the Spindle. The other House had a similar committee, and he trusted, this would be deemed an additional argument for one here.

Mr. HOLMES, of Maine, said that the gentleman had endeavored to define the duties of a Committee on Agriculture; but every one that he had mentioned, properly belonged to, and was always considered by, the Committee on Finance. As regarded the tariff, or a tax affecting any article of commerce, the Committee of Finance was properly the Committee of Agriculture for the Senate. Mr. H. did not mean to disregard the interests of agriculture—on the contrary, he thought it the great interest on which all the other interests rested. The present question was merely the proper mode of transacting the business of the Senate; but, as far as the agriculture of the country was concerned, having a bearing on taxes, and on the manufactures of the country, the Committee of Finance was the true committee to which its interests ought to be referred.

The question was then taken on the resolution of Mr. FINDLAY, and decided by Yeas and Nays, as follows:

YEAS—Messrs. Barton, Bell, Benton, Chase, Dickerson, Edwards, Findlay, Hayne, Hendricks, Johnson, of Ken. Johnston of Lou. Kane, Knight, Marks, Noble, Robbins, Ruggles, Seymour, Smith, Thomas, Willey, Woodbury—22.

NAYS—Messrs. Branch, Chandler, Clayton, Cobb, Eaton, Gaillard, Harrison, Holmes, of Me. King, of Alab. Macon, Mills, Rowan, Van Buren, Van Dyke—14.

So the resolution was agreed to.

IMPRISONMENT FOR DEBT.

The Senate then proceeded to consider the following resolution, submitted on Wednesday last, by Mr. JOHNSON, of Kentucky:

Resolved, That a Committee be appointed to inquire into the expediency of abolishing Imprisonment for Debt.

Mr. MILLS, of Massachusetts, said this was a subject which had occupied much of the time and attention of the Senate, and he should be glad to have it thoroughly examined, that some course might be adopted, some proposition made, which should meet with the approbation of a majority of the Senate. But he was opposed to the appointment of a Select Committee at the present time for that purpose. Amongst the great variety of subjects in the President's Message, Mr. M. said, there was one he had recommended—and he thanked him for it—the establishment of an uniform system of bankruptcy in the United States, in pursuance of the express delegation of that power to Congress by the Constitution; and it was easy to see that it was a subject connected with the proposition now brought forward; and, whenever they exercised that power, all the evils, of which there was so much complaint, would be effectually remedied. As soon as the Standing Committees were appointed, that part of the Message which related to the subject of bankruptcy would be referred to one of them, probably the Committee on the Judiciary, and, when it was so referred, that committee would then have before it the very subject to which the gentlemen now wished to call the attention of the Senate, and for which he wished the appointment of a Select Committee. Mr. M. was of opinion that, where two subjects were so intimately blended together, that they could not legislate on one without involving the other, both ought to be referred to the same committee. In digesting and preparing an act to establish an uniform system of bankruptcy throughout the United States, the subject embraced by this resolution would come before that committee. He hoped, therefore, the gentleman would permit his resolution to lie on the table till the Standing Committees of that House were appointed, and it would then be referred to one of them, under whose examination it would more immediately come.

Mr. JOHNSON said, it was the good fortune of his friend from Massachusetts, to have a Presidential recommendation in behalf of his favorite measure to satisfy his mind. But, for himself, Mr. J. said, he was obliged to bring forward his favorite project in the same manner, and ask for it the same course that it had taken the two preceding sessions. He had not opposed the proposition for a bankrupt law; but, if he had that subject not so much at heart as the measure he had now, for the third time, presented to the Senate, he hoped he should be pardoned for asking an opportunity of bringing it forward. He said this was the third time he had introduced this proposition. The first session, the bill for abolishing imprisonment for debt, passed this body, but unfortunately it was at the close of the session, and, like every thing which at that period goes from one house to the other, it was swallowed up and engulphed, for want of time, with the other unfinished business of both Houses. That was the fate of the bill the Senate acted on; and, last session, when he again introduced the subject, he was unsuccessful. Mr. J. said, there was not a member of the community who would deny the isolated proposition for which he contended, that imprisonment for debt ought to be abolished; yet for want of perfection in the details, it was, last session, lost by the casting vote of the presiding officer. He denied, most unequivocally, that this subject was embraced in that of an uniform system of bankruptcy; he denied that it had ever been embraced in any system here or in Great Britain, or in any other proposition made here by a standing committee, and, if his life were spared, he should submit it annually as long as he had the honor of a seat on that floor, although, out of respect to his associates, he should never complain of the result, if he failed, but content himself with having discharged his duty to God, his country, and his conscience. He had stated emphatically, and he should repeat with the same emphasis, that no individual in that House, or the other Branch of the Government, had been known to raise his voice against the propriety of the proposition to abolish imprisonment for debt. They had only differed on the details of the measure. Imprisonment for debt was a stain on us as a Christian nation, and he thought that the wisdom of Congress, whilst it sanctioned the object of a bill for its abolishment, would be capable of communicating to it a vivifying principle. He was not so fortunate as to have his proposition recommended in the President's Message, but he hoped, though it was only sanctioned by a humble member of this body, it would have as good an opportunity for investigation as that which came with the sanction of the Chief Magistrate.

Mr. NOBLE, of Indiana, could not vote for referring the subject to a Select Committee. It had been before the Senate three years; had been most amply discussed; and, as far as he knew, there was no one in favor of the abstract proposition of imprisonment for debt; but all were willing to abolish it. He would say now, that whenever the subject should be brought before that body, he should vote for the bill if it proposed giving to the honest creditor a right to compel a cession of property, but not otherwise. The Committee on the Judiciary would consist of men of talents and experience, and a subject which would vitally affect millions of persons within the United States, certainly would not be passed over.

Mr. MILLS said he should be sorry to be misunderstood by the gentleman from Kentucky, or by any other: his only wish, in the few remarks he offered, was to in-

duce the gentleman from Kentucky, to permit his resolution to lie on the table till the Standing Committees were elected, and if it was found that a large portion of business was referred to the Committee on the Judiciary, he would unite with him in referring it to a Select Committee, provided the resolution offered by the gentleman from South Carolina, (Mr. HAYNE,) should go to the same Committee; both propositions, Mr. M. said, had reference to the relationship between debtor and creditor, and it was difficult to legislate so as to preserve the rights of the creditor, and yet give liberty to the honest debtor, which they all had so much at heart. When the two subjects should come before the same committee, they would consider them in every point of view, and digest such a system as would be acceptable to the House. The gentleman from Kentucky had asserted, that no Standing Committee in either House had ever brought forward a proposition of this kind: the gentleman had himself, Mr. M. said, brought forward the subject on the first business day of each Session for the last three years, and he would appeal to him and to others whether its failure was not to be attributed to its having been brought forward originally in an undigested form; and whether there was not more probability of something being accomplished by leaving one Committee to consider both propositions together, than by bringing each forward before distinct Committees. With this explanation, Mr. M. said he should move to lay the resolution on the table.

Mr. MACON, observed, that, to his mind, there was a clear distinction between the measure proposed by the resolution and a bankrupt law. A law to abolish imprisonment for debt would apply to all honest debtors of whatever class or vocation; whereas a bankrupt law would apply to a few comparatively, as he understood that bankrupt laws embraced merchants only; the latter were also highly penal, and if a fraudulent bankrupt was caught, he would be severely punished. [Hanged, said Mr. MILLS, in an under voice.] The gentleman from Massachusetts says, hang him. I did not know, sir, that the people in his part of the country were so fond of hanging; but I confess I prefer relieving debtors, honest ones, by the mode proposed by the gentleman from Kentucky, and shall vote for his resolution.

Mr. HAYNE, of S. C. said he had that morning the honor of submitting a resolution on the subject of bankruptcies; in so doing, his object was not to call for the immediate decision of the Senate on that proposition, but to refer it to some committee, when they shall have been appointed. He should be particularly desirous, if the gentleman from Kentucky, (Mr. JOHNSON,) should obtain his Select Committee, with a view of considering the subject in all its bearings, to ascertain how far process in the Courts of the United States might be modified, and how far general relief might be extended throughout the Union; that the committee, viewing the whole of the subject, might present the result of their deliberations to the Senate. He should still maintain his resolution, and if the gentleman from Kentucky should succeed in his proposition, he intended to move, at the proper time, to refer it to that committee. He was not disposed to object to that proposition, and he hoped that, in the spirit of mutual accommodation, he would not object to the suggestion which he now made. The proposition of the gentleman from Kentucky, Mr. H. said, would afford relief to unfortunate debtors of a particular class, for that bill never did propose to extend it beyond the Courts of the United States. The relief afforded would, therefore, only be as one in a hundred; but a mild and judicious bankrupt law would not be confined to this class, but its benefits would be extended to every class throughout the Union. This was a subject for fair inquiry—there existed, Mr. H. said, in this House, and in the nation, a prejudice on the subject of bankruptcy. Many imagined that the object of such a system was merely to benefit the debtor and, in consequence, the creditor became alarmed. This was not the fact. One object certainly was to secure relief to the honest debtor; but one equally important would be considered, the securing the just rights of the creditor. Any one who had surveyed the United States during the last six months, and had witnessed the tremendous effects of the bankrupcies that had prevailed in different parts of the Union, must have been convinced that the most crying evils existed in regard to that subject—fraudulent debtors giving undue preference, making false consignments, &c. and putting fair dealing at defiance. Mr. H. said, whilst he was disposed to join with the gentleman from Kentucky, in affording relief to honest debtors of every class and description, he should be no less anxious to secure the just rights of creditors. All he desired was, that the whole subject, in all its bearings and relations, should go to the enlightened committee, who would deliberate seriously on it, and present the views which their deliberations would suggest; and he had no doubt, if the talents and experience of the Senate were directed to the subject, the result would be a wise and beneficial law.

Mr. MILLS then moved to postpone the further consideration of the subject to Tuesday next, which, after a few remarks from Mr. JOHNSON, of Kentucky, was agreed to.

The Senate adjourned to Monday.

MONDAY, DEC. 12, 1825.

This day was principally occupied in the election of Officers of the Senate. After several ballotings, WALTER LOWRIE, of Pennsylvania, (late a member of this body) was chosen Secretary. MOUNTJOY BAILEY, was chosen Sergeant at Arms, and HENRY TIMS, Doorkeeper. The Rev. Dr. STAUGHTON was chosen Chaplain to the Senate.

TUESDAY, DEC. 13, 1825.

IMPRISONMENT FOR DEBT.

The Senate proceeded to the consideration of the following resolution, submitted on a former day, by Mr. JOHNSON, of Kentucky:

"*Resolved*, That a Committee be appointed to inquire into the expediency of abolishing Imprisonment for Debt."

Mr. HAYNE, of S. C. thought the suggestion made on the subject the other day, by the gentleman from Massachusetts, (Mr. MILLS,) a very good one, and he hoped it would meet the approbation of the honorable mover: he should, therefore, move to amend the resolution by adding the following words:

"And, also, that they be instructed to inquire into the expediency of establishing an uniform system of Bankruptcy throughout the United States, with leave to report by bill or otherwise."

Mr. H. remarked, further, that, by referring both subjects to the same committee, sufficient time would be given for the inquiry, and the whole ground would be occupied: the only objection would be, its not being referred to the Committee on the Judiciary, but that committee would, he presumed, have so much to do, it would, probably, not be able to bestow the necessary attention on the details of these measures.

Mr. JOHNSON, of Kentucky, said he should make no objection, as far as he was concerned, but would vote for the proposition, provided no objection were made to it by the Committee on the Judiciary.

The amendment was agreed to, and the resolution, as amended, adopted.

The Committee was ordered to consist of seven members.

JUDICIAL PROCEEDINGS.

The Senate then proceeded to the consideration of the following resolution, submitted yesterday, by Mr. KANE, of Illinois:

"*Resolved*, That the Committee on the Judiciary be instructed to inquire into the expediency of so amending the Acts of Congress regulating processes in the Courts of the United States as to place the persons and property (with regard to the proceedings against them) of citizens of the States admitted into the Union since the 29th of September, 1789, upon a footing of equal security with the persons and property of citizens of the original States."

Mr. HOLMES, of Maine, said he should be much gratified if the honorable gentleman who had moved the resolution would briefly state his object in making the motion, as his views would probably be useful to the Committee on the Judiciary.

Mr. KANE then rose, and said, that the explanation required by the honorable gentleman from Maine, lay within narrow limits, and might be explained in few words. The object is, as expressed upon the face of the resolution, to procure such amendments in the acts of Congress, regulating processes in the Courts of the United States, as will place the citizens of the several States upon a footing of equal security in their persons and property. The Process act of the 28th September, 1789, amongst other things, in effect, provided that the modes of process in the Circuit and District Courts, in suits at common law, should conform to those *then* used in the Supreme Courts of the States. By "modes of process" was meant, as is decided in the case of Wayman vs. Southard, by the Supreme Court, every step taken in a cause; and "indicates the progressive course of the business from its commencement to its termination." Thus, the persons and property of the citizens of the States *then* in existence, were placed under the protection and guardianship of their own laws. This provision continued in force, without modification, until the act of May, 1792, was passed, by which the same was made subject to such alterations and additions as the Circuit and District Courts might make, and to such regulations as the Supreme Court of the United States should, by rule, prescribe. He did not understand, nor did he know that it was so understood any where, that these "modes of proceeding" were by this latter act made subject to any alterations, additions, or regulations, other than such as time and practice should show to be indispensable to the correct administration of justice. The benefits of the provisions of '89, have been adjudged to have application to the citizens of those States only which had existence when the act was passed. It was for the purpose of placing the citizens of other States upon the same footing, that he ventured to introduce this resolution. These citizens, in their persons and property, are now subject to be dealt with, not in a manner prescribed by their own laws, but according to such rules as the Courts may think proper to adopt. The State which he had the honor in part to represent, as is the case with its neighbors, Indiana and Missouri, has no other than a District Judge. No inference was, however, to be drawn from the few remarks he had submitted, that the Judges are blamcable for the manner in which they have exercised so large a discretion. The principle is to be dreaded; and the cause of complaint may be removed by extending the benefits of the act of '89 to all the States, or by the passage of a law establishing a system uniform and impartial in its operations. It was not essential to the explanation required of him, nor to the purpose of the resolution, that he should, on this occasion, indicate a preference for any particular plan; but he would think himself fortunate if he had succeeded in convincing the Senate that further legislation was necessary.

Mr. R. M. JOHNSON, of Kentucky, remarked, that he had not taken notice of the proposition of the gentleman from Illinois, until he found it on his table, and he was at some loss to know the precise objects which the gentleman intended to embrace; but he was now extremely happy to learn, from the explanation given, that the motion involved a great constitutional question—one vitally interesting to the Union, and particularly to the State which he in part represented—a State which was unfortunate enough to be the first member of this Confederacy, which had felt judicial power under the enactment of a code of laws issued under the name of Rules of Court. Mr. J. said, that the Federal Circuit and District Courts for the Kentucky District, had issued certain rules of court, which operated, to all intents and purposes, as the execution laws of the State of Kentucky, so far as related to judgments or decrees obtained in the Federal Courts for that State. He had not those rules of court to present to the Senate, which he called a code of execution laws; at a proper time, he hoped to have it in his power to present them; for the present he would say that these rules, if he recollected right, regulated the *ca. sa.* which took the body of the debtor; they regulated the forth-coming bond and the replevin bond; the terms upon which real and personal estate should be sold; at what time, and upon what credit; and, in fine, he considered the rules a complete system (of its kind) of execution laws; laws which were not in force in Virginia; laws which were not in force in Kentucky; and laws which were not in force by acts of Congress. These Courts, acting under the authority of the United States, declared that this power had been exercised in consequence of a decision of the Supreme Court of the Union. He had not examined that opinion with so much accuracy as to give an opinion whether he concurred with the Judges of the Circuit and District Court for the State of Kentucky as to latitude of principle which they believed the Supreme Court had assumed. It would, however, become the bounden duty of Congress to look into that matter, and see if it were possible that irresponsible judicial officers had assumed the right, and had exercised the power, of making laws for a sovereign and independent State. He thought they might be satisfied with the exercise of the power to declare State laws unconstitutional, at their will and pleasure, and leave to the Representatives of the People to frame the laws. From what he could learn, he supposed the Judges had, in giving this opinion, doubted whether the regulation and creation of rules, to regulate the sale of property, and the disposition of the body of the debtor, was the exercise of legislative power. Mr. JOHNSON said he would appeal to every member of this body—he would appeal to every intelligent jurist of this nation—whether, in England or America, if it was at all doubtful whether the system of execution laws was not a substantive and a vitally important legislative power; and whether, in all the States, in the United States, and in Great Britain, the statute books did not invariably prove that legislative bodies, the Representatives of the People, where they exist, have not at all times exercised this power exclusively. Mr. J. said, in many cases the Court might be authorized to interfere in the forms of judicial proceedings; and, like the colors of the rainbow, it might sometimes be doubtful where legislative power ended and judicial power began. But, in the case mentioned, he could not conceive of a higher or more exclusively legislative question, than that which had dominion over the property and liberty of the citizen. But, he said, he should not longer trespass upon the patience and courtesy of the Senate, but should conclude by saying that he believed that the exercise of such a power, by the Judges, was as contrary to the spirit of our Constitution, as if the King of England and his two Houses of Lords and Commons had given us this code.

Mr. HOLMES, of Maine, said his object was attained by the clear explanation given by the honorable mover. He had pointed out the evil and the remedy he proposed: this was the object he had in view in calling on him, and he was perfectly satisfied.

The question was then taken and the resolution agreed to.

WEDNESDAY, DEC. 14, 1825.

The Senate proceeded to consider the following resolution, submitted yesterday by Mr. EATON:

Resolved, That the Committee on the Judiciary inquire into the expediency of so amending the judicial system of the United States, as that each and all the States may equally participate in its benefits.

Mr. EATON said, he was not aware it was necessary to offer any explanation of the resolution; he merely desired to call the attention of the Committee on the Judiciary to the subject, as it was one of very great importance to the section of country where he resided. In the year 1789, five Associate Justices and one Chief Justice had been deemed necessary to discharge the judicial functions of the United States. At that period the population of the country was not greater than is the present population of the Western States, where but a single Associate Judge was now assigned. He was now incompetent to the labor; and in fact the performance of his duties had almost destroyed his constitution. Many complaints had been made on the subject, but every application had been refused or put off for want of time or inclination to meet and act upon it. He said there was much business in the country which necessarily came into the United States' Courts, and in which, if any error existed, there was no mean of correction by appeal to the Supreme Court. The People of the West were not satisfied with the kind of justice which had been extended to them. They had repeatedly applied for some amelioration. He hoped, therefore, that the Judiciary Committee would give to the subject the earliest attention. The Western country had not had fair dealing on the subject, and, until they should be placed on the same footing with the other States of this Union, as respected their Judiciary, they would never cease to complain, and to ask redress.

The resolution was then agreed to.

The Senate then proceeded to the consideration of the following resolutions, submitted by Mr. HOLMES:

Resolved, That the Committee on Finance be instructed to inquire into the expediency of regulating the duties on certain goods, so far as to prevent the illegal introduction of such goods from Provinces or Territories adjacent to the United States.

Resolved, That the Committee on Finance be instructed to inquire into the expediency of revising and altering the several laws relating to the coasting trade.

Resolved, That the Committee on Finance be instructed to inquire into the expediency of altering the law relative to the seizure and forfeiture, so far as respects small parcels or packages, of goods illegally brought into the United States.

Mr. HOLMES observed, that, last year, separate bills passed the Senate on the subjects of the two latter resolutions, but were not acted on by the other House. The act which we passed in 1790 or 1792, regulating the coasting trade, only related to the Atlantic coast, and the waters on that coast. This act was altered in 1820, but no provision was made to regulate the trade on the interior waters. The end proposed by the bill relating to seizures and forfeitures, was, to provide for a more expeditious mode of seizure and forfeiture of goods illegally imported in small parcels, and thus lessen the expenses of adjudication.

Mr. FINDLAY said, he was not so conversant with the subject as the honorable mover, but it appeared to him that one, if not two, of the resolutions ought to be referred to the Committee on Commerce—if they were to be referred to the Committee on Finance, on the ground that any regulations in the coasting trade would affect the Finances, then almost every subject coming before the Senate ought to come before the Committee on Finance—it would be difficult to make any regulation in commerce but would affect finance.

Mr. LLOYD, of Massachusetts, said, the general reasoning of the gentleman from Pennsylvania was correct. If he recollected right, both the bills brought forward last year, had reference particularly to the prevention of smuggling: in that view, he thought the subject came properly before the Committee of Finance, and should hope that it went there now.

The resolutions were then agreed to.

The Senate then proceeded to consider the following resolution, submitted by Mr. LLOYD, of Massachusetts, yesterday:

Resolved, That the Secretary of the Navy be directed to cause to be laid before the Senate, the proceedings and judgment of the Court of Inquiry in relation to the employment of the squadron under Commodore Porter, for the suppression of Piracy in the West Indies, and the transportation of specie, in vessels of the United States, during the years 1823 and 1824, and, also, the proceedings of the Court Martial in reference to the transactions at Foxardo.

Mr. LLOYD observed, that the first part of the resolution—that relating to the proceedings of the Court of Inquiry—had been offered at the solicitation of Commodore Porter himself. The second part of the resolution, Mr. L. said, he had added because the proceedings of the Court Martial had been printed, by order of the Navy Department, for the use of the Members of Congress, and were now ready for distribution; and, as there could be no objection to receiving them, he had thought it as well to make the call for them while requiring the proceedings on the first named subject.

The resolution was then agreed to.

THURSDAY, DECEMBER 15, 1825.

The Senate proceeded to consider the resolution submitted yesterday by Mr. JOHNSTON, of Louisiana, on the subject of the Judiciary.

Mr. JOHNSTON said, that the resolution he had submitted required no illustration. The subject was familiar to the Senate, and especially to the Committee to whom it was proposed to be referred. It had been repeatedly pressed upon Congress; and, at the past session, it had been deferred, under the assurance, that, at the present, something definitive should be done. Mr. J. said, that, when this subject was thrown open, so many different views were taken; so many projects for the reorganization of the Courts were presented; such diversity of opinion prevailed, that every scheme successively failed. The new States, aware of the difficulty of perfecting, in any short time, any new system of reconciling public opinion to it, as well as the time necessary to arrange all the details of an extensive and complicated plan, had now to ask of Congress to extend to them at once the benefits of Circuit Courts; and, at the same time, to remedy all the inconveniences from the defective arrangements of these Courts, as well as the laws regulating the jurisdiction and the mode of proceeding. Mr. Johnston said, the first part of the resolution related to the Supreme Court, and, unless some amendment could be obtained in its terms, it would be useless to ask an extension of the Circuit Courts. He said, he presumed that, at every term, 70 or 80 causes were left undecided; and that, at this time, more than twice that number were on the docket, and that that Court could not, in the short space allotted to them, determine half those causes. The effect was, that no judgment could be had in the Court of last resort under two years, and sometimes three; that the Court could not now keep pace with the progress of business, and the docket would constantly augment; that a great mass had already accumulated, involving constitutional construction, property to an immense amount, and principles of great interest. Such a distribution of the Circuit Courts must be made, as will afford a longer session to the Supreme Court, and, even then, it is feared that some time will elapse before the

will discharge the accumulated business. He said, the establishment of Circuit Courts was required by nine States, the state of the country imperiously demanded that the system should be equal and general, and he hoped it would be no longer delayed, under the idea that some other system would be adopted. He concurred with all those States in asking this now at the hands of Congress. We shall then be upon an equality, and prepared to discuss any new project that may be submitted.

Mr. J. then went at length into the inconvenience which had resulted from the expression of the Judiciary act of 1789, prescribing to the Courts of the United States the mode of proceeding. He said the mode of proceeding, in the several States, at the date of the act, had been prescribed. The consequence was, that the States admitted since had no law on the subject. He said, it was submitted to the gentlemen representing the old States, to be governed by that law still; but it deprived those States of all improvement which might have been made since in their legislation, especially with regard to Executive laws. It destroyed the conformity which ought to exist in the rules and practice in all the Courts administering justice, within the same limits, upon the same contracts. It created some confusion and some inequality, by prescribing different measures of justice to different parties; besides, almost every State had found it necessary to adapt her laws to the peculiar circumstances of the country, and sometimes to alter them under the pressure of events which the State thought justified their interposition.

In regard to the States admitted into the Union since the Judiciary act, they had no law, and the Courts of the United States had undertaken, not only to prescribe rules of proceeding, but to exercise the highest act of sovereignty, by making laws to supply the defects of our legislation—a power which Congress cannot delegate. This subject was clearly explained yesterday by the honorable member from Illinois, (Mr. KANE.) Mr. J. said, that, if we prescribe the laws of the several States for the government of the United States' Courts, there is still another difficulty—those laws may violate contracts; they may be unconstitutional; and, in that event, those Courts would have no authority to enforce their judgments. The only law which they could employ, to give effect to their judgment, would be declared by themselves null and void. It must be our duty, therefore, to provide for such an occurrence by a general law applicable to such a state of things. For himself, he could only wish, that the Courts of the United States, in Louisiana, should be governed, in all cases, by the laws of the State.

Mr. J. said, that, under the present Judiciary act, a deviation from the laws of all the States had been permitted, as unfriendly to civil liberty as it was vexatious and oppressive. It permitted the judgment creditor to take execution: in the first instance against the body of the debtor, to hold him in prison until the money was coerced either from him or his friends. It is arming a vindictive creditor with a power over the personal liberty of the debtor—to exercise the most malignant vengeance, and at once to degrade and ruin him. He said that the law which permits a man to be deprived of his liberty, while he possesses property, on the faith of which the contract was made, can only be equalled in absurdity by a law which authorizes his perpetual imprisonment, because he has the misfortune to have none. This power had been, in many instances, seized on and exercised in a most unfeeling manner. It is believed not to be consonant with the laws of any of the States, and to be unworthy our legislation. Mr. Johnston remarked, he had merely hinted the propriety of restraining the jurisdiction of the Courts in civil cases. It was known that the States had competent Courts for the administration of justice, conveniently situated to the parties, to which they could resort without much inconvenience or expense. That justice was uniformly and impartially administered. It was now known that the distrust and jealousy of the States was without foundation. That, in fine, there was no necessity for a Court to decide causes between citizens of different States. The Courts of the United States had unlimited jurisdiction over a great extent of country, and was often used oppressively. Citizens of States are often sued at the distance of two hundred miles from the seat of justice; they are inconveniently carried to a great distance, with an expense which they cannot afford, deprived of the means of defence, and removed from their witnesses; and what is gained by the other party? The cause is tried by the same laws—by a Judge and Jury, resident in the same State. He submitted to the Committee whether it would not be advisable to limit the jurisdiction; and, he said, as it was an onerous and odious jurisdiction, it ought to be restrained to the immediate parties to the contract, even in commercial cases. Mr. Johnston said, he had only taken a desultory view of the subject, merely to point out these objects to the attention of the Committee, and to ask of them at once to extend the Circuit Courts over all the States, and to make some reformation in the Judiciary act.

The resolution was agreed to.

AMENDMENT TO THE CONSTITUTION.

The Senate proceeded to consider the following resolution, submitted yesterday by Mr. BENTON:

Resolved, That a Select Committee be appointed, with instructions to inquire into the expediency of amending the Constitution of the United States, so as to provide for the election of President and Vice President, by a direct vote of the People, in districts.

Mr. HAYNE was rejoiced to see that the gentleman from Missouri had thus early called the attention of the Senate to this important subject; but he thought he had not made the inquiry sufficiently extensive; he had confined it merely to the mode of election; but Mr. H. thought an attempt ought also to be made to secure the election of President of the United States from the intervention of the House of Representatives; and he, therefore, moved to amend the resolution, by adding the following:

"And that the Committee be further instructed to inquire into the expediency of so amending the Constitution as to secure the election of President and Vice President of the United States, without the intervention of the Senate or House of Representatives."

Mr. MACON said, that it would be wise, in adopting a resolution of this kind, to give the Committee all the latitude that could be given, that they might examine the subject in every particular, and make the inquiry as broad as possible. He had not the same opinion of any particular mode of electing a President of the United States as he formerly had, but inclined to favor the district plan.

Mr. DICKERSON said it was highly desirable that the President and Vice President should be elected without the interposition of the Senate or House of Representatives; but it was a question with him, whether it could be completely effected. He did not think the Constitution could be so amended as to prevent, at some time or other, and under some unforeseen contingency, the election coming to the House of Representatives. If any mode had been devised, it had not yet been shown to them. It was hardly correct, that the members should commit themselves on this point, thus early, on preliminary propositions, and he should, therefore, vote against the resolution.

Mr. HAYNE said, the proposition merely proposed an inquiry. The gentleman allowed it was expedient that it should be done, and, by voting for the inquiry, he would not in any way commit himself. The only object was, for the Committee to ascertain whether the propositions contained in the two branches of the resolution could be car-

ried into effect. This was what had been done in Congress the last session. A proposition was submitted, similar to that now submitted by the gentleman from Missouri, but in a positive shape, not for an inquiry. It was referred to a Committee; and a variety of propositions that were made on the same subject, were referred to the same Committee; and if the gentleman from New Jersey should wish to submit any proposition himself, he should be perfectly willing it should accompany this resolution to one Committee.

Mr. BENTON said, as one taking a deep interest in the subject, he should be glad that any gentleman in the House, who had turned his attention to the subject, and could suggest any mode that promised to be beneficial, would submit his resolution, which should be referred to the same Committee with the resolution he had submitted. Whatever Committee might be charged with this subject, he should feel obliged to any gentleman that would contribute any thing that would tend to turn the attention of the Committee to it. He wished the proposition he had submitted should have an examination. Since it resolved nothing, and committed nobody, it was perfectly innocent and harmless in its present shape. As to the amendment of the gentleman from South Carolina, it only tended to enlarge the field of inquiry, and he could not object to that or any other proposition that was calculated to promote that end.

Mr. HOLMES, of Maine, said, he generally voted in favor of resolutions of inquiry on almost every subject; but he had not much confidence in amendments of the Constitution, of any kind. He thought the time was gone by for amending the Constitution, and perhaps it was well that it was so. It was easier for them to break it ten times than it was for them to amend it once, and if they tried to mend it only in those places where they had broken it, they would have enough to occupy them for a considerable time. He should not vote for the resolution under the expectation that much would be done; but he was willing that an inquiry should be made. He was not in favor of the measures of either of the gentlemen, but he should vote in favor of the amendment to the resolution, and then for the resolution as amended.

Mr. R. M. JOHNSON, of Kentucky, said, he was happy to find that the proposition to appoint a Committee embraced a specific proposition to amend the Constitution relative to the choice of a President and Vice President of the United States. The gentleman from Maine had, he feared, uttered a solemn and awful truth when he said that the time had passed for amending the Constitution, and that it could be broken with more facility than it could be amended. Mr. J. said, he should be more apprehensive of the truth of this belief, if this spirit of opposition should apply to amendments which proposed to vest the People of this country with the exercise of the great essential principles of self-government; principles upon which he conceived the prosperity, happiness, and perpetuity of our free institutions principally depended.

If, in the infancy of our Republic; if, in the first year of our political Jubilee, we discovered this opposition, what might we expect in mature age? He said our first political jubilee commenced the 4th of July last. This was the fiftieth year of our Independence. For his part, he said, he never wanted to see any friend of his called upon, as a Member of Congress, to vote for the President and Vice President of the United States; for the world was invidious, and no matter what purity Members could boast of, even if they possessed the purity of angels, their vote, in many cases, would make them obnoxious to imputations. This was one reason why he was in favor of the proposed amendment, an amendment proposing that, in no event, and in no contingency, should the duty of electing devolve upon Congress, or either House. His desire was, by such amendment, to place the Members of Congress not only beyond temptation, but beyond suspicion. Till then, he looked in vain for that harmony, concord, and affectionate feelings, which should always exist among those associated for the same great object, of giving laws and rules of conduct and action to a free people. In vain he expected to see a President elected by Congress hailed as the President of the nation; and, finally, till this right was exclusively vested in the People, or some other agents than Congress, we should never see members voting for and against measures proposed by the Administration, without being charged with being partizans on the one hand, or opponents on the other. If we have any political principles and maxims, Mr. J. said, in which we all concur, he thought it was, or would be, admitted by all, that, wherever it was practicable, the People should be vested with the exclusive right of choosing men to rule over them. It was as practicable, in this instance, he thought, as it was to elect Representatives to Congress. And why not give the power? The gentleman from New Jersey seemed to doubt its practicability. This Mr. J. regretted very much; he thought the gentleman had given a timely caution how we committed ourselves on any one proposition, and, at the same time, expressed his conviction that the proposition to give the exclusive right to the people could not be realized. Mr. J. regretted this the more, when he recollected the long services, the general attainments, and the democratic principles of the worthy member from New Jersey. For his part, Mr. J. said, he should pursue one undeviating course in this matter, and that would be to vest in the People at the polls the right exclusively, under all contingencies, to elect the President and Vice President of the United States; and if he could not obtain that result, he would give such votes as would more nearly bring the power to the exercise of the People, and in no event to vest the power in Congress.

The question was taken on Mr. HAYNE'S amendment, and carried.

Mr. COBB then rose, and said that, without entering into the inquiry whether they could strike out a mode for the election of President and Vice President, without the intervention of either branch of Congress, he would offer an amendment that went to another point: its object was to instruct this same Committee to inquire into the expediency of so amending the Constitution as to prohibit the appointment of any Member of Congress to any office of honor or trust under the United States during the term for which such Senator or Representative should have been elected. If this amendment were adopted, the evil would not be so great in referring the election of President to the decision of either branch of Congress. While he had the honor of being a member of the other House, he said, he submitted a similar proposition, and though there was not a sufficient vote to carry it through, he had the consolation of knowing that the vote in favor of it was very respectable. He thought there could be no better time than the present to renew the proposition; if the Committee could not devise a mode by which the election could be effected, without the interposition of Congress, then it became the more proper to inquire whether they should not remove from those on whom the election must devolve all temptation that might bias them in that election. He would not make any observations as to the fact of how far any member of Congress might be influenced by the hope of office, in voting: but every member would see, from the fallibility of human nature, that it was almost impossible for men sometimes not to be influenced. Mr. C. said, he wished to cut off every thing that could tempt a man, and entirely destroy all hope of office, and all imputation whether they should vote right or wrong. Mr. C. concluded by moving an amendment to the resolution, corresponding to what he stated in his remarks; and

The question being put on Mr. C's amendment, it was agreed to, *nem. con.*

Mr. MACON said, he still thought that, instead of referring to the Committee separate and distinct propositions, it would be better to commit the whole subject of the election of President and Vice President of the United States, that the Committee might devise and report such plan as they should think best to avoid the existing evils, and secure the benefits which were deemed desirable in the mode of electing those officers. He therefore moved the following as a substitute for the resolution, and the several amendments already adopted, viz:

"That a Select Committee be appointed, who shall inquire into the expediency of so amending the Constitution, in the election of President and Vice President of the United States, as to attain the best, most preferable, and safest mode in regard to such elections."

After some conversation as to the expediency of this general reference, in preference to the propositions previously offered, between Messrs. HOLMES, MACON, JOHNSON, of Ky, and COBB,

Mr. MACON'S motion was agreed to, and his amendment adopted.

Mr. VAN BUREN then said, that this was a subject on which great diversity of opinion had existed, as was manifested both at the last session, and at the present, by the number of propositions that had been offered. It was from this consideration that he thought a larger number should compose the Committee to whom the subject was now to be referred, than was usual, and, therefore, he should move that nine be appointed.

That number was agreed to.

Mr. DICKERSON gave notice that he should to-morrow ask leave to introduce a resolution for so amending the Constitution as to limit the term for which one person should be eligible for the office of President of the United States.

The Senate adjourned to Monday.

MONDAY, DECEMBER 19, 1825.

Agreeably to notice, Mr. DICKERSON asked, and having obtained leave, introduced the following resolution; which was read and passed to a second reading:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That the following amendment to the Constitution of the United States be proposed to the Legislatures of the several States; and which, when ratified by the Legislatures of three-fourths of the States, shall be valid, to all intents and purposes, as part of the said Constitution:

"No person who shall have been elected President of the United States a second time, shall again be eligible to that office."

Mr. WOODBURY submitted the following resolution for consideration:

"*Resolved,* That the Committee on the Public Lands be instructed to inquire into the expediency of requesting the President of the United States to cause to be published a detailed statement of the names, rank, and line, in the continental army, of such persons as have not applied for the revolutionary land warrants issued, and remaining for them in the Bounty-Land Office; and of such other persons as appear on the records of said Office, now entitled to have revolutionary land warrants issued to them."

Mr. COBB submitted the following resolution:

"*Resolved,* That the Committee appointed on Thursday last to inquire into the expediency of amending the Constitution of the United States, in relation to the mode of electing the President and Vice President, be further instructed to inquire into the expediency of so amending the Constitution as to prohibit the appointment of any Senators or Representatives in Congress to any office of honor, trust, or profit, under the authority of the United States, during the period for which such Senators or Representatives shall have been elected."

The resolve was read.

TUESDAY, DECEMBER 20, 1825.

INTERNAL IMPROVEMENTS.

Mr. VAN BUREN submitted the following motion for consideration:

"*Resolved,* That Congress does not possess the power to make Roads and Canals within the respective States.

"*Resolved,* That a select committee be appointed, with instructions to prepare and report a Joint Resolution, for an amendment of the Constitution, prescribing and defining the power Congress shall have over the subject of Internal Improvements, and subjecting the same to such restrictions as shall effectually protect the sovereignty of the respective States, and secure to them a just distribution of the benefits resulting from all appropriations made for that purpose."

In introducing these resolutions—

Mr. VAN BUREN said, that it would be recollected that he had, some days since, given notice of his intention to ask for leave to introduce a joint resolution, proposing an amendment of the Constitution on the subject of the power of Congress over the subject of Internal Improvements. Upon the suggestion of gentlemen who feel an interest in the subject, and think the principal object can, in that way, be better effected, he had consented so far to change the course originally contemplated, by substituting resolutions expressive of the sense of the Senate on the Constitution, as it now is, and proposing the appointment of a select committee to report upon the subject, under such instruction as the Senate may think proper to give. Such resolutions he would now take the liberty of submitting. He did not, of course, wish to press their immediate consideration, but would call them up at as early a day as would comport with the state of public business and the ordinary course of proceeding in the Senate. He hoped he would be excused for expressing an earnest wish that the conceded importance of the subject would induce gentlemen to turn their attention to it as soon as they conveniently could, to the end that, when it was taken up, it might be carried to a speedy decision, and not exposed to those unprofitable delays and postponements which had heretofore attended measures of a similar character, and ultimately prevented an expression of the sense of the Senate on their merits. He deceived himself, if there was any matter in which, at this moment, their constituents felt a more intense interest, than the question of the *rightful* and *probable* agency of the General Government in the great work of Internal Improvement. Whilst, in the States, measures of that description had been harmonious in their progress, and, as far as the means of the States would admit of, successful in their results, the condition of things here had been of a very different character. From the first agitation of the subject, the constitutional power of Congress to legislate upon the subject had been a source of unbroken, and, frequently, angry and unpleasant controversy. The time, he said, had never yet been, when all the branches of the Legislative Department were of the same opinion upon the question. Even those who united in the sentiment as to the existence of the power, differed in almost every thing else in regard to it. Of its particular source in the Constitution, its extent and attributes, very different views were entertained by its friends. There had not been any thing in the experience of the past, nor was there any thing in the prospect of the future, on which a reasonable hope could be founded, that this great subject could ever be satisfactorily adjusted by any means short of an appeal to the States. The intimate

connexion between the prosperity of the country and works of the description referred to, would always induce efforts to induce the General Government to embark in them, and there was but little reason to believe that its claim of power would ever be abandoned. As little reason was there, in his judgment, to expect that the opposition to it would ever be given up. The principles upon which that opposition is founded; the zeal and fidelity with which it has hitherto been sustained, preclude such an expectation. If this view of the subject was a correct one, and it appeared to him that it was, he respectfully submitted it as a matter of imperious duty, on the part of Congress, to make a determined effort to have the question settled in the only way which can be final—an amendment of the Constitution, prescribing and defining what Congress may, and what they shall not do, with the restrictions under which what is allowed to them shall be done. It appeared to him that, not only every interest connected with the subject, but the credit, if not safety, of our enviable political institutions, required that course; for it must be evident to all reflecting men, that the reiterated complaints of constitutional infraction must tend to relax the confidence of the People in the Government, and that such measures as may be undertaken upon the subject must be constantly exposed to peril from the fluctuations of the opinion of successive Legislatures. The subject, he said, had been viewed in this light by some of the best and ablest men the country has produced. As early as 1808, the propriety of an appeal to the States upon the point in question, had been suggested by Mr. Jefferson, in his last message to Congress. The same course had been recommended by Mr. Madison, and the recommendation repeated by Mr. Monroe.

As yet, no decided effort to effect this great object had been made; he permitted himself to hope that such effort would now be made. It was true, he said, the subject had not been referred to by the present Executive, and the reasons why he had not done so, were apparent, from the communications he has made to us. From those, it appeared that the President entertained opinions, as to the power of Congress, which removed all difficulties upon the subject. But, Mr. V. B. said, that, although that circumstance might possibly diminish, it certainly did not obviate the necessity of now acting upon the subject, as the Senate were not left to conjecture as to the fact, that there existed a discordance of opinion between the Executive and portions, at least—how large time would shew—of the other branches of the Legislative Department. Mr. V. B. said, that, entertaining such views upon the subject, he had felt it his duty to bring the subject thus early before the Senate, and when the proper period for discussion arrived, would avail himself of their indulgence to assign his reasons for the course proposed.

REVOLUTIONARY BOUNTY LANDS.

The resolution submitted yesterday, by Mr. WOODBURY, relating to Bounty Lands, was taken up. Some discussion took place between Messrs. KING, BARTON, and EATON, as to the best mode of proceeding in the case, and the most eligible committee for the reference of the motion.

Mr. LLOYD, of Massachusetts, observed, that the course pursued by the gentleman from New Hampshire, (Mr. WOODBURY,) was the correct and proper one on this occasion; he had no doubt there are many meritorious officers and soldiers of the Revolutionary army, still living, and the descendants of many who are dead, that are entitled to the Bounty Lands, promised by Government, who have not applied, from ignorance of their claims. The object of the proposition of the gentleman from New Hampshire was, to inform them of their rights. This subject, Mr. L. said, had been pending for nearly thirty years, and ought to be brought to a close; he hoped, therefore, the resolution would be adopted.

Mr. WOODBURY remarked, that as the gentleman from Alabama had made no motion to enforce his views, the question was upon the adoption of the resolution in its present shape. On that point he would add only a few words to what his friend from Massachusetts had kindly suggested in support of its objects. If the right to these land warrants was unquestionable—and the right was of a character to be treated with favor, and the mode of aiding it contemplated by the resolution would tend to enforce rather than defeat the right—the resolution would doubtless pass. As to the right, Congress, in September, 1776, conferred, for a bounty, one hundred acres of land on every soldier enlisting and serving during the war. More than 2,000 persons, entitled to this bounty, had never received their warrants: and, by a report from the Bounty Land Office, in November last, more than fifty warrants had actually been made out by Generals Knox and Dearborn, which still remained on file. A large tract of country, called the United States' Military Tract, had been appropriated to answer the warrants; and the statutes of limitations had, from time to time, been extended so as not to bar the proprietors. The right, then, in the first instance, was clearly established; and if any right was entitled to peculiar favor, it was a right purchased like this—by sufferings and sacrifices—by losses, toil, and blood, in one of the most holy wars on record. It was due to the memory of our fathers, that their intentions to the soldiers of the revolution should, if possible, be carried into complete effect; and where the original proprietor did not survive to receive the reward of his fidelity in the hour of peril and tribulation, it should be hastened to his children, who, in many instances, had performed our duty in smoothing the downhill of life to the saviours of their country. The mode suggested by the resolution would, probably, on inquiry, be thought the best one to effect this object. Some had not applied for their warrants from ignorance—others from forgetfulness—some had failed to get them from accident—and others, because, by infirmities and age, they had so speedily been summoned to pass that bourne whence no traveller returns. But a publicity, as wide as that given to our laws, of the names, rank, and line, of those entitled to the warrants, would remove most of these difficulties. Speculators, it had been suggested, would also profit by this publicity, and, in some cases, defraud the real owners: but the opportunity for them to defraud would then be less. They are now more active and better informed on those points than the owners—such publicity would place the owners, and their friends, on an equal footing with the land-jobber. And, in addition to this, the owners, and the people at large, had as good a right to this information as their officers had. It was no State or Cabinet secret. It was public property in a Government like ours; and this was an age, he trusted, of too much intelligence, for gentlemen seriously to argue against information and knowledge, because they might, in some instances, be abused. This was a resolution for inquiry merely, and if any mode, more acceptable and efficient, could be devised by the Committee to enforce the same object, he would, very cheerfully, acquiesce in it.

Mr. MACON said he had his doubts as to the beneficial effects proposed to be derived from the resolution. It appeared to him, that, instead of preventing speculation, it would encourage speculators to ride over the country, buying up these claims. In early life, in Congress, Mr. M. said he remembered there was one question that bordered on this: it was, to get the statute of limitation suspended for revolutionary services. Speculators went out and administered all over the Union, on the property of persons having claims, and, in one case, two administrators came forward upon the same estate, and the man himself the original claimant, upon whose estate they pretended to have administered, came afterwards. He was thought

an imposter—but his Captain happened to be in Philadelphia, to prove his right, and the man received his claim. Publishing these names, Mr. M said, would be to set all the speculators abroad throughout the nation. If the law had expired, allowing these people time to obtain their warrants, he would submit whether it would not be better to revive it, that they might get their warrants, without any speculations on the subject.

Mr. HOLMES, of Maine, thought that, at present, all the advantage was on the side of the speculators; but, if the names were published, there would be something like an equal chance. He knew of some speculators who had been riding about the country, informing these claimants that they could obtain these land warrants for them. If the information were distributed throughout the country, it would be understood that the best way would be for the claimants to apply to their members of Congress, who would charge them nothing for obtaining them.

Mr. RUGGLES thought it was desirable that some measures should be adopted to bring this business to a close. In consequence of these warrants being outstanding, there was land in the State of Ohio, which could not be sold, or brought into use, and it was highly important to that section of the country, that those who were entitled to those warrants should not remain in ignorance of their rights. He suggested whether it would not be more advisable to lay the resolution on the table, till some mode should be devised that would be of service to the old soldier, without benefitting the speculator. He would, he said, unite in any motion by which Congress might satisfy these claims, and let the land in the State, which should remain unclaimed, be sold.

Mr. WOODBURY said he should have no objection to the resolution's being laid on the table, if delay would throw any light on the subject; but, as it was only for an inquiry into the expediency of the measure, he thought it would be as well that the resolve should be acted on now.

After some further observations from Mr. LLOYD, of Massachusetts, to shew that there was no danger of speculation in this matter, as the laws now stand—and an ineffectual motion, by Mr. EATON, to lay the resolution on the table, it was adopted.

On motion of Mr. ROBBINS, it was

Resolved, That so much of the President's Message as relates to a National University, be referred to a Select Committee, to consist of —— members; that said committee be instructed to report upon the expediency of such an institution; and, if deemed by them expedient, to report the principles on which it ought to be established: and a plan of organization that will embody those principles.

The Senate adjourned to Thursday.

THURSDAY, Dec. 22, 1825.

The Senate met, but no business of consequence being matured so as be acted upon, adjourned over to Monday.

MONDAY, Dec. 26, 1825.

The Senate met, but no business of importance came up this day.

TUESDAY, Dec. 27, 1825.

The VICE PRESIDENT communicated a letter from David Porter, a Captain in the Navy of the United States, and late commander of the Squadron on the West India Station for the Suppression of Piracy, requesting that the subject of certain communications from Thomas Randall and John Mountain, communicated to the Senate at the last session, and which he deems highly injurious to the character of himself, and the other officers of the Squadron, may be investigated, and a decision pronounced thereon; and,

On motion, it was ordered, that this letter be printed for the use of the Senate; and that it be referred to the Committee on Naval Affairs.

NAVIGATION OF THE OHIO RIVER.

The resolution submitted by Mr. EATON, calling for information relative to the removal of obstructions in the Ohio River, was then taken up.

Mr. EATON said, the object of the resolution could be stated in a very few words. Last year, $70,000 were appropriated for the removal of the obstructions in the Ohio and Mississippi Rivers. That portion of this fund which had been already applied to the purpose, so far from producing a beneficial effect, had, he was assured from various sources, done considerable injury. His object was, therefore, to obtain information as to the manner in which the undertakers have proceeded, that some means might be adopted to avoid similar error for the future. Something might be done to afford safety to the commerce of that part of the country. There are, Mr. E. said, between one and two hundred steamboats plying on those rivers, a large capital is invested in them, and the commerce carried on is to such an extent as to render it highly necessary that it should be cherished and protected.

Mr. HARRISON said this subject was one of vital importance to the Western country, and he was gratified that the gentleman had turned his attention to it; but he thought the Memorial he had this morning presented superseded the necessity of the resolution. The object of the persons who signed that memorial was the same as that contained in the resolution of the honorable gentleman; but, as it would do no harm, he should be willing that the memorial and the resolution should both be referred. Mr. H. said that no blame could be attached to the Secretary of War on this occasion, as he had framed the contract which he had entered into for that purpose, in strict conformity to the law under which he acted. It was also understood that the contractor would attempt to shelter himself under the plea of having literally performed his duty as enjoined by the contract. It would, therefore, depend upon the construction to be given to the law whether the injury that had been done was attributable to the terms in which it was expressed, or to the contractor.

Mr. JOHNSON, of Kentucky, thought it his duty to state that he was well acquainted with the contractor, who had formerly had a seat in the Legislature of Kentucky, and who had sustained a very high reputation. He had always thought him a man of most honorable character, and he therefore hoped, that, when the subject came to be investigated, it would be found that the rumours that have been circulated, to his discredit, were entirely without foundation.

Mr. EATON said he was not in possession of any facts on which to ground an accusation, and he had made none. The application before the Senate merely asked for information as to the manner in which the contract was made and executed, with all its attendant circumstances, that whatever Congress thought necessary on this subject should be done, with a view to the objects of the appropriation—which was, to remove the various obstructions to the navigation of the river. To show how improperly the contract had been executed, Mr. E. adverted to the fact, that the very snag on which a steamboat had struck, and which had occasioned the death of forty of our citizens, now lies in the bed of the river, within a quarter of a mile of its original position.

Mr. HARRISON said the only question to be examined as to execution of the contract, was, whether the contractor had fulfilled his engagements or not. If there was a defect in the law, then no blame could possibly attach either to the contractor or to the War Department. Mr. H. said he was well aware, from information he had received, that much injury had been done to the navigation of the Ohio, from the application of a portion of the ap-

propriation. So far, he agreed with the honorable gentleman from Tennessee. He only disagreed with him in the supposition that any thing improper had been done, either by the War Department or by the contractor. The contract had conformed to the law; and the contractor had fulfilled the obligation of the contract he had signed. Therefore, no blame could attach to him, or to the Department with which the contract was made.

The resolution was then agreed thereto.

WEDNESDAY, DEC. 28, 1825.

The Senate proceeded to the consideration of a resolution, submitted yesterday, by Mr. JOHNSTON, of Louisiana, calling for an inquiry into the law of the Territorial Government of Florida, relating to wrecks.

Mr. MILLS said he should be obliged to the honorable mover if he would point out some source from which the Judiciary Committee might derive the necessary information: it would be desirable, if it could be procured, that the law of Florida referred to in the resolution now under consideration, should be laid before them, that they might know what it was; but, as the resolution now stands, it would be impossible for them to ascertain from what source they were to procure the information required.

Mr. JOHNSTON, of Louisiana, said, the gentleman was aware that it was the business of the Governors of Territories to forward copies of the laws of the Territories, to undergo the supervision of Congress, and that they would remain in force, unless disapproved. The resolution he had submitted, called the attention of the Judiciary Committee to the laws of the Territory of Florida, particularly to the law relating to wrecks. These laws had doubtless been transmitted to the proper Department, to be laid before Congress; and the committee, by applying, could obtain them. Mr. J. said he had handed to the Chairman of the committee some letters and publications relative to this subject, from which it appeared that great abuses existed. The act of Congress, passed last session, requires that the whole amount of property wrecked should be carried into the ports of the United States. He understood that a very summary process had been instituted at Key West, by which all property that was wrecked, was decided by four or five individuals, who were perhaps interested in the event—a large property has been condemned, and a salvage of from 70 to 90 per cent. allowed. Mr. J. then adverted to the immense amount of commerce which passed through the Gulf of Mexico, and to the heavy losses that are every month sustained by casualties; and stated the fact, that, in the month of September last, no less than ten vessels were lost on that coast. Mr. J. said this had been a great subject of complaint, from our own citizens, particularly from the Insurance Companies; and he had a knowledge that two of the Foreign Governments had applied to this Government for redress, stating, that the abuse is so enormous, it is worse than piracy If the laws had not been transmitted from the Territory, Mr. J. said he had not the means of obtaining them; and he could not tell how the Judiciary Committee would act on the subject.

Mr. HOLMES, of Maine, said he recollected one instance of this kind which had been referred to the Judiciary Committee, who made application and obtained the Act of Florida from the Department of State. A bill was reported by that committee to repeal certain acts of the Territory of Florida in regard to unreasonable taxes imposed. That bill passed both Houses of Congress: he recollected that case distinctly, and he believed that the act regulating the Government of Florida required that copies of the laws should be transmitted, to be laid before Congress, who possessed the power of revising all the laws of the Territories.

The resolution was then agreed to.

The Senate then proceeded, as in Committee of the Whole, to consider the bill "supplementary to an act for enrolling or licensing ships or vessels to be employed in the Coasting Trade and Fisheries, and for regulating the same."

Mr. HOLMES said, that, since that bill had been reported, it had been thought necessary to make some further provisions in it in regard to the Coasting Trade in another part of the United States. In the year 1820, the act was passed, to which this is an addition, dividing the United States, or the shores of the United States, into two large Districts: one beginning at Passamaquoddy, and extending to St. Mary's; the other commencing at the Perdido, and extending to the Western Shore of the United States in the Gulf of Mexico. This act was passed before Florida was ceded to the United States, and, if it is not provided for in the act regulating the Territorial Government of Florida, Florida is not included in either of the two Districts. It would, therefore, he said, be probably necessary to alter the Districts, or to make a provision including Florida in one or the other, or both of them: to accomplish this purpose, therefore, he moved to postpone the further consideration of the bill to Monday next; which motion prevailed.

THURSDAY, DECEMBER 29, 1825.

Mr. HAYNE rose, and said, that, in obedience to a resolution of the Senate, the Secretary of the Navy had transmitted to the Senate the proceedings of the Court of Inquiry, and of the Court Martial, on Commodore Porter. Since this report had been made, the Commodore had addressed a letter to the presiding officer of the Senate, which had been referred to the Committee on Naval Affairs. That the committee might have the whole subject before them, Mr. H. moved that the letter of the Secretary of the Navy, and proceedings of the Court of Inquiry and Court Martial, be referred to the same committee.

Mr. LLOYD of Massachusetts, said he thought it necessary to state to the Senate the circumstances under which he had become connected with this subject. A few days after his arrival at Washington, Commodore Porter called on him, and handed him a letter, requesting he would move a call for the proceedings of the Court of Inquiry, which was held on him and his officers, who had charge of the squadron on the West India Station, in the year 1823 and 1824. From the good disposition which he felt to all the gallant officers of the Navy, and certainly the distinguished hero of Valpariso was one of them, he said he had no objection to the call being made, although he was not in possession of the circumstances of the case. In consequence of this, Mr. L. said, as he had no views of his own to answer, he thought it proper to ascertain whether the call was ready to be complied with, and, in prosecuting this inquiry, he found that the proceedings of the Court of Inquiry and of the Court Martial had been printed, and bound up together in one volume, of which there was a considerable number with the Navy Department, ready to answer the call of either House of Congress. In consequence of this, Mr. L. stated these facts to Commodore Porter, who assented to the resolution's being presented in the shape in which it passed the Senate. Some days after this, Commodore Porter asked him what measures he intended to adopt, with regard to the communication from the Navy Department: that communication had not then been received, and Mr. L. said he knew nothing more of the subject than was contained in a pamphlet the Commodore had sent him, and what he had collected from the newspapers; and until the communication from the Navy Department had been received, and he was better acquainted with the subject, he did not think it consistent with the decorum due to the Senate to adopt any further measures in reference to it. His object, he said, was answered, by obtaining the communication from the Navy Department, and

having it laid before the Senate. Another reason which had induced him not to come to any determination on the subject, was this—he had seen that, when a similar motion was made, in the other House, it was stated there was other information connected with the case, which he believed had been ordered to be furnished; and wish to know what that might contain, he had determined not to proceed. Mr. L. concluded, by observing that he thought the respect due to the Senate, and to himself, had required that this explanation should be made.

The motion of Mr. HAYNE prevailed, and the documents were referred accordingly.

FRIDAY, DECEMBER 30, 1825.

No business of consequence was transacted this day, and the Senate adjourned over to Tuesday.

TUESDAY, JANUARY 3, 1826.

The VICE PRESIDENT communicated a letter from Thomas Randall, one of the persons mentioned in Commodore Porter's communication to the Senate of the 27th ult. enclosing a copy of the printed publication alluded to by the Commodore, and commenting upon the character and objects of that communication, and requesting that this letter, with the paper enclosed, be printed and referred to the same committee to which the letter of Commodore Porter has been referred.

On motion of Mr. SMITH, the letter and paper enclosed were referred to the Committee on Naval Affairs.

IMPORT OF WINES.

Mr. LLOYD, of Massachusetts, rose, and said that a communication had been laid on the table this morning, from the Treasury Department, relative to the quantity of Wines imported into the United States since the year 1800. Mr. L. said that the object of procuring the information from the Treasury Department, in answer to the call that had been made for it, was to lead to an investigation, as to the expediency of endeavoring to restore a trade to the United States, which had formerly been one of much advantage, but which in some of its branches, from the heavy rate of duties imposed on it, had of late years been greatly diminished. This could be done, as he apprehended, only by a reduction of the rate of the existing high duties on the importation of certain Wines. The Secretary of the Treasury, in his Annual Report, had suggested the propriety of reducing the rates of duty on Teas, Coffee, and Cocoa, and, as he believed, had wisely done it; but all the reasons in favor of such a reduction, applied as strongly at least to the importation of Wines. The trade with the wine-growing countries had formerly been more strictly a barter-trade than almost any other enjoyed by the United States; the wines were received in return for the shipment of our domestic products—the flour, corn, staves, and provisions of the country—whereas the trade in teas, and in coffee, so far as it was received from Java, Sumatra, and Arabia, was prosecuted with specie; and although he had no alarms respecting the exportation of specie, believing that, in a time of peace at any rate, and in an open market, the supply would be generally equal to the demand; yet, as he did consider a trade which was commenced by the exportation of our own domestic products, and which gave two freights to our vessels instead of one, was equally worthy of consideration, he had moved for the information which had been given; and, as he understood the Committee of Finance had under consideration the subject of a reduction of duties on importations, he would move the reference of the statement received from the Treasury Department to that committee, to consider thereof.

The reference to the Committee of Finance was then agreed to.

BONDS OF PUBLIC OFFICERS.

The Senate then proceeded, as in Committee of the Whole, to the consideration of the bill "to provide for the security of public money in the hands of Clerks of Courts, Attorneys, and Marshals, and their Deputies."

Mr. CHANDLER inquired why the Attorney General should not be required, by the bill, to give bond, as well as the District Attorneys.

Mr. HOLMES said, the same query had been suggested to him by several members of the Senate. The District Attorneys are Receivers of Public Moneys, though not recognized as such by the Treasury Department; and one of the principal objects of the bill, is, that they should give bond for money coming into their hands. Mr. H. said he could refer to cases to show that they are, and must necessarily be Receivers of the Public Money in the execution of their duty; and as this was the case, and there had been public defaulters amongst them, it was necessary to guard against it. Such is the difference of practice in the different States of the Union, that, though in some of them the Attorney has little to do with the collection of the public money, in others he does almost every thing: he issues the writ, he receives the return of it in his office, he enters the suit, gets a judgment, and takes out execution, and perhaps, if the money is likely soon to be paid, he keeps it in his office without giving it to the Marshal; and as such is the practice in many of the States, it is necessary he should give bond. Mr. H. said, he was not sure but the bill might, with propriety, be so amended, as to include the Attorney General, though he was not prepared to say, at present, that such a provision was proper. He should, therefore, move that the bill be postponed and made the order of the day for Thursday next, that the Judiciary Committee might direct an amendment to the bill, without its being referred back to that committee which motion prevailed.

The bill from the House, making appropriation for the payment of the Revolutionary and other Pensioners of the United States, was taken up, as in Committee of the Whole, and, no amendment having been offered, was ordered to a third reading.

WEDNESDAY, JANUARY 4, 1826.

The Senate proceeded, as in Committee of the Whole, to consider the bill "to provide for the seizure and sale of property brought into the United States, in violation of the revenue laws, in certain cases;" and the blanks having been filled,

Mr. HOLMES rose, and said that the object of this bill is to prevent the expense attending small seizures. It had been the case, especially on the frontiers, that the seizures which had been made had almost always been made in small packages, of small value, and as it is necessary to libel them in the District Courts of the United States, the expenses of adjudication, in many instances, swallowed up all the profit, and there is consequently no inducement for the collector to make the seizure. By the alteration in the law proposed by the present bill, if any small packages are seized that have been illegally introduced into the United States, and in the opinion of the collector they do not amount to more than $200 value, he may proceed to obtain a forfeiture, by advertising for eight weeks in the newspapers, and if no person appear, the property shall be sold; but, to guard against any accident, as persons may have sent packages from abroad which may not have been illegally introduced, there is a provision in the law that the proceeds of the sales shall be placed in the Treasury of the United States, and remain there a year, to the end that any person claiming the property may enter his claim as if no sale had been made.

The bill was then ordered to be engrossed for a third reading.

THURSDAY, JANUARY 5, 1826.

FLORIDA CANAL.

Mr. HAYNE, of South Carolina, stated, that he had received a memorial, which he was requested to present to the Senate, on the important and interesting subject of a Canal to connect the waters of the Atlantic and the Gulf of Mexico, across the Peninsula of Florida. It appears that the Legislative Council of Florida, deeply impressed with the importance of a work which they suppose will relieve the commerce of the United States from heavy losses now sustained from shipwrecks, had, in December last, passed an act, appointing Commissioners to report on the expediency of opening such a Canal. Three of the most eminent citizens of the Territory had been appointed, pursuant to the provisions of that act, one of whom (Col. James Gadsden) was advantageously known to the country as formerly a distinguished officer of the Army of the United States, and a man of great talents as a civil and military Engineer. It appears from the memorial forwarded by these gentlemen, that they are ready to enter into the duties of the appointment, which are to be gratuitously performed, so soon as such aid should be afforded by the U. States as was deemed essential to the successful execution of the task. It was deemed by these gentlemen essential that skilful Engineers should be appointed by the United States to accompany the Commissioners in making the necessary explorations, and the memorial asks of Congress the necessary aid to enable them to enter immediately on the work. Mr. H. said he presumed that whatever might be the final decision of Congress on the subject of this Canal, it was due to the respectable source from which this memorial emanated, that it should receive the most respectful consideration. He, therefore, moved that the memorial and the act of the Legislative Council of Florida be printed for the use of the members. Mr. H. then presented the memorial of James Gadsden and Edward R. Gibson, Commissioners appointed by the Legislative Council of Florida, "to examine into the expediency of "opening a Canal through the Peninsula of Florida, from "the waters of the Gulf of Mexico to the waters of the "Atlantic," accompanied by the said act, and praying for aid of Congress for the immediate exploration of the country, under the direction of skilful Engineers; which, on motion of Mr. HAYNE, was ordered to be referred to the Committee on Roads and Canals, and to be printed for the use of the Senate.

Mr. JOHNSTON, of Louisiana, said the gentleman from South Carolina had presented a paper on a subject which he himself was just about to rise to bring to the notice of the Senate in the shape of a bill; and he now gave notice that he should, on Monday next, ask leave to introduce a bill for a survey and estimate of a Canal through the Peninsula of Florida, from the mouth of St. John's River to Vocassassa Bay, in the Gulf of Mexico, and to ascertain the practicability and expense of a ship channel.

SECURITY OF PUBLIC MONEY.

The Senate proceeded, as in Committee of the Whole, to the consideration of the bill "to provide for the security of public money in the hands of Clerks of Courts, Attorneys, and Marshals, and their deputies."

Mr. HOLMES, of Maine, said this bill had been postponed a few days ago, from the suggestion of his colleague, who had inquired why the Attorney General should not be required to give bond, as well as the District Attorneys. He had paid some attention to the subject, and he thought such a provision would be rather incongruous in a bill of this kind—though he was satisfied that it would be well some provision should be made respecting the duties of the Attorney General at the Seat of Government. He was not sure but it might be necessary to regulate the conduct of the officers of some other of the offices of the Government, so as to prevent the necessity of having a separate, or *home* department. The whole subject required considerable consideration; but he had his doubts as to the propriety of requiring an officer, who was one of the President's Cabinet, to give bonds. That the office of the Attorney General required further regulation, he was well satisfied—but he doubted if it was proper, in a bill of this kind, connecting it with subordinate offices: therefore, he should not propose any amendment to that effect. Mr. H. then proceeded, and briefly explained the several provisions of the bill.

Mr. CHANDLER, of Maine, said that, when he made the suggestion the other day, respecting the Attorney General, alluded to by his colleague, he did not intend that he should be required to give bonds to execute any part of his duty as an adviser of the President; he would most probably give his opinion faithfully without being under bond. Mr. C. said he had been told that the Attorney General received money, as well as the District Attorneys; he, therefore, thought it proper he should likewise be required to give security.

Mr. WHITE, of Tennessee, offered several amendments to the details of the bill, which were agreed to; and the bill was ordered to be engrossed for a third reading.

The Senate adjourned to Monday.

MONDAY, JANUARY 9, 1826.

Mr. VAN BUREN, from the Committee on the Judiciary, to whom was referred so much of the President's Message as related to the Judiciary, together with the several resolutions which had been submitted on that subject, rose to make a report. The subject of amending the Judicial System of the United States had, he said, been before that committee for the last two or three sessions, and had always proved a matter of great difficulty. During the last session of Congress the Judiciary Committee of the Senate had reported a bill "to increase the number of Associate Judges from six to nine, and of the Circuits from seven to ten," which, together with an extension of the time for holding the term of the Supreme Court, was all the improvements that were then contemplated. That bill was discussed, and received the assent of a majority of the Senate, but was not finally acted on for want of time. The committee had again considered the subject, and had bestowed on it all the attention which its importance required; and a majority of the committee had concluded to report a bill containing similar provisions with that which was reported last session; although they believed it not to be free from objections, still it was less objectionable than any the committee were able to devise. What was of still more importance, they believed it was a measure which was likely to succeed; and this opinion was strengthened by the fact that a bill containing substantially similar provisions had been reported by the Judiciary Committee of the other House, where it had apparently been received with favor, and partly acted on.

Mr. VAN BUREN then reported the bill "further to amend the Judicial system of the United States;" and the bill "altering the time of holding the session of the Supreme Court of the United States;" which were read, and passed to a second reading.

Mr. VAN BUREN, from the same committee, to whom was referred the bill "prescribing the modes of commencing, prosecuting, and deciding controversies between States," reported it without amendment; but said it was the unanimous opinion of the committee that it ought not to pass. [The bill was, subsequently, on motion of Mr. Robbins, laid on the table.]

TUESDAY, JANUARY 10, 1826.

The Senate proceeded, as in committee of the whole, to consider the bill "to revive and make perpetual an

act, entitled 'an act fixing the compensations of the Secretary of the Senate and Clerk of the House of Representatives, of the Clerks employed in their Offices, and of the Librarian."

Mr. RANDOLPH, of Virginia, said, although he knew it was a received maxim, *de minimis non curat lex*, yet often, in small matters, bad precedents crept into legislation; therefore, he should move to strike out the words making this act perpetual, because he did not think there ought to be any perpetual law, under this or any other Government, except the fundamental or constitutional law. He believed it was very well that these acts, and all other acts, should come under the revisal of the Legislature, from time to time. A very wise provision was made in relation to the appointing power of the President, appointing certain officers only for a limited time, that the appointments might be revised from time to time by this House; and if it held good in relation to appointments, it would, *a fortiori*, hold good in relation to laws. As it would be necessary, after striking out, to put in some period of limitation, he would propose it should continue in force till the 3d of March, 1830.

A division of the question being required, it was first taken on striking out, and decided in the affirmative; and, after some conversation between Messrs. EATON, HOLMES, and RANDOLPH, as to the time to which the act should continue in force, Mr. HOLMES moved to insert "four years, and thence to the end of the next session of Congress, and no longer." Mr. CHANDLER moved "three years, and thence," &c. which was carried, and the bill was then ordered to be engrossed for a third reading.

FLORIDA CANAL.

Mr. JOHNSTON, of La. said he would make a few remarks in explanation of the object of the bill. It provides, said he, for an examination of all the country South of the St. Mary's and Appalachicola rivers, to ascertain the most eligible route through which to connect the Atlantic and the Bay of Mexico. It contemplates, after this reconnoissance, a scientific survey of the several routes, with a view to obtain all the facts in relation to the localities of the country and the coast, and to obtain such plans, estimates, and opinions, as will hereafter enable Congress to act on this subject.

The measure proposed has in view two distinct objects: 1. A Canal, in connexion with a general system of inland navigation. 2. The practicability of a ship channel. I feel it, said Mr. J. my duty, as well from the public station which I fill here, as the peculiar interest and position of the State I represent, to bring before this House, separately, a subject which concerns my State, which unites every interest, and in which, happily, we can all concur without violating any constitutional principle. The connexion of the Gulf of Mexico with the Atlantic forms a part of the great system of inland navigation. It is the most important link in the chain of communication. It is the point of union between the two great portions of our country—the East and the West. Its political, military, and commercial advantages need not be illustrated here. The public opinion is already sufficiently enlightened and determined. It remains only for us to give it effect.

In regard to a canal navigation, it is satisfactory to know, that the work is not only practicable, but of easy execution, and at a small expense.

Many routes have been indicated, all of which are probably convenient, but it requires an accurate survey and estimate, to obtain a knowledge of the localities and expense, to enable us to decide. Two routes have been particularly mentioned in the bill. That from St. Mary's to Appalachicola is deemed practicable, and thought to possess many advantages. It passes through a sandy soil, of moderate elevation, abundantly supplied with water, and communicates with both seas in a deep channel; its distance not exceeding two hundred miles, and may be, in time, with increased advantage, extended to Pensacola Bay, and thence to Mobile Bay. That from St. John's to Vacassausa Bay, is a work of easy execution. The Peninsula is of secondary formation, or alluvion, with little elevation, and penetrated by a chain of lakes, which deviate only a small distance from the shortest line of communication between the two seas. The distance is not more than 92 miles, 18 of which are already navigable by the river. Throughout the remaining 74 miles, the soil is light, with little elevation, easily excavated, and many natural facilities. From the St. John's river, the first 16 miles are alluvion, with an elevation of only three feet above the waters of that river. From thence the line passes over a region whose elevation is estimated at eleven feet, but indented throughout by lakes, valleys, and creeks. It is formed of a strata of sand and clay, and bedded on limestone, lying probably below the point of excavation. The remaining 25 miles of the line is a gentle inclination from the Great Prairie Alachua to the Bay of Mexico, with sand, clay, and broken fragments of stone, mixed, and easily removed. Throughout the whole line there is an adequate supply of water, with an elevation of four feet in the centre, and a declination from that height to the Atlantic in 31 miles, and to the Bay of Mexico in 34.

It is, moreover, to be observed, that, by uniting the channels of a chain of Lakes that extend into the interior, you will greatly diminish the line of excavation, the labor, and expense, while you will only increase the line of communication 13 miles. Thus much, said Mr. J. I have deemed it necessary to say, in regard to the two routes designated. But there are other and higher considerations connected with this subject, that claim the attention of this body. I mean the possibility of a ship channel across the Peninsula—an object which, if accomplished, would operate an extraordinary revolution in the navigation and commerce of this continent. From the information which I have on this subject, and the opinions of practical, experienced, and scientific men, I do not entertain a doubt that the work is *practicable*—at an expense which the object fully justifies—and within the means which we can fairly devote to it.

At present, more than one-half of the territory of the United States depends on the Mississippi river, and one-third of the population, and this proportion constantly increasing, have their commerce through the Bay of Mexico. It is the object of this bill to supersede the passage round the Gulf of Florida. Of the political and commercial advantages of this communication, I shall reserve the exposition until the bill is reported to the House.

The bill was then, on motion of Mr. JOHNSTON, referred to the Committee on Roads and Canals.

WEDNESDAY, JANUARY 11, 1826.

FLORIDA WRECKERS.

The Senate then proceeded to consider, as in Committee of the Whole, the bill "to annul an act concerning wreckers and wrecked property, passed by the Governor and Legislative Council of the Territory of Florida."

Mr. VAN BUREN moved to strike out so much of the bill as deferred the period of its going into operation, until the first day of March next. He observed, that, as the provision of the bill was a matter of considerable interest, he would state as briefly as the subject would admit of, the reasons which had induced the Committee on the Judiciary to report it. He said, that, by an established principle of maritime law, a reasonable compensation is allowed to every person who saves property wrecked on the high seas. The salvor has a lien on the property for his salvage, and his remedy in the District Court of the United States, to ascertain its amount and enforce payment. By the established practice of that Court, appro-

priate proceedings are prescribed, which enable it to do justice to all concerned, by securing to the owners of the wreck the best practical notice, by making order for the security of the property during the progress of the claim, and by instituting an examination into the circumstances of each case, and settling such rate of salvage as is just and equitable; which, in the absence of treaty stipulations between the Governments of the salvor and owner was left entirely to the discretion of the Court; and, finally, by making disposition of the residue, after deducting the salvage allowed, including the right of adjudicating upon contested claims thereto, if any such existed. Such, he said, had been the result of this mode of proceeding, that there did not now exist a Legislative provision upon the subject as it respects civil salvage, nor had any, to his knowledge or belief, been thought necessary since the establishment of the Government. By the act establishing a Territorial Government in Florida, the Judicial power was vested in two Superior Courts, and those Courts are clothed with all the powers of the District Courts of the United States, including exclusive original Admiralty and Maritime jurisdiction. It is made the duty of the Courts, respectively, to hold their terms at Pensacola and St. Augustine: thus affording to the wreckers on that coast, all the advantages for the recovery of their salvage, and to the owner, all the security for their property which, by the law of the land, was extended to the citizens of the United States in general.

It appears that the inhabitants and Legislative Council of Florida are not content with the law as it stood, and have passed the act proposed to be annulled by the bill under consideration. The act, he said, had been read, and would be found to contain many provisions of an extraordinary and highly exceptionable character. By it, the wrecker, instead of libelling the property in the Superior Court, and subjecting it and its future disposition to the order of that Court, is directed to report it to a Justice of the Peace or Notary Public, who is authorized to summon a jury of five men; two of whom to be selected by the wreckers, two by the owner, and one by the Justice or Notary: or, in the absence of the owner, (a case doubtless of common occurrence,) the other three Jurors to be selected by the Justice or Notary. To the award of this jury, is submitted the whole interest in question; including not only the rate of salvage, but the disposition of the wreck; and the Clerk of the Territory is charged with the execution of the award. Notice of it is to be published, for twelve months, in a paper published in the Territory, and, if not claimed within that time, the whole property to belong to the salvors; if not claimed, the Territory to have 10 per cent. on the value of the property; if claimed, 5 per cent. on the surplus, and, in all cases, 3 per cent. on the whole value of their property—the Justice, Notary, and Clerk, have, also their per centum, and the Jury a per diem allowance. The circumstances under which the law was to be executed, he said, left little doubt that its execution, for the most part, devolved on men who had personal interests in the subject, and would, of course, lead to gross perversions of justice. That such had been the result, the committee, he said, entertained no doubt. From the general statements which had been made, and which the committee thought entitled to credit, it appeared that the greatest abuses had been practised under the act in question—by omission to provide for the safety of the property during the time allowed for ransom, by improper conversion of the fund, and by the allowance of unexampled rates of salvage from 75 to 90, and, in one instance, as high as 94 per centum. The case of the brig Hercules had been particularly stated to the committee. From the documents on the table, it appeared that this vessel had been carried into Key West, having received but little injury, at least in comparison with the amount of salvage allowed. The underwriters in New York, on receiving information of the fact, sent their agent to the spot. On his arrival, he found a great part of the cargo already on board of a vessel for Havana, and other vessels ready to take the residue to different places, where it would have been impossible for the owners to have followed it, the packages broken, the marks effaced, and a salvage allowed by the Jury, which induced him to pay, $72,500 for the ransom of the brig and cargo. This sum he paid, and submitted, moreover, to the most vexatious and oppressive impositions by the wreckers and their friends and abettors. But there was, he said, one view of the subject which superseded the necessity of further observation on the provision of the act in question, or the abuses which had been practised under it, and that was, that the Legislative Council had no authority to pass it. By the act establishing the Territorial Government, a limit is put upon the Legislative authority, that they shall pass no law inconsistent with the Constitution and laws of the United States. By the same act, the Superior Courts of the Territory are vested with exclusive Admiralty and Maritime jurisdiction. The act proposed to be annulled, gives to Justices of the Peace Admiralty and Maritime jurisdiction, in palpable violation of the fundamental law of the Territory.

Mr. V. B. said, that he had been informed, since the report of the committee, that the Superior Courts had decided that the law in question was unauthorized and void. He had not learnt on what grounds that decision was made, but presumed it was, as well it might be, on the plain principle he had stated. It was on that account that he wished the bill amended, so that it might go into operation immediately, and that the assent of Congress might in no way be given to its validity, which would be the case if the bill passed as it now stands.

The amendment was agreed to, and the bill ordered to be engrossed for a third reading.

OHIO SCHOOL LANDS.

The Senate then proceeded, as in Committee of the Whole, to consider the "Act to authorize the Legislature of the State of Ohio to sell the lands heretofore appropriated for the use of schools in that State," which was reported this day from the Committee on Public Lands, without amendment.

[This bill authorizes the sale of school lands in the State of Ohio, and the investing the money arising from the sale in some productive fund, the proceeds of which are to be applied, under the direction of the Legislature, for the use and support of the schools in the Townships and Districts; the sale not to take place without the consent of the inhabitants of the several Townships, &c.]

Mr. KING said, the committee to whom the bill was referred, had taken the subject into consideration, and had thought there was not, in reality, any necessity to legislate on the subject. The power had passed away from the General Government, to interfere in any manner with it. The committee thought the bill unnecessary, and perhaps inexpedient, as it might be drawn into a precedent hereafter.

Mr. EATON was of opinion that, as these lands were granted to the State of Ohio, to be held in trust for the benefit of the inhabitants of the townships, that Congress had no control over them. There was a question whether the land would not, at a future time, become more profitable, and produce a greater revenue, than if it were to be converted into money, and that money placed in Banks or elsewhere. He thought the course formerly pursued by the Government the better one; and that the time would come when this land would be the best fund they could possibly have: he thought it better the bill should not be acted on.

Mr. RUGGLES said, that there was a difference of opinion as to whether the Legislature of Ohio had a com-

plete control over these lands, though the majority of the Legislature were of opinion that they had; yet, to put the whole thing at rest, and to allow the Legislature to proceed without any embarrassment, they had applied to Congress for its sanction to sell; as, at any rate, this sanction would quiet any doubt which purchasers might have of the title, unless the consent of Congress was obtained.

Mr. HARRISON had had the honor of a seat in the Senate of Ohio when this matter was brought before it, and there was not an individual in that body but was convinced that the State had an entire control over the land; but in the State it was otherwise. These sections of land are inhabited by the most indifferent class of men to be found in the Western Country, who removed the timber, and whatever else was valuable, and the people were desirous that the land should be sold, and the fund placed where they could come at the avails in an easy manner.

Mr. HOLMES thought the Legislature of Ohio had no control over the land at all, without the consent of the inhabitants—it is a grant in fee to the inhabitants of the townships, and Congress could not in any way interfere. It was a common thing amongst them in the North, where a tract of land had been granted for the use of schools, or of the Ministry, to change the nature of the property by the consent of the Legislature, and, in this way, the Legislature of Ohio could interfere.

Mr. WOODBURY suggested, that the gentleman from Maine had probably not adverted to a proviso in the bill preventing any sale without the express consent of the respective towns; either the Union, the State of Ohio, or the respective towns, had the whole interest, or each a fractional interest in these lands. Whichever might be the truth on a strict legal construction, it seemed expedient to pass a bill like the present, to quiet doubts and controversies: for then the consent of the grantor, or the grantee, and the cestuyque trust would all be had before the title was pretended to be conveyed to any individual. The expediency of selling these lands, and altering the character of the funds for the aid of schools, he was willing to leave to the decision of those most interested in their expenditure. The people of Ohio had both more knowledge about the sales, and more at stake in the benefits of them, than we had; and, should the bill pass, he thought there was no danger of their wasting funds so important to their welfare, and expressly required by the bill to be in future devoted to their original and laudable object.

Mr. ROWAN stated, that the bill asserted that the right to the school lands was in the State of Ohio, and yet provided for a release of that right by the United States. Now, either the United States had, or had not, title to those lands. If the title was in the Legislature of the State of Ohio, for the benefit of schools, as the advocates of this bill asserted, then the bill providing for a release of that title by the United States, was useless. It was worse than useless. The passage of it would imply a reproachful ignorance on the part of Congress of the nature and extent of the title of the United States to those lands. If the title to those lands was really in the United States, it ought to be so stated in the bill—and not as the bill purported, that the title was in the Legislature of the State of Ohio. But it was evident, Mr. R. stated, that the United States had no title to those lands—that she had absolutely relinquished them to the Legislature of the State of Ohio for school purposes, upon the erection and admission of that State into the Union, and therefore, he was against the bill, as an act of superfluous legislation, which could not be passed by that body, consistently with proper self respect—as an act not within the sphere of its legitimate powers. But it is alleged, said Mr. R. that although the Legislature of the State of Ohio is entirely satisfied that the title to those lands is exclusively in that State, yet there are many persons in that State who entertain a different opinion—and there are many who have their doubts upon the subject; to silence which doubts, and prevent the depression of the price of those lands, which those different opinions and doubts are calculated to produce, when they shall be brought into market, the Representatives from that State urge, that this bill ought to pass: that it can do no harm, and may do much good: that if the United States had no title to the lands, the passage of the bill would be harmless: if she had a title, that title, by the passage of the bill, would be vested where all acknowledged it ought to be. Mr. R. said he had before remarked, that the Senate could not act upon that dubious aspect of the question. To do so would argue an incompetence in the Senate to its duties, which would and ought to derogate much from its character. But, said Mr. R. the State of Ohio knows her own rights—let her exert them. He disliked to see a State apply to the General Government, to be instructed in her rights, or to be advised as to the manner in which she should exercise them. He disliked the precedent. The Judiciary Department of the United States had, in some instances, as he believed, encroached upon the rights of the States. He was unwilling to see the Congress invited to do the like. He disliked to see the States even willing to see their rights narrowed from any quarter—still less could he consent to assist them, at their own solicitation, to diminish their rights. He considered the excellence of the division of this country into States, to consist, mainly, in the capacity of the States to comprehend their rights, and exert their energies in the protection of their citizens, and in the promotion of their prosperity and happiness—a capacity which a single Government, comprehending their Territory, could not possess, or exercise so beneficially to the citizens, or favorably to their liberties, as the States can. He believed that the best rights and interests of the citizens depended upon the maintenance, and exercise, by the States, of all their legitimate rights. He believed that this bill tended to narrow the rights of the State of Ohio, and that its passage would form a dangerous precedent, in relation to the other States—and therefore, he repeated, that he must vote against it. He felt reluctant to contravene the wishes of his friends from that State. But he consoled himself, that no injury would be inflicted upon that State, by the rejection of the bill: for it was evident that the lands might be sold by the State, with the consent of the townships, which were the cestuyque trusts. They were competent to give their assent, and the State was competent to act as trustee. A more competent or fit trustee than a sovereign State, to manage the interests of her citizens, could not well be thought of.

Mr. BERRIEN thought there were two material objections to passing the bill; in the first place, it was an excess of legislation which ought always to be avoided; and, in the second place, the Legislature of the Union was not the proper tribunal before which doubts of this kind ought to come. The Courts of the Union were the proper tribunals to decide such questions. Mr. B. spoke a short time in sustaining these objections to the passage of the bill.

The above embraces the substance of the discussion, which, in replies and rejoinders, continued some time. In the end,

On the motion of Mr. CHANDLER, (who thought the right of the United States to interfere ought to be ascertained before the bill passed,) the bill was laid on the table.

THURSDAY, JANUARY 12, 1826.

PREVENTION OF DESERTION.

The Senate then proceeded, as in Committee of the Whole, to consider the following bill, "to prevent desertion from the army and for other purposes."

"*Be it enacted, &c.* That, from and after the first day of June next, there shall be retained from the monthly pay,

as now authorized by law, of each non-commissioned officer and soldier of the United States' Army, enlisted after that date, —— per month, until the period of his discharge, as a security for his faithful service; the sums so retained to be passed to the credit of the said non-commissioned officer and soldier, and paid by the Paymaster to him, at the expiration of his term of service, or whenever he shall be discharged without disgrace.

"Sec. 2. *And be it further enacted*, That, whenever a non-commissioned officer or soldier of the United States' Army, having become entitled to an honorable discharge, shall, voluntarily, re-enlist for an additional term of *five years*, shall be allowed him an increase of —— per month on his pay as now authorized by law, during the term of such re-enlistment; and that to each non-commissioned officer or soldier, who shall, in like manner, re-enlist for a *third* term of five years, there shall be allowed —— per month, in addition to his pay as now authorized by law, during the term of such re-enlistment.

"Sec. 3. *And be it further enacted*, That, as an encouragement to emulation, and for the advancement of the non-commissioned grades of the Army, the Sergeant-Major and Quartermaster-Sergeant of each regiment, and the first Sergeant of each company of the Army of the United States, shall receive, in lieu of pay now allowed by law, —— dollars, per month, and that every other Sergeant shall receive, in lieu of the pay now allowed by law, —— per month."

Mr. HARRISON moved to fill the first blank in the first section with $1 50, and the first blank in the second section with $1; which was carried.

He then moved to fill the last blank in the section with $2 50, which was carried.

He then moved to fill the first blank in the third section with $15.

Mr. SMITH inquired what were the duties of the first Sergeant of a company, that should induce Congress to give him pay equal to that of the Quartermaster-Sergeant and Sergeant-Major. He thought it would be better if it were amended so that the first Sergeant should receive $12, and the other Sergeants in proportion. The Quartermaster-Sergeant and Sergeant-Major were, he thought, of a very important character, and ought not to be placed on the same footing, as regarded pay, with the first Sergeant of a company.

Mr. HARRISON was very sorry to differ from such authority as that of his friend from Maryland; but he thought he could shew, and it was the opinion of many abler and more experienced men than himself, that the first Sergeant of a company is the most important character of all the non-commissioned officers of the army. He should prefer, therefore, that the sum of $15 be continued.

Mr. SMITH denied that the first Sergeant of a company was so important a character, as required so much pay as the Quartermaster-Sergeant; though he allowed he was of some importance. The Quartermaster-Sergeant ought to be equal to any officer of the army of the more subordinate kinds. Their pay should be greater than that of the first Sergeant, who has only the duties of his company to perform, whilst the others have that of the whole regiment to attend to.

Mr. HARRISON said it was true that the Quartermaster-Sergeant was an important character. It was necessary he should be trustworthy—but it required no more military talents than are possessed by a common storekeeper. If he is faithful and understands accounts, it is all that is necessary. The first Sergeant, besides being storekeeper, and having charge of the arms and accoutrements, performs the duty of Adjutant to the company. Mr. H. said he had never seen a company that was not a good one, where the first Sergeant was respectable—and, on the other hand, he had never seen a good company but he found an excellent first Sergeant. The men, Mr. H. thought would derive their character more from him than from any other man in the army. He could refer to the authority of a most respectable officer to support his opinion. He was informed by General Bernard, that there was in the French army, an intermediate grade between the commissioned and non-commissioned officers, called an Adjutant sub-officer—a grade established by Bonaparte, and on which he valued himself much; he answers to our first Sergeant, and his pay corresponds to his station. The objects of the bill would be better obtained by having a good first Sergeant in the company, than by any other means; and if his feelings and judgment could govern on this occasion, he would say $20, and declare that, in his opinion, the money was well spent.

Mr. CHANDLER said, that, in filling these blanks, it would be well to consider where this business would end. If the first Sergeants were allowed fifteen dollars per month, the subordinate officers, *the Lieutenants*, in making the comparison between their own pay and that of the Sergeant, will say to you at once, either our pay is too small, or that of the non-commissioned officers is too great. Raise the pay of the Lieutenants, and the Captains will make comparison also, and the pay of the Captains must be raised; and thus it will go through the whole line. He had no wish that officers should serve for less pay than was proper; and, if their pay is not enough, say so, and raise the pay at once, and not commence in the middle of the line; for they will push you through.

Mr. HARRISON said he should make but one observation in reply; the Sergeant has no further stimulus to a faithful performance of his duty than that of his pay; but the Lieutenant lives in hopes of promotion.

The question was then taken on filling the blank with fifteen dollars, and carried—Ayes 21, Noes 14.

Mr. HARRISON then moved to fill the last blank in the bill with ten dollars; which was carried.

Mr. SMITH moved to amend the bill, by altering the last two words in the first section of the bill, so that it should read, "whenever he shall be honorably discharged;" which was carried.

Mr. HOLMES said, he doubted whether increasing the pay of the army in this way, could do any thing very effectual towards rendering the army more efficient in case of war. He was satisfied that something permanent should be done on the subject; we suffered more from temporary armies, in case of a war, than from any thing else.

If provisions had been made by law, for a permanent army in case of a war, and during a war, he was satisfied that much blood and treasure would have been saved; he, therefore, moved to add the following additional section to the bill:

"Every non-commissioned officer, musician, or private, who shall, within —— months after the commencement of war, in which the United States shall be engaged, and who shall enlist for, and during the war, and shall actually serve during the war, and not less than twelve months, and be honorably discharged, such non-commissioned officer, musician, or private, or his legal representatives, shall receive —— per month," &c.

Mr. LLOYD, of Massachusetts, opposed this amendment. Sufficient for the day is the evil thereof, said he. Before we get into a war we shall have time and opportunity enough to provide a remedy; it would be impossible to say what might be the value of money in the country ten or fifteen years hence.

Mr. COBB objected to the amendment of the gentleman from Maine. The first part of it was too indefinite. It directed that, *after* the commencement of a war, &c. Mr. C. said he had experienced enough to know, that, in this country there were two kinds of war waged: they might declare war, or they might carry on war without declaring it. It was customary to declare war against foreign nations, but never against the Indians. Did the

gentleman intend to include those different kinds of war? Or did he intend to mean, by the word war, a war to be declared by Congress conformable to the provisions of the Constitution: he should be glad if the gentleman would make his terms definite, so that he might be able to understand what kind of war he meant.

Mr. HOLMES replied, that by war he meant fighting; that was the common meaning of the word war. The United States knew they had the power of declaring war, but they ought also to have the power of making war without declaring it. If a nation make war against us, to say it is a declaration of war, would imply a declaration on our part. Suppose there was no declaration of war, there would still be no doubt that war existed, nor of the time when commenced; the event that commenced the war was always well known, and the first act of hostility was always understood as declaring the existence of war. If the United States were engaged in a war, either with, or without a declaration, the fact would be as well understood as any thing could be. The gentleman from Georgia had asked if he meant by the word war, war with the Indians. It was very seldom that an Indian war lasted so long as twelve months; but, supposing this were the fact, it would then have acquired the character of war, in which the soldiers were equally exposed to dangers and entitled to reward. Mr. H. said, that, when war commenced, there was always a difficulty found in raising permanent armies; there were laws enough passed for three months' men and six months' men; but he would have an army enlisted for and during the war, that they might have something on which to rely; and such an army as that, he thought, might do something effectual. He doubted, if they postponed this to the commencement of a war, whether a permanent law of this kind would ever be passed.

Mr. COBB said he hoped the gentleman from Maine would pardon him, if he told him that he did not think he had explained the difficulty he had in his mind; perhaps it might be occasioned by his (Mr. C.'s) inability to express his ideas distinctly. The gentleman's amendment says, that "any soldier who shall, within — months after the commencement," &c. Who, Mr. C. asked, was to decide when this war commenced? To whom was the question to be referred, whether war had commenced or not? If the gentleman meant such a war as is declared by Congress, then he agreed with the gentleman from Maine, that they would have time enough to remedy the evil. If he had reference to the other kind of war, he would then ask him, who was to determine when war commenced, so as to ascertain the number of months it had continued? Mr. C said he was opposed to making provision for such a kind of war. War is sometimes carried on without any declaration. The gentleman said that an Indian war seldom lasted more than twelve months. Mr. C. said he was afraid he would have to request the gentleman to review his historical knowledge. Indian wars had been waged for years, before they were terminated by peace. One commenced after the battle of Tippecanoe: was that declared by the Congress of the United States? Was there any declaration made in the Indian war which General Wayne terminated in the Northwestern country? He wished the gentleman specifically to say, who was to determine the time when the war commenced. Was it Congress, or the officer entrusted with the detachment of the army which was employed? He would put another question to the gentleman. When Pensacola was captured, during the Seminole war, was that war or not? or, to refer to a more recent case, the affair at Foxardo—was that war? If so, was war declared? Mr. C. concluded by saying, he thought this thing had better be let alone, for it might produce trouble; and, as to throwing more discretion into the hands of the Executive power, he would give it no encouragement.

Mr. HOLMES said, if it ought to be let alone, the gentleman from Georgia had certainly given the last reason he could give for it. Was his friend serious when he evinced a doubt, as to what time war commenced, or to what time it extended? We have, Mr. H. said, a Government capable of declaring war, and whether it lasted twelve months or not, we are in possession of means to ascertain when it commenced—he believed, that, in all the Indian wars the gentleman spoke of, the time that they commenced, is ascertained, as well, indeed, as that war existed at all. In former times, there might be a regular Indian war continuing more than twelve months, but, in our own days, they were of entirely a different character—a war, where one side gave blows, and the other side submitted to them, could not last a long time; but, if they were to last twelve months, he saw no reason why a soldier should not be put on the pension list for services in those wars, as well as in any other.

The question was then taken on agreeing to the amendment, and decided in the negative.

Mr. RUGGLES said, as no gentleman seemed disposed to oppose the passage of this bill, and as he had some objections to it, he would state them very briefly to the Senate. He was sensible that his colleague, who reported the bill, must be better informed on this subject than himself, in consequence of his long experience in the military service. The object of the bill is to prevent desertion in the army. Any law that could be passed, that would effect this object, would be a salutary one, and a sound measure of policy. But will this bill accomplish this desirable result? The first section provides that one dollar and fifty cents per month shall be retained out of the wages of the soldier, until the expiration of his term of service. Congress has, heretofore, thought that even increased pay and bounties were necessary to induce the soldier to enlist and serve faithfully. Large sums, in the shape of bounties, were given during the last war, to enable the Government to fill the ranks of the army. This bill changes the policy that has been heretofore pursued by the Government, and refuses payment for services actually rendered. This will not satisfy the soldier—it will not prevent desertion. The most effectual mode that can be adopted is to pay them well, and pay them promptly. Mr. R. said, if he had a correct knowledge of that class of our population, who filled the ranks of our army in time of peace, he was satisfied that it was the pay that induced them to enlist and serve. They will not look to the termination of five years to receive their reward; the very act of withholding it will induce them to desert. The period is too remote to satisfy them; present enjoyment and prompt pay alone satisfies the soldier. There are many that enlist who have families to support, who stand in immediate want of their earnings, and whose families must suffer, unless they receive the just reward for their service. Congress has no more right to withhold the pay of the soldier, than the farmer has the wages of the laborer on his farm. What has been the principal cause of desertion, mutiny, and rebellion, in the armies of Europe, and particularly Spain? The answer is ready—The withholding the pay of the soldier. By this act, Congress is about to legalize a proceeding which has done so much mischief, and produced such great difficulties in Europe. Mr. R. said he would repeat, the only way to prevent desertion was to pay your soldiers well, and pay them promptly. The second section of the bill provides, that the soldier, who has served out one tour of duty, and re-enlists, shall receive one dollar per month more. This will produce great difficulty and dissatisfaction in the army. There can be no substantial reason for such a discrimination. They ought all to receive precisely the same pay—they stand in the same ranks, fight the same battles, and perform, in every other respect, the same duties. Will the soldier, under such circumstances, who receives one dollar less

per month than his fellow-soldier, be satisfied? He will not. He will complain; and, Mr. R. said, in his opinion, he would have just ground of complaint. This dissatisfaction, arising from an unequal distribution of wages, will induce him to desert, and leave the service in which they are not rewarded equally. The soldier who re-enlists at the end of five years' service, is, upon no just principles, entitled to greater pay than the man who leaves the plough and enters your army. Mr. R. said it was from a belief that the bill would not attain the object desired, and also that it was unequal and unjust in its provisions, that he should feel compelled to vote against it.

Mr. HARRISON, of Ohio, said, to save the trouble of further opposition to particular parts of the bill, he thought it due to the committee to give a general outline of the principles on which the bill had been adopted, and in so doing, he trusted he should give an answer to his friend and colleague. No one, Mr. H. said, who had turned his attention to the subject, would doubt that the system which the United States had pursued in relation to the organization of the peace establishment was a wise one: the laws on the subject show that they had in view the formation of a large and effectual army, when the circumstances of the country should require it. He believed that there was never an army of its size capable of so much expansion as that of the peace establishment of the United States. As far as related to the staff of the commissioned grade of the army, they had, he thought, nearly arrived at perfection. But he could say with truth, that he believed the non-commissioned officers and privates of the army to be in a worse state than had ever before existed in America. The documents on which the committee had acted, were now before him. He had obtained from the Adjutant General's office a statement of the number of desertions amongst the non-commissioned officers and privates during the last three quarters of a year, and they amounted to 701. If this proportion should continue, the amount in one year would be 934; and it was to be remembered that these were enlisted chiefly from our own population. In deliberating on this subject, there were two modes which offered themselves to the committee to put a stop to this state of things: one by increasing the punishments now inflicted for desertion; and the other to restrain the soldier, by holding out inducements to him for a faithful performance of his duty, and to make him believe that the path of duty is the path of interest. In addition to this document, Mr. H. said, he was in possession of another, which went to show the amount of money drawn from the Treasury, on account of desertions, by which it appeared that the sum of $10,099 had been paid for apprehending deserters, and 536 for the pursuit of those not taken.

The bill now presented contains two propositions; the first, in the 1st and 2d section, providing a bounty for re-enlistment; the other in the 3d section, relates to increasing the pay of the non-commissioned officers of the army. The committee had adopted this plan in preference to that proposing an increase of punishment, and in doing so, they acted in accordance with what they thought would be the view of the Senate, and they were sure they acted in accordance with the feelings of the American People.

Mr. H. said, it would be proper to state the manner in which desertion had hitherto been punished. At the commencement of the American Revolution, America having had little or no intercourse with any other part of the world than Great Britain, in regard to desertion, had adopted the system of that country—the punishment was death or flogging, at the option of the court martial. He was not aware what effect this kind of punishment had on the soldiers of the Revolutionary war; but whatever it might be, it could not form a criterion for us; for there were circumstances operating on the mind of the soldier in that war, such as extreme suffering in some instances, and the ardent attachment to the cause, which pervaded every class of society, which is not likely again to occur. After the peace, the articles of war prohibited courts martial from inflicting the punishment of death, except when sanctioned by the Supreme Executive authority—an exception which prevented it from ever being recurred to. There then remained no other punishment but flogging. The smallness of our military establishment at that time created no difficulty in keeping the ranks full; but, when the difficulty which arose between us and the Indian tribes on the Northwest frontier, created the necessity of a large military force, though no law was passed on the subject, on a recurrence to the advice of the Executive, sanctioned by the opinion of the Attorney General, that, though war had not been declared by the Legislature, it existed in fact, and that the punishment of death might be inflicted by *a court martial*—under Generals St. Clair and Wayne, this thing was often done. It was found impossible to restrain desertion by flogging, and death was often inflicted. In a plain adjacent to the town of Pittsburgh, Mr. H. said, the spot could be pointed out where ten or twelve, or perhaps twenty men, had suffered death for desertion. This enormous waste of American blood raised a great commotion throughout the country, and notwithstanding the popularity of General Wayne, it was the occasion of strong remonstrance from the citizens to the Executive. The wisdom, and even humanity of the course pursued by General Wayne, was manifested by the result: for, from this period, few desertions took place, and a recurrence to capital punishment was seldom necessary. At the conclusion of the war, by the peace of Greenville, the right of inflicting the punishment of death no longer pertained to courts martial. Nothing was done but flogging, which was carried to such an extent, as to create a very great dissatisfaction throughout the country. Immediately before the last war, Government thinking, and very properly too, that this mode of punishment would be the means of preventing the filling up of the army, repealed that section, and declared that stripes should no longer be inflicted. I feel considerable satisfaction in stating, that I am one of the officers who were consulted on that occasion, who gave an opinion favorable to the abolition of that disgraceful punishment.

Since the conclusion of the last war, the usual punishment has been what is called the ball and chain, and hard labor; and what has been the result of this? In one year there have been 934 desertions—it is surely time that some remedy should be applied. Will you again recur to the system of flogging, or will you again authorize the infliction of the punishment of death? The feelings of the American Congress are too strongly in unison with those of the nation, to recur to that till the one which is recommended by the committee shall have been tried—one which is more lenient, and is addressed to the mind of the soldier. Such was the intention of the committee in reporting this bill. It has been supposed by some persons who have turned their attention to the subject, that the first section of the bill which relates to the retention of a portion of the soldier's pay, would be sufficient to answer the desired end. There have also been some objections to it: for my colleague thinks it will have an injurious effect on the recruiting service. Alone it would not be sufficient, but taken in connection with the other sections of the bill, I trust will be found useful. My colleague asks what is the motive which induces men to enlist in the army, and to a faithful performance of their duty? He says it is the pay. I allow that it is so with regard to the first enlistment; but an old soldier enlists from other and better motives. The only objection I could think of to the first section is, that, at the expiration of his period of service, he will have his pocket full of money, and would go home to spend it instead of re-enlisting. But, sir, it is the humane practice in the army to grant furloughs to the old and faithful soldiers. An old soldier, therefore, who

has $100 in his pocket, and wishes to re-enlist, would be allowed to go home and spend amongst his friends the money he has gained.

In regard to the second section of the bill, it is not only a measure of justice, but a measure of humanity, and I may add of economy, also. My colleague has asserted it will produce dissatisfaction amongst the soldiers of the army, where one man is paid more than another. Sir, there is not a service in Europe in which this system does not prevail; and in those services where this idea is most prevalent, there has been a more efficient and better conditioned army. England commenced a plan of this kind under the administration of Charles Fox, a man whose policy, wisdom, humanity, and whose excellence of character, are equal to any other that ever guided the helm of state. When this plan was first adopted, a small addition was made to the pay of the soldier; each soldier having served a certain time, was entitled to an additional penny a day, and for the second period of two pence a day; and this, however insignificant it may appear to us, is to the British soldier a matter of great importance. I have some knowledge of British soldiers, and whilst conversing with the prisoners of the British army, I could distinguish by their erect attitude and correct deportment, the pride they felt in being called veterans.

This plan has been adopted by every army in Europe. The value of an old soldier to an army, sir, is known to every military man. There is not an officer who has served in the army but knows that, for a considerable time after he has enlisted, a recruit is worth nothing. The money that is paid him, the clothes which are given to him, and the arms which are put into his hands, and which are frequently destroyed, are so much loss to the Government. I have in my hand, sir, a calculation, made by an excellent officer in the army, Major Wool, from which it appears that, in consequence of the loss of arms, the expense of provisions, &c. each recruit, sent, for instance, to Green Bay, will cost eighty dollars. So that an old soldier, who will re-enlist, is worth eighty dollars more to the Government than a recruit, exclusive of the chance of desertion. To this may be added the pay and subsistence of the recruit till he arrives there, which will swell the amount to upwards of one hundred dollars.

But, sir, I have said I believe the last section to be the most important one. I think so still, and the more I consider the subject, the more I am confirmed in that belief, not only as it relates to the persons to whom the section particularly refers, and as the means of improving the general condition of the army, but as the means of effecting the objects contemplated by the first and second sections of the bill. I believe no military man will deny the fact, that, on the character of the non-commissioned officers of the army, depends, in a more important degree, the character of the army itself, than even in the commissioned grade. General Wayne thought so, and I can, from my own experience, say, that I have never yet seen a good company that had not a good non-commissioned officer; and I have seen many companies defective in discipline where the Captain was, in many respects, an accomplished officer. General Wayne often said he could ascertain the state of a company, or of a regiment, better, by examining the non-commissioned officers, than by a cursory review of the regiment. It may, then, be considered an established maxim that, as the non-commissioned officers are, so will be the soldiers of the line. If the one is faithful and effective, such will be the state of the army. This fact, all history proves; and I refer to one fact in our own history—the revolt of the Pennsylvania Line, during the Revolutionary War. The mutiny of that line begun and ended by the non-commissioned officers; and we find universally that, where an army has mutinied, it has been more particularly through the lower grades, than through the upper ones. In the mutiny which took place in the British fleet, in the year 1797, it will be found that the revolt began amongst the subordinate officers, one of whom, Parker, the admiral, had been a boatswain. It is found that ambitious men have always directed their efforts towards the lower grades of the officers, in their attempts to seduce armies from their duty, and, if they can be made use of for effecting bad purposes, certainly they can be made the medium of infusing good principles. It has always been the practice of great Generals to pay the greatest attention to this grade of the army, and, when I find a man who is so little acquainted with human nature as to be inattentive to this fact, in the end I always expect he will be found wanting. It was the possession of this knowledge that made the celebrated Pompey, rather than Lucullus, the conqueror of Asia. The possession of it enabled the King of Prussia—the great Frederick, I mean—with small means, and with resources drawn from an impoverished country, the sands and marshes of Brandenburgh and Prussia Proper, to maintain, for many years, a successful contest with the colossal power of the three great Kingdoms of Europe, with Russia, Austria, and France. Anecdotes enough have been related of this great philosopher as well as General, to show his devotion to this particular grade of his army. He was extremely indulgent to the non-commissioned officers of his army; he was severe to the higher grades. In going the rounds of his camp, if he remarked any excellence in a non-commissioned officer, it was always rewarded. Amongst the variety of anecdotes that have appeared, elucidating this point in his character, there is one which is particularly in point. The King, as was his custom, passing through the lines of his army, observed a corporal who was dressed very handsomely and even gaudily, to have an elegant watch-chain, and believing his resources inadequate to procure a watch equal in beauty to the chain, and supposing he had none, he called to him and asked the time of day. The corporal, drawing out his chain, produced a musket ball attached to it. Sir, said he, my watch does not point to 10 or to 12, but it reminds me perpetually of the duty I owe to your Majesty—to die whenever your service requires it. The reward of this noble sentiment was the King's own watch, set with brilliants. Is there a gentleman who hears me, so unacquainted with human nature, as to believe that a watch worth five hundred guineas or ten thousand guineas, would be too high a price for the effect which this noble sentiment produced when circulated in the army? If the King had given five thousand watches to the commissioned officers, they would not have produced the effect which was produced by the gift of this one to a corporal; because every private and non-commissioned officer who heard the story, which would soon spread, believed that a present of this description was within his reach also. I do not know, sir, at what precise period of time this circumstance occurred, but I know that, if it was a short time prior to one of those battles, in which, from accident or blunder—for the King of Prussia could sometimes commit blunders—his army was jeopardized, it was possible that this present of five hundred guineas might have saved him and his army also. At the battle of Cunnersdorff, the King, by his obstinacy in persevering to attack the impregnable position of the Russians, had every corps in his army so completely broken and dispersed, that, in the succeeding night, the King was found asleep in a cottage, attended by an Adjutant and a single soldier. Believing that he could oppose no effectual resistance to the Russians, in their advance to his capital, he had directed, in a hasty note to the Queen, that the archives and Royal family should be removed; but then it was, that the affection of the non-commissioned officers to his person, proved his salvation; for, in a short time, they did what the commissioned officers could not alone have done, from the dispersed situation of the army; a force was collected sufficient to check the advance of the enemy and to save his capital. At the battle of Torgau, a

similar instance occurred: General Zethin having mistaken the time for making the attack with the half of the army committed to his charge, the King was obliged to fight it alone, with that portion under his immediate command. Repeated attacks had nearly destroyed every regiment; the battle appeared to be so far won by the Austrians, that Marshal Daun had despatched a note to the Empress Queen, informing her he had gained a great victory. The King was making a desperate effort with the last regiment of his reserve, when their ineffectual valor was gloriously supported by the broken remains of the corps which had been before engaged, and which were embodied and brought again to the contest by the zeal of one of his colonels; and, by this timely aid, the victory was gained. If the army of his adversary had been broken as his was, they they could never have been rallied: and I am warranted in the belief, that it was the attachment of his faithful sergeants and corporals, which placed the laurel of this victory on the brow of Frederick. I am warranted by Gen. Bernard, in the assertion, that a similar opinion was entertained of the importance of the non-commissioned grades by the great Napoleon. I believe, sir, that there are so many anecdotes respecting Napoleon, that every gentleman must be acquainted with them, going to show that the attachment evinced towards him by his armies, in so many instances, was produced by the attention he paid to that grade of his army. If it were asked by what means these wonderful results were produced, I should say, it is by their being in direct and constant contact with the men; the commissioned officers seldom are with them, and, when they are, the soldiers but rarely exhibit themselves unmasked. It is the non-commissioned officer who sees them in situations where he can dive into their characters, and obtain an influence favorable to making any impressions which they may choose. In every well regulated army, the men are divided into squads, and at the head of every one is a non-commissioned officer; and it must, I think, be obvious, how much benefit may be derived from having this grade composed of efficient and trust-worthy men. Notwithstanding this, it is a little singular that so little has been done for them in our service, and it is the more singular, considering the nature of our government; the grade of commissioned officers represent the wealthy and well-informed part of the community; the non-commissioned officers are drawn principally from the laboring class of the community, the mass of the People—the real sovereigns of the country; and yet nothing, or very little, has been done to render that grade respectable. At present they are cut off from every prospect of promotion, and as long as the present system, which I protest against, exists, of confining all the military knowledge to the sons of the richer portion of the community, there is no alternative; if Government will not change their system, and diffuse a military education amongst the People generally, it must exist. At this time there is no prospect that a non-commissioned officer can arrive at the grade of a commissioned officer. When a man is asked to enlist, with a promise of being made a sergeant, what prospect is held out to him? Why eight dollars a month. That is his ne plus ultra; beyond that he cannot go. My friend on my right, (Mr. CHANDLER,) supposes that fifteen dollars is too much; but he should consider that he has no other stimulus. No Lieutenant would ever enter the army if he thought he were to be confined to that grade. No; he hoped, in time, to be a Captain or a Colonel, nay, at some day to command your army.

But, sir, let us look to Europe, from whence we have borrowed most of our military ideas, and let us see what is the situation of the non-commissioned officers there. In France, the great distance which exists in our service between the commissioned and non-commissioned grade, never did exist. I have been told by some of the Revolutionary officers, that, at the siege of York, they had frequently seen sergeants at the table of Count Rochambeau. Since the Revolution the grade has suffered nothing, under the care of Napoleon, whose knowledge of the human character was such, that you might have been assured, as I was, without any particular knowledge of the fact, that new provision has been made in favor of this grade.

I have learned from the very worthy officer to whom I before alluded, and who is equally an honor of the country which gave him birth, and that which has given him an asylum and employment, a very singular piece of history. The character of Government, or the Constitution, if it may be so called, which was adopted after the first expulsion of Napoleon, gave all the appointments to the King. The King was so convinced of the necessity of encouraging this portion of the army, that a message was sent by him to the legislative body, recommending them to pass a law defining the mode of making promotions in the army, and in such manner as to give, out of every three promotions to the rank of officer, two to the non-commissioned grade. The ultras opposed the measure as trenching too much on the royal prerogative, and thus the affair rested until the return of Napoleon. No such measure was necessary for his Government, as his attachment to the principle was well known. On the second restoration of Louis the Eighteenth, the measure was again taken up, and the law adopted prescribing the mode of promotion, as I have stated—it goes further—making the mode of promotion regular throughout the grade of platoon officers; from the rank of captain, the King is obliged to promote three out of four, on the principle of seniority; the fourth he may choose, but still from the grade of Captains. I am moreover informed that Prussia, seeing the advantages which had been derived to the French army from this system, has adopted it in extenso, and Austria partially. If we look to the organization of the army of Great Britain, which is more like our own, we find that this class of the army has been attended to, not only by giving it better pay, but by honorary distinctions. I have made an abstract from a valuable work, Dupin's Military View of the organization and situation of the English army. He was sent by the French Government, so recently as 1819, to examine into the British military establishment, that France might benefit by it.

[Mr. H. here quoted the work above named, from which it appeared that the Sergeant Majors and Quartermaster Sergeants were allowed between eighteen and nineteen dollars; and the other Sergeants from twelve to fifteen dollars; and that, in the year 1813, an addition was made to the pay of one Sergeant in each company of sixpence a day, who were to bear a badge of distinction, and who were to be called color Sergeants.]

To shew the effect which the British Government promised themselves from this institution of color sergeants, I will ask leave to read to the Senate an extract from the Duke of York's order on this subject.

"In consideration of the distinguished services of the non-commissioned officers of the army, and with a view to extend to the infantry the encouragement and advantages enjoyed by the non-commissioned officers of cavalry, the Prince Regent, &c. The pay of the Sergeant Major shall be increased to three shillings per diem, and that of one Sergeant per company, to 2s. 4d.

"These privileged Sergeants to be termed Color Sergeants; they will bear above their chevron the honorary distinction of a regimental color, supported by two sabres crossed. When under arms, they will constantly take post round the regimental colors; in other respects, they are to fulfil all the duties of other Sergeants.

"The Commander-in-Chief addresses himself to the non-commissioned officers themselves. He appreciates their meritorious services; he is persuaded that, under the direction of their officers, they have, by their individual and collective efforts, largely contributed to raise the charac-

ter of the British army to the degree of eminence which it has at present reached," &c.

I am aware there is still a considerable deduction from the pay of the non-commissioned officers in the British army for provisions. I have not been able to ascertain precisely what is its amount, but I believe it is eight or nine pence per day. It is the general opinion that the soldier pays for every thing that is distributed to him; but that is not the case—it is only to a certain amount, and Government pays the remainder. The pay of the ordinary sergeant of infantry may be somewhere about what it is in this country at present, but the pay of the artillery sergeant is greater. I ask what is done in our service to compensate them? Nothing that I know of, and, if it is necessary, for the good of the service, to have good non-commissioned officers, you must strike out some mode of encouraging them; if you cannot give them distinction, give them an equivalent for it; if you cannot give them promotion out of their grade, give them distinction in it, and pay, sufficient to dress well, to supply all their little wants, and that they may cut some sort of figure amongst their friends when they are by the lenity of their officers, suffered to visit them. They ought, also, I should think, to have sufficient to support a family in a style of tolerable decency.

I have before observed, that the objects of the first section of the bill will be materially promoted by passing the third section; but whilst the committee were deliberating on the subject, I had no idea that I could procure a document, which I have since done, that would prove the fact so decisively. Since the bill has been reported, I have obtained from the Adjutant General's Office a document to that effect—it is a statement of the number of desertions amongst the non-commissioned officers distinct from that of the men; and, if it continues in the same proportion as it has done, it will make the number, for twelve months, amount to thirty and a fraction. During the whole course of my life, I have never known such a thing to occur before. I formerly served as a platoon officer in the army of Gen. Wayne, and should certainly have known if there had been any uncommon desertion from that grade; and, during the whole of that period, I am convinced there were not four desertions of that kind—one was taken and shot, but I cannot recollect any other; and, whilst commanding the Northwestern army, I do not recollect of a single instance. Surely, sir, some system should be adopted by which the men may be enlisted from amongst the respectable yeomanry of the country—thirty non-commissioned officers deserting in one year, is a humiliating spectacle, and the Legislature should feel themselves bound, as far as they can, to prevent its future recurrence.

I said, sir, that I had it in my power to shew that the order which I have read from the Duke of York, raising the pay of the non-commissioned officers, was produced by the recommendation of the Duke of Wellington, and that it was intended as a remedy against the desertions in the army. There is an order of the Duke's, of the same year, in which he complains that the desertions were greater than at any former period. The order of the Duke of York says, indeed, nothing about desertion, but holds out to the soldier the inducement of obtaining the rank of non-commisioned officer, to whom more respect and emolument had been given for a more faithful discharge of his duty; and a similar object is expected to be accomplished by the section of the bill I am now discussing.

If you are not willing, sir, to adopt a system of this kind—if you will not increase their pay, from the apprehension which my colleague has expressed, that it will produce dissatisfaction in the army—what measures will you adopt? Something must certainly be done. Will you say that the punishment of death shall again be inflicted? Will you crimson your plains with the blood of your own soldiers? If you are resolved to do this, be assured the feelings of your fellow-citizens will not go with you. Will you subject your gallant officers, who gained you so much honor during the last war, to the revolting task of executing their fellow-soldiers? I assure you it is an employment, for which they have no stomach. Though accustomed to scenes of blood, it was the blood of their enemies, or friends who, falling in the defence of their country, it is not permitted a soldier to regret. If it were not from the apprehension of a charge of garrulity, which, it is said, belongs to the character of some old soldiers, I could tell what I felt, when, at the age of eighteen, it fell to my lot to command the guard which executed two soldiers for desertion; and what I also felt, when, as the commander of your army, I was called on to sanction a sentence of death. But I will tell you what I have seen General Wayne, the Marcellus of your country, suffer on a similar occasion. I witnessed the tear starting from his fine blue eye, and his breast heaving with emotion, whenever he was called upon to perform this painful duty.

If you do not wish to revive this punishment, will you restore the omnipotence of the cat-of-nine tails, that instrument of torture? If you do, you will find it ineffectual. Resort to severe punishments of that description, procure the shlag from Prussia, or the knout from Russia—it will never be effectual in an American Army. The punishment of the picket has even been tried, but in vain; the only one that has proved effectual, is death. Perhaps it may be said, it will be best to continue the present system of confining the deserter to hard labor in a fortress, with a ball and chain around his leg. Will the Senate consider what will be the effect of this congregation of bad men? Amongst this number, there are many old offenders, who are hardened in crime, and others who are but young in guilt—the effect of such a system, always being to bring the least guilty to the standard of the greatest. And what a mass of villany will you periodically turn loose on the community. Try, then, I beseech you, some other plan—try the effect of lenity and instruction—take the fetter from the leg, and apply it to the mind of your soldier, and make him what he should be, the willing and faithful servant of his country.

After all, Sir, this bill is not entirely to my mind. I would have added some other inducements; I would have added honorary distinction; and I would have increased the pay of the corporals; but I feared to go too far, lest nothing should be obtained. There is another clause I would willingly have added; to restore again to your army the ministers of religion. Until lately I had not known that the grade of Chaplains had been abolished. May not to this cause be, in part, attributed the increased number of desertions in your army? I know there are objections in the minds of some military men to the employment of Chaplains; but it has always arisen from the character of the Chaplains themselves. I know also that books of caricatures have been printed in England against that grade; but, in the reform that has lately taken place under the Duke of Wellington, a considerable change has been effected in that particular. They are now chosen with great care, and faithfully do their duty. A Chaplain, properly chosen, and employed where he can have constant access to the men, will, no doubt, be of effectual service, and I regret they are no longer to be found as a component part of our army.

I am sorry to have detained the committee so long, but I consider it a most important subject, and well worthy all the consideration that can be bestowed on it.

Mr. CHANDLER said, he believed that when the Senate considered what sort of men the ranks of the army was filled with, in time of peace, they would perceive how difficult it was to prevent desertion; for so long as such quantities of wild land remained, which is so easily obtained, it is impossible to induce men to enlist into your

army, who have any thoughts of laying up any thing for themselves, those who do enlist in a time of peace, are generally a class of men, who enlist for the sake of the small amount of pay given, merely to supply them with something to drink, which is about all they wish. The object of the bill is to prevent desertion, and I dont know but what it will have the effect, for, if you stop one dollar and fifty cents per month from their pay they will not enlist, if they do not enlist they will not desert; but so long as your army is made up of such materials as are enlisted in a time of peace, they will desert, if enlisted; neither stoppage of pay, or appointing of chaplains, as suggested by the Chairman, will prevent it. I will, however, pass by the first section of the bill and make a few observations upon the residue of it. With respect to the second section, which provides for increasing the pay of the soldier on his re-enlisting, Mr. C. asked, to what kind of men do you give this additional pay? Why to this same class of men who you enlist in time of peace; and the Chairman of the Committee has just informed us, that in one year, about nine hundred of them out of less than six thousand, say one-sixth of the whole, have deserted, including thirty or forty non-commissioned officers; they enter your service with habits and morals not the most correct, and they are not generally bettered by being in the service. The bill proposes, after the soldier has served five years, to add one dollar per month to his pay if he re-enlists for five years more, and at the expiration of that five years, if he re-enlists to add to his monthly pay two dollars and fifty cents more, making three dollars and fifty cents per month more to this soldier, who is broken down by bad habits after ten or more years service, than you give to the soldier who enlists at the commencement of a war, when your army is made up of a different class of men, men who enter it from far higher and better motives than those who enlisted in a time of peace. Those who enter the service at the commencement of a war, are men who have families and property to defend, men of correct habits, and after a few months service one of them are worth three of those who have been fifteen years in service in time of peace; and I appeal to any officer who has seen service, whether he does not find this to be the case. As to the third section of the bill Mr. C. said, he agreed with the Chairman, that the pay of the non-commissioned staff was rather low, as also the first sergeant, and that they were a very important part of the army, but if the pay of a sergeant major and quartermaster sergeant, must be fifteen dollars, which he thought too high, he thought that the first sergeant of a company should not be more than twelve dollars; it would be more in proportion to the grade and the services performed, and quite as satisfactory. It may be well for gentlemen to remember when they make comparisons between the pay of the subaltern officers and the non-commissioned officers, that the latter are furnished with clothing by the Government in addition to their pay, while the former furnish their own clothing, which leaves less difference in their pay and emoluments then at first sight might appear. Mr. C. said, he should move, at a proper time, to strike out the second section of the bill.

Mr. SMITH said, that, in his mind, this was an experiment of a very doubtful character. He thought it most probable that men would be enlisted, and that the sergeant who enlisted them would never tell them that one dollar per month, of their pay, was to be retained—they would enter the service, and the first time they came to receive their pay, they would only get four dollars, or three dollars and fifty cents, as the case might be. Would that be a mode of preventing desertion, asked Mr. S. or would it be an additional inducement to desert? He thought the man would say he had been defrauded; he expected, when he enlisted, he was to receive five dollars, and he found he only received four or three dollars and fifty cents. Mr. S. thought he would be justified in deserting. It often happened they had a family of children: would $3 50 be sufficient to maintain that family? The old soldier, and those who are now in service, will be receiving their pay of $5 per month, whilst those who enlist hereafter will receive only $3 50. Would that be the means of retaining them in the service, or would it not be something of an inducement to desert? Mr. S. said he did not intend to oppose the bill, but he wished to make it as good as possible, by rendering the inducements to desertion less. He thought nothing would prevent desertion but prompt punishment, and he did not care how severe that might be; he believed that, in the end, it would benefit humanity. At one period of the Revolutionary war, desertion, even to the enemy, was excessive. Every step was taken to prevent it, and what did? An order from General Washington to seize and shoot every deserter found beyond the lines. This was done, and it put an effectual check to it. Again: whilst the army was passing along the Jersey shore to Newark, desertions were frequent: the wife of one of the deserters was left behind, and she laid an information against one person who had aided in producing desertion, and he was taken up. They had a French commander at the head of the brigade, and this man, who had been the instrument of desertion, was tried by court martial and shot; after that there were no more desertions. Mr. S. concluded by expressing it as his decided opinion, that nothing would prevent it but severity.

The question being on concurring in the amendments made in Committee of the Whole, they were agreed to, with the modification of reducing the sums of $1 50 to $1, and the $2 50 to $2, on motion of Mr. SMITH, who made also an unsuccessful motion to reverse the amount proposed for the quartermaster sergeant, and first sergeant, by giving the former $15 and the latter $12.

The question then being on engrossing the bill for a third reading—

Mr. CHANDLER said, he had intended to have moved to strike out the second section of the bill, but seeing the bill was regarded favorably by a great majority of the Senate, he should content himself with recording his vote against the bill; he therefore moved, that when the question is taken upon the bill going to a third reading, it be taken by ayes and noes.

The question was then decided in the affirmative by yeas and nays, as follows:

YEAS.—Messrs. Barton, Benton, Berrien, Bouligny, Chase, Edwards, Ellis, Harrison, Hendricks, Holmes, Johnson, of Ky. Johnston, of La. Kane, King, Lloyd, of Mass. McIlvaine, Marks, Mills, Noble, Robbins, Rowan, Seymour, Thomas, Van Buren, White, Woodbury—26.

NAYS.—Messrs. Bell, Chandler, Clayton, Cobb, Eaton, Findlay, Macon, Randolph, Ruggles, Smith, Willie, Van Dyke.—12.

The bill was ordered to be engrossed for a third reading.

Mr. BENTON, for the reason that there was so much business before the committees, and so little before the Senate, moved that, when the Senate adjourn, they adjourn to meet on Monday next, which was carried; and

Then the Senate adjourned to Monday.

MONDAY, JANUARY 16, 1826.

Mr. HAYNE, from the Committee on Naval Affairs, made the following report:

"The Committee on Naval Affairs, to whom was referred a letter from Captain DAVID PORTER, of the United States' Navy, 'requesting an investigation of charges contained in communications from Thomas Randall and John Mountain;' and to whom was also referred a letter from THOMAS RANDALL, on the same subject, together with a communication from the Secretary of the Navy, covering the Proceedings of the Court of Inquiry and Court Martial, in relation to Captain Porter," report:

"That they have had these several communications under consideration, and find nothing in the character of the transactions to which they relate, that requires the interference of this House.

"It appears that the case of Captain Porter has been submitted to the proper tribunals; and the committee do not feel themselves warranted in forming any opinion unfavorable to their decisions, or indulging any impression that their proceedings require revision. The committee consider it due alike to the preservation of a proper discipline and to the reputation of our officers, that appeals should not be encouraged from the decisions of the Military Courts. Under this view of the subject, and seeing no satisfactory reason for interposing the authority of the House in matters which have been finally settled by the competent authorities, the committee ask leave to be discharged from the further consideration of the subject."

The report was read.

The Senate then proceeded, as in committee of the whole, to consider the bill "declaring the assent of Congress to an act of the State of Alabama," [laying a tonnage duty on vessels, for the improvement of the river Mobile.]

The bill was supported by Messrs. KING and SMITH, who explained the situation of the harbor of Mobile, the necessity of deepening the channel; and commented on the benefits which would result to the commerce of all parts of the Union trading to Mobile, from the improvement contemplated by the act of the State of Alabama. The bill was opposed by Messrs. LLOYD, of Massachusetts, and HOLMES, of Maine, who expressed some doubts as to the right possessed by the State of Alabama to impose such a duty; and that five cents per ton was too much. The bill was finally laid on the table, Mr. KING expressing his intention of calling it up on a future day; and should he be unable to effect the object in this way, to propose an appropriation from Congress for the improvement of the harbor of Mobile.

TUESDAY, JANUARY 17, 1826.

No business of importance done to-day.

WEDNESDAY, JANUARY 18, 1826.

The Senate proceeded, as in committee of the whole, to consider the bill "for the relief of sundry citizens of Baltimore."

Mr. RUGGLES, of Ohio, said, it appeared from this case, that, in September, 1814, twenty-four vessels belonging to citizens of Baltimore, were taken by order of the Government, and sunk, for the defence of that place; after the peace they were raised, but so much injured, that twelve of them were entirely useless; and the committee, acting on those principles which had heretofore governed them, thought it right that they should be paid the value of these vessels at the time they were taken, deducting therefrom what had been paid for damages, &c. twelve of the vessels were not so injured but they could be refitted, and were again employed by their owners; and on these the committee thought it just that twelve and a half per cent. should be allowed on their respective valuations. This, Mr. R. said, was a plain statement of the facts of the case, and it was unnecessary to say any thing further on the subject.

The bill was then ordered to be engrossed for a third reading.

THURSDAY, JANUARY 19, 1826.

AMENDMENT OF THE CONSTITUTION.

Mr. BENTON, from the Select Committee, to whom was referred the several resolutions proposing amendments to the Constitution of the United States, made a report, in part, accompanied by the following joint resolution:

"Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following amendment to the Constitution of the United States be proposed to the Legislatures of the several States, which, when ratified by the Legislatures of three-fourths of the States, shall be valid to all intents and purposes, as part of the Constitution:

"That, hereafter, the President and Vice President of the United States shall be chosen by the People of the respective States, in the manner following: each State shall be divided, by the Legislature thereof, into districts, equal in number to the whole number of Senators and Representatives to which such State may be entitled in the Congress of the United States; the said districts to be composed of contiguous territory, and to contain, as nearly as may be, an equal number of persons entitled to be represented under the Constitution, and to be laid off, for the first time, immediately after the ratification of this amendment, and afterwards at the session of the Legislature next ensuing the apportionment of Representatives by the Congress of the United States; or oftener if deemed necessary by the Legislature of the State; but no alteration after the first, or after each decennial formation of districts, shall take effect at the next ensuing election after such alteration is made. That on the first Thursday, and succeeding Friday, in the month of August, of the year one thousand eight hundred and twenty-eight, and on the same days in every fourth year thereafter, the citizens of each State who possess the qualifications requisite for electors of the most numerous branch of the State Legislature, shall meet within their respective districts, and vote for a President and Vice President of the United States, one of whom, at least, shall not be an inhabitant of the same State with himself, and the person receiving the greatest number of votes for President, and the one receiving the greatest number of votes for Vice President, in each district, shall be holden to have received one vote; which fact shall be immediately certified to the Governor of the State, to each of the Senators in Congress from such State, and to the President of the Senate. The Congress of the United States shall be in session on the second Monday in October, in the year one thousand eight hundred and twenty-eight, and on the same day in every fourth year thereafter; and the President of the Senate, in the presence of the Senate and House of Representatives, shall open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President shall be President, if such number be equal to a majority of the whole number of votes given; but if no person have such majority, then a second election shall be held on the first Thursday and succeeding Friday in the month of December, then next ensuing: between the persons having the two highest numbers for the office of President; which second election shall be conducted, the result certified, and the votes counted, in the same manner as the first; and the person having the greatest number of votes for President, shall be the President. But if two or more persons shall have received the greatest and equal number of votes at the second election, the House of Representatives shall choose one of them for President, as is now prescribed by the Constitution. The person having the greatest number of votes for Vice President, at the first election, shall be the Vice President, if such number be equal to a majority of the whole number of votes given: and if no person have such majority, then a second election shall take place between the persons having the two highest numbers, on the same day that the second election is held for President; and the person having the highest number of votes for Vice President, shall be the Vice President. But if two or more persons shall have received the greatest, and an equal number of votes in the second election, then the Senate shall choose one of them

for Vice President, as is now provided in the Constitution. But when a second election shall be necessary in the case of Vice President, and not necessary in the case of President, then the Senate shall choose a Vice President from the persons having the two highest numbers in the first election, as is now prescribed in the Constitution."

The resolution was twice read, and made the special order of the day for Monday, the 30th inst.

Mr. ROWAN, of Kentucky, said, as this was a subject in which the dearest interests of the People were vitally involved, he should wish a large number of this Report to be printed, to be distributed amongst the People of the Union, that the Senate might, by its diffusion, have an opportunity to learn their sentiments, and be enlightened by their wisdom on the subject. Whether considered with regard to the great interest which the subject possessed, or to the great ability with which it had been discussed, it merited that the highest number should be printed which it was customary to print of interesting documents, and he moved that three thousand be printed;

Which motion was carried.

IMPORT AND TONNAGE DUTIES.

The Senate then proceeded, as in committee of the whole, to consider the bill "further to amend the act of 1799, entitled 'an act to regulate the collection of duties on imports and tonnage."

Mr. SMITH, of Maryland, then took a review of the revenue system; explained the objects of this bill; the necessity for it, which had been made apparent by the transactions which had lately taken place at Philadelphia. He adverted to the act of 1799, and explained the different sections, and the reasons which had induced the Committee of Finance to propose the present amendment to that act.

Mr. HOLMES, of Maine, also offered some remarks in explanation of the bill, in the necessity of which he entirely agreed with the Chairman of the Committee. As regarded the late transactions at Philadelphia, he understood a very serious loss was likely to be sustained. It arose either from some fault of the Collector, in permitting the owner or importer of the goods to have the control of the warehouse in which they were deposited, or from some mistake in delivering up the certificates, when he ought not to have done so. Whether there had been any fraud on the part of the officers of the Government, he was not prepared to say. Mr. H. said he thought it probable the time would come (and might not be far distant) when they would find it the interest of the Government, and for the safety and profit of the revenue, to build public warehouses of their own, in the principal ports of the Union.

Mr. LLOYD, of Massachusetts, said, that the object of the law of 1799 was to grant a facility to the merchants of the country, by allowing them to warehouse their teas and spirits under the custody of the Custom-house, without putting them to the inconvenient necessity of immediately seeking sureties, for a heavy amount, when, perhaps, the article deposited might never come into the consumption of the country, or not do it for a long period thereafter, or again be trans-shipped to some other country for the benefit of drawback. That he knew nothing of the losses which were said to have occurred in Philadelphia, except from vague rumors and newspaper accounts; but from them he feared a heavy loss would be sustained by the United States. In this, however, he might be mistaken, as he had no direct information on the subject. If there should be such loss, he apprehended it would arise from what he should consider a misconstruction of the law of 1799, the provisions of which appeared to him good, and, perhaps, sufficient. They required that the article of teas should, where the importer wished it, be bonded by his individual bond, and the teas be deposited in a warehouse, under the custody of the officers of the customs; to which warehouse there should be two locks, the key of one of which should be kept by the Collector or Inspector, the key of the other by the importer; the object of which was, that, as both the Government and the importer had an interest in the property, and, with regard to the cheaper kind of black teas, an equal interest—for the duty was equal to the cost—they both should have a control over it; and the object of having two locks, if he understood it, was, that they should be locks with different wards, as in the vaults of a bank, so that it would require the concurrence of both the parties in interest, to have access to the property; without this, two locks were no better than one.

The law of '99, he said, further provided, that, when the goods were thus warehoused, a general certificate was to be given by the Custom-house to the importer: this was the evidence he had of his property being deposited, when he wanted to take the property from the warehouse to bring it into the consumption of the country or to sell it; then he must pay or secure the duty, and was to receive a special certificate for each package, and without which it was liable to seizure if met in the streets of any city, or on board any vessel in the harbors of the United States. This individual certificate, if he might so term it, was never to be delivered until the duties were secured; if it were done before, it was done erroneously.

He said he had only seen the bill under discussion that morning; he did not object to it; but, if severe losses had occurred, he feared they would be found to arise, rather from the administration of the law of 1799, than from a defect in its provisions.

Mr. SMITH moved to fill up the blank in the clause to punish the officer of the customs with fine and imprisonment, in certain cases, with four thousand dollars as the limit of the fine, and three months as the limit of the imprisonment.

Mr. HOLMES moved twelve months as the limit of the term of imprisonment.

Mr. COBB, of Georgia, said, it appeared, from what had transpired of the occurrences which had taken place at Philadelphia, that there was something like fraud on the part of the Custom-house officer. A fine of four thousand dollars would not, he thought, affect much the perpetrator of such a fraud. He understood the loss which was likely to be sustained by the Government, by that transaction, amounted to between five and eight hundred thousand dollars; and, if it had arisen from the connivance of the custom-house officer, he would laugh at a fine of four thousand dollars. The importer of goods on which such a large amount of duties would accrue, would find it to his interest to bribe him with a sum much larger than would suffice to pay this fine. Mr. C. said, that, when a heavy loss was likely to accrue from the misconduct of the custom-house officer, he thought the fine ought to be augmented; it should amount almost to as much as the loss which might accrue to the United States. The sum now proposed would be, as a fine, no punishment at all. Mr. C. said, he should say, a sum not exceeding twenty thousand dollars ought to be inserted in lieu of the proposed sum of four thousand dollars.

Mr. HOLMES said, that, by a reference to the bill, it would be found that the punishment to be inflicted was a fine not exceeding ——, and imprisonment for a term not exceeding ——; that either or both of the said punishments might be inflicted, according to the nature and aggravation of the offence. The delinquent would, moreover, be removed from office. Mr. H. did not pretend to say whether the fine would be sufficient to deter them from the commission of the offence, but he thought the imprisonment would, and he should prefer that the term of the imprisonment should be increased, instead of increasing the fine. He thought that the fine could not be fixed quite high enough to deter men in cases of this kind.

Mr. COBB thought, if the custom-house officer took a bribe in a case like this, imprisonment would have no effect on him. A man might import tea to a great amount; might say he could not pay, or give security for the payment of the duties, and the goods would be warehoused; the duty on these teas might amount to $800,000. This man would make money by bribing the custom-house officer with $100,000, to permit him to take these teas out of the public warehouse; and how was it proposed to punish this officer who should receive the bribe? Dismiss him from his office? The officer would not mind that. A fine of $4,000 he would laugh at, and he would think lightly of the imprisonment; for on coming out, he would be left to the enjoyment of $96,000, thus fraudulently acquired. This would be no punishment at all. The term of imprisonment should extend beyond twelve months, or he would turn it into ridicule. In cases like this, where it appeared it was in the power of the importer and custom-house officer to benefit themselves, it would be necessary to place it in the power of the court to impose such a punishment as would deter them from the commission of such a crime. Mr. C. said, he should move to extend the limit of the term of imprisonment to five years.

Mr. WOODBURY did not oppose an increase of the sum of the fine, but thought, before it was definitely fixed, it should be considered that the collector, for such misconduct as was alleged to be true at Philadelphia—and for such as was made penal by the bill—would be liable not only to removal from office, and such fine and imprisonment as should be prescribed, but would be answerable, without doubt, in his private capacity, for all damages sustained by the United States—and his sureties also be liable to the extent of his official bond.

Mr. FINDLAY said he was not in possession of any particular information relative to the transactions at Philadelphia—and he thought the Senate ought to be made acquainted with the origin and causes of the evil proposed to be remedied before they legislated on the subject. He was informed from a respectable source that the Executive had sent a confidential agent to Philadelphia to inquire into the whole affair. He therefore moved to lay the bill on the table to await a report on the subject from the agent.

This motion prevailed, 18 to 12.

The Senate adjourned to Monday.

MONDAY, JANUARY 23, 1826.

DUTY ON FOREIGN SPIRITS.

Mr. MARKS presented the petition of sundry agriculturists, citizens of Pennsylvania, praying that such a duty may be laid on foreign ardent spirits as may prevent its importation; and Mr. M. moved its reference to the Committee on Agriculture.

Mr. MACON thought that as such a measure would be the same as a tax bill, which this House could not originate, it would not be worth while to refer the petition. If such a bill were to come from the other House, then this petition might properly be referred with it to the Committee on Finance; but its reference now would be premature and useless.

The memorial having been read, at the instance of Mr. MARKS,

Mr. SMITH said the memorial was of a very strong financial character, and it was probable that Congress would not, in the present state of the finances, consent to a total relinquishment of revenue from foreign spirits, unless an excise was laid on the distilled spirits of the country. The revenue arising from the duty on imported spirits amounts to two millions of dollars. It was not probable that such an amount could be deducted from the revenue unless its place were to be supplied by an excise on the distilled liquors of the country. Therefore, taking the whole subject into consideration, he thought it properly belonged to the other House, and when it came before the Senate they would consider it.

Mr. FINDLAY said, if the position taken by the gentleman from Maryland was correct, he had been in error when he had formerly made the motion to raise a Committee on Agriculture—there could be no occasion for a Committee on Agriculture, unless this petition, and others of a similar nature, were referred to it. It was true, this House had not the power to originate a bill laying a tax, but they could originate a bill to repeal any branch of revenue whatever. The purport of this petition was not so much for a repeal of any branch of the revenue, but to encourage the manufacture of domestic spirits, and to provide a home market for the produce of the farmer.

Mr. HOLMES hoped that the petition would be referred to the Committee on Agriculture. When the motion for appointing a Committee on Agriculture was under discussion, Mr. H. said, he had expressed it as his opinion, that there was nothing which could be referred to such a committee, but what properly belonged to the Committee on Finance, and this petition was a full proof, a practical illustration, of what he had then advanced. Nothing could be proposed, affecting the Agriculture of the country, but would affect, likewise the Finances of the country. He was happy that the Committee on Agriculture had been appointed, inasmuch as it would lighten the labors of the Committee on Finance. The petition contained no proposition to lay a tax, but, on the contrary, to repeal a tax which amounts to two millions of revenue annually. He wished the Committee on Agriculture to take the subject up, and make a report on it, to show what would be the probable effects of a repeal of the tax on foreign spirits.

The question was then taken on the reference to the Committee on Agriculture, and decided in the affirmative.

CASE OF COMMODORE PORTER.

On motion of Mr. DICKERSON, of New Jersey, the Senate proceeded to the consideration of the following report of the Committee on Naval Affairs, made some days ago:

"The Committee on Naval Affairs, to whom was referred a letter from Captain DAVID PORTER, of the United States' Navy, 'requesting an investigation of charges contained in communications from Thomas Randall and John Mountain;' and to whom was also referred a letter from THOMAS RANDALL, on the same subject, together with a communication from the Secretary of the Navy, covering 'the Proceedings of the Court of Inquiry and Court Martial, in relation to Captain Porter,' report:

"That they have had these several communications under consideration, and find nothing in the character of the transactions to which they relate, that requires the interference of this House.

["It appears that the case of Captain Porter has been submitted to the proper tribunals; and the Committee do not feel themselves warranted in forming any opinion unfavorable to their decisions, or indulging any impression that their proceedings require revision. The committee consider it due alike to the preservation of a proper discipline, and to the reputation of our officers, that appeals should not be encouraged from the decisions of the Military Courts. Under this view of the subject, and seeing no satisfactory reason for interposing the authority of the House in matters which have been finally settled by the competent authorities,] the committee ask leave to be discharged from the further consideration of the subject."

The report having been read—

Mr. DICKERSON observed, that the Naval Committee must have misunderstood the application of Commodore Porter. They consider him as appealing from the decision of the Court to whom his case was referred—and the intimation that the preservation of proper discipline requires

that appeals should not be encouraged from the decisions of Military Courts, and that, under this view of the subject, the committee request to be discharged from the further consideration of the subject, is an indirect censure upon Commodore Porter for having made this supposed appeal. A sentiment like this, Mr. D. was not willing to sanction by any vote of his. Nothing was more remote from the intentions of Commodore Porter, than to appeal from the Court of Inquiry which had, by their report, most honorably acquitted him of the charges founded upon the letters of Mr. Randall and Mr. Mountain, and to which alone he has solicited the attention of the Senate. If this is an appeal at all, it is not from the court—but, from sentiments expressed against him upon this floor last winter, when the subject of carrying specie by our West India squadron was partially discussed, and when we had but a part of the information which such a discussion required. If this subject had not been brought before the Senate last winter, without the consent of Captain Porter, and in his absence, he would not at this time ask their attention to it.

In January last, it was known to the Senate and to the Public, that Commodore Porter had been recalled from his command in the West Indies, to answer to charges which the Executive considered of great national concern. This call, under these portentous and undefined charges, was calculated to throw a cloud over the character of this gallant officer: at such a time as this, it was all-important to him, that no impression unfavorable to his character should be made upon the Senate of the United States; at such a time as this, it was all-important to him, that no such impression should be made upon the Public; and most especially was it important to him, that, if impressions must be made against his character upon the Public, those impressions should not be strengthened by the approbation or concurrence of this Senate. At this time the President was called upon for such information as he possessed, and which might be safely communicated, relative to the piracies referred to in his message; in answer to which, on the 13th of January, he sent a message containing, among other things, the letters and extracts of letters, from Mr. Randall and Mr. Mountain, which placed the conduct of Commodore Porter, and the squadron under his command, in a most unfavorable point of view. Among other things, Mr. Randall, in his letter to the Secretary of State, dated at Havana, 1st October, 1824, says "I take the liberty to add some remarks, on the disposition and conduct of the naval forces of the United States on this station, which were designed to be employed in the suppression of Piracy. It is here a matter of common observation and complaint, that the antipiratical squadron has effected nothing against the pirates, commensurate with its numbers and force, during the last six months." Again, "I allude to the carrying of specie for our merchants in vessels of war, the whole effect of which, is to give a trifling premium of insurance to one class of the community, which would otherwise be paid to another class."

Again—"But experience shows that the suppression of piracy, and the transportation of specie, on the late system, are incompatible. The first, alone, is more than sufficient to occupy all the time and energies of any force we can detach for that service. It must be evident that officers arriving here, their vessels freighted with large sums of money, deliverable in the United States or elsewhere; for which they have signed bills of lading, and on which insurance has been effected by all parties, for their respective interests, have contracted obligations, always embarrassing and frequently adverse to the performance of some important service. Such has been the predicament of many vessels of the United States, designed to protect our trade against the pirates, which have merely touched at this island in their voyages to and from other islands out of the sphere of piracy, and the ports of the Gulf of Mexico, the usual termini of those cruisers. They stop at the large ports of this island, barely time enough to take in water and other supplies, to land or receive specie, and then, after a long cruise, return to the United States; their usefulness limited to the convoying of a few vessels from the coast."

These, and many other observations of Mr. RANDALL, are made, more from the information derived from others, than from his own observation—but not the less injurious to Commodore Porter.

Mr. Mountain is much more explicit. In his letter to Mr. Warner, dated Havana, Oct. 30, 1824, he says, "herewith accompanying, I have given you a long extract of a letter from Mr. Lattin, of Matanzas. It is a lamentable fact, that, unless some efficient measures are taken by our Government, to put a stop to the pirates, our poor countrymen must suffer; it is too true, our trade has not been protected on this side of Cuba, since early last spring; our men of war have, it is certain, been here, and off here, on their way to, or from, the ports in the Bay of Mexico, carrying freight. A thirst for making money prevails with others, as well as those in the Island of Cuba." This language cannot be misunderstood by a single citizen of the United States. And least of all, by the officers of our squadron in the West Indies, whose characters were to be affected by it. A thirst for making money prevails with others—who are these others? The officers of our squadron—and who are those of the Island of Cuba? The pirates. This is the language of Mr. Mountain; though not explicit, yet not to be misunderstood. Thus, sir, the officers of our squadron in the West Indies, so far as regards a thirst for making money, are compared to pirates. Yes, the gallant officers on that station, who were risking their lives—who were sacrificing their lives for their country—are classed with the enemies of the human race—and that by an Agent of the United States. Upon information of this character, a discussion took place in the Senate, on the 2d of February last, in which observations were made, extremely unfavorable to the character of Commodore Porter, and the officers under his command, but which seemed to be justified by the information laid before the Senate. As this information went to charge Commodore Porter and his squadron, with the transportation of specie, to the neglect of his duty, and the important interests of the country, it was but right, that the orders authorizing this carrying of specie, if such existed, should also be laid before the Senate—and, in the President's message, we find the orders of Secretary Thompson, of the 1st of February, 1823, in which he says, "you will embrace the object of protecting the convoy of specie from Vera Cruz, and the Mexican Coast, generally, to the United States. Keep one vessel, at least upon this service, to be at, or near Vera Cruz, during the healthy season of the year, and to be relieved, as occasion shall require; both for the convoy of trade, or to bring specie to the United States, confining the transportation to the United States only."

It will be seen by this, that the power to carry specie was very limited—confined to the convoy and to the transportation of specie to the United States only, which could by no means justify the carrying of specie from one place or port to another in the West Indies; and by no means affording a justification against the charges contained in the letters of Mr. Randall and Mr. Mountain. Yet these orders have been communicated, and no others of a later date upon the subject, it was to be presumed that none others, affording a justification to Commodore Porter and his squadron, existed. That the Senate acted under this impression, is evident from their remarks. Yet, sir, there were later orders to Commodore Porter, giving much more extensive powers as to the carrying of

specie, which were not communicated in the President's Message.

In the printed trial of Commodore Porter, we find a letter from the Secretary of the Navy of the 22d of December, 1823, to the Commodore, in which he says, "you may receive on board specie, and the articles permitted by the act for the better government of the Navy, belonging exclusively to our own citizens, and carry them from one port or place to another, when it does not, in any degree, interfere with your other duties, or violate the laws of the country where you are. You may also bring to the United States specie belonging to our own citizens, but you are in no case to permit any thing in the shape or character of public advertisements, to be used for the purpose of giving information that you will carry them." "You will, from time to time, make reports to this Department, of all the specie and other articles you may carry, the places to and from which you may carry them, and the circumstances, terms, and conditions, under which you do it."

In conformity with the instructions of this letter, Commodore Porter issued his orders to his squadron; and on the 16th October, 1814, he made a return to the Navy Department, from which it appeared that the specie transported at that time, by his squadron, amounted to $399,000; that transported by Lieutenant Gallagher not included. If this information had been communicated to the Senate, the opinions formed then of the conduct of Commodore Porter would have been very different from what they were. This information, with much more, was laid before the Court of Inquiry, which induced them to acquit Commodore Porter most honorably of all charges of carrying specie to the neglect of his duty in the suppression of piracy; and to decide "that the manner in which the squadron, under the command of Captain Porter, was employed during the period of his command, appears to the Court to have been highly honorable to him, and the officers and men employed."

Why the letter containing the orders of the 1st of February, '23, which did not authorize the carrying of specie, from port to port, and place to place, in the West Indies, was sent to the Senate, while that of the 22d December of the same year, which did warrant such transportation, was withheld, it is perhaps not important to inquire. Perhaps the last letter was not thought of sufficient importance to be communicated; perhaps there was some reason for keeping such orders secret; perhaps it was omitted through inadvertence. It certainly was not intended to produce the effect which it did produce—a mortifying though temporary depression of Commodore Porter's character, when it most wanted support.

Whether the transportation of specie from place to place, and port to port, for our merchants, was a judicious employment of our squadron, was not for Commodore Porter to decide. The Executive had adopted it, at the earnest solicitation of our merchants; and, in doing this, our squadron were acting according to orders. A large portion of the specie transported by our squadron, would otherwise have been divided among the pirates. It is specie the pirates are in pursuit of; cut them off from that, and the business would cease.

It is proper here to observe, that the dangers to which our commerce has been exposed in the West Indies has been greatly exaggerated. By the third section of an act of Congress of the 3d March, 1819, for the protection of commerce, continued to this time, our merchants are permitted to arm their vessels and defend themselves against the pirates or others, attempting unlawfully to seize their vessels, not only to defend themselves, but to capture the vessels thus attempting to take them; to bring them into port, to have them condemned, and to divide the proceeds of such vessels and cargoes; yet the risque has been so small, that the merchants have not thought proper to arm their vessels. Nay, more, the Secretary of the Navy, in his letter of the 21st of December, 1824, says—"Convoy has been often declined, rather than submit to delays, or changes in the course of the vessel; and it is understood that insurance is unusually low, and that the offices add little, if any thing, on account of this risque. It may be effected to the West Indies at one per cent. on the outward, and one on the homeward voyage; and in some instances at one and a-half, embracing both, which is below the actual expense of arming." It is therefore evident, that the public excitement upon this subject has been unreasonably great, and it is to be regretted that it has led to the loss of more of our brave seamen than fell during the late war, lost in a deadly climate and in an inglorious service.

Capt. Porter, by endeavoring to bring before the Senate the information laid before the Court of Inquiry, did hope to remove impressions formed without this information; and, if the Senate should not be satisfied with his honorable acquittal by the Court of Inquiry, he is willing to submit to a more rigid examination of his conduct. But he has not attempted to answer the arguments and inferences used against him in the Senate. He has not, by any observations of his own, endeavored to obviate them; but, if he had, it would not be beneath the dignity of this body to listen to him. When the conduct of General Jackson had been scrutinized with great severity in the Senate, the General sent a long memorial in answer to the charges made against him, in which he recriminates very freely upon those who made charges against him. The Senate received this memorial, read it, ordered it to be printed, and it now forms a part of our documents. Com. Porter asks nothing like this. He wishes them to examine more fully, what they examined in part last winter. He wishes them to be convinced, by examining the proceedings of the Court of Inquiry, that, in transporting specie, as laid to his charge by Mr. Randall and Mr. Mountain, he has acted agreeably to the laws and agreeably to his orders; and this favor he asks in terms sufficiently respectful and submissive. If we do not think proper to express an opinion upon the subject, let us not lay hold of the occasion to lacerate the wounded feelings of this gallant officer. Let us not insinuate, by any resolution of ours, that Captain Porter has disturbed the discipline of the Navy by an appeal from the decision of a Court which he never meant to make, and has not made. If we cannot grant his request, let us dismiss it with the respect due to a meritorious officer. If the report of the Committee had been, that they did not think it expedient to enter into the consideration of this subject, as the same had been decided by the proper tribunal—and therefore asked to be discharged from the further consideration of the subject, although it would have been wanting in courtesy to the applicant; yet no objection would probably have been made to this report, and it is now respectfully suggested to the Committee to amend their report, by inserting, that Commodore Porter, having been acquitted by the Court of Inquiry, and there being no grounds for forming an opinion unfavorable to their report: therefore, resolved, that the Committee be discharged. If this is not acceded to, a specific motion will be made to recommit the case to the same Committee.

Mr. HAYNE, Chairman of the Naval Committee, rose in reply to Mr. DICKERSON, and said, that an answer to a single question would show that the gentleman from New Jersey was mistaken in the view which he had taken of this subject, and that the Naval Committee were in the right. How came this case before the Senate? They had been told by the gentleman, that it had been carried before a Court of Inquiry, and had there been properly decided—therefore, Mr. H. repeated, how came the case of Commodore Porter before the Senate? Was it not on an application by that gallant officer for the expression of an opinion by this House, which had been decided by a

Naval Court? It was true, this might not, technically, be an appeal, inasmuch as it was an application, not to reverse, but to support and confirm a decision; but it was an application here on a subject matter which had been tried and decided before a proper tribunal—therefore, the Senate would be warranted in considering it in the light of an appeal to that body, from the decision of the Court of Inquiry, and would agree with the committee in the conclusion, that it was not proper that matters of this sort should be submitted to them—that such a proceeding would be injurious to the discipline of the service, and no good could possibly result from it. The Senate would, he presumed, consider the committee as equally correct in the conclusion, that they ought to be discharged from the further consideration of the subject.

Mr. H. said he would take a short view of the nature of this transaction—he would enter into a brief history of it, to shew that the view which had been taken of it by the Naval Committee, was not subject to those exceptions which had been suggested by the gentleman on the other side, who, he thought, had not displayed his customary accuracy in the statements he had made, and in the inferences he had drawn from those facts.

At the last session of Congress, said Mr. H. during the progress of the bill for the suppression of piracy, information was called for from the proper department, on the subject, and the communications of Messrs. Mountain and Randall were submitted to this House—and what, asked Mr. H. did these communications set forth? That piracy prevailed in the West Indies to an alarming extent, in consequence, as they believed, of the absence of a portion of our force on that station. They did not attribute this to Commodore Porter, and he thought that every gentleman who looked further into those proceedings would find they expressly disclaimed all idea of casting censure on the commanding officer. They asserted that piracy existed, and that our vessels were not so frequently on the coast as was requisite for its suppression; but, whether that line of conduct was consistent with the instructions which had been given to the commanding officer, was a question which they did not pretend to decide.

The Senate, acting on the lights they had, passed a bill on the subject, which occasioned some free debates, but Mr. H. said, if he was not mistaken, the gentlemen, who, in the course of those debates, expressed themselves most strongly on the subject, always qualified their expressions, in such a manner, as to spare the feelings of the Commodore. For himself, he could distinctly state, that he had abstained from any harsh construction of the conduct of that officer.

On Com. Porter's return to his country, he demanded, as every high-minded officer should have done, an official inquiry into his conduct—not from the Senate, but from his official superior. He did not come here, and, presenting a petition, say, let my conduct, which has been called in question in this Hall, be investigated by you. He did not ask us, in consequence of opinions unfavorable to his character, to appoint a committee to investigate his case. No. He took the proper course. He went to the Secretary of the Navy, and claimed a full inquiry by a proper court, embracing his whole conduct while on the West India station. He sought for a trial by his peers, the officers of the navy—a tribunal appointed by law for the decision of matters of that nature. That tribunal had investigated the subject at great length, and the gentleman had before him the result. On inquiring into the subject, they had found the Commodore's conduct, as far as this question was concerned, free from censure, and that he had performed his duty conformably to his instructions and the means placed at his disposal. Mr. H, asked whether the matter ought not to have rested there? Could the friends of Commodore Porter hope to obtain any decision before this or any other body better calculated to satisfy his feelings, and to do justice to his character? Could any investigation that could have been instituted, here or elsewhere, have satisfied the nation better than this had done? Under such circumstances, Mr. H. said, the presentation of the memorial at all was an objectionable proceeding. After the decision of the court of inquiry on the identical matter submitted to the Senate, to bring it here in any shape, or in any form, was in the nature of an appeal to the Legislative body from the decision of a military tribunal—and he thought it was calculated to do injury to the discipline of the service. He did not impute to the Commodore any such design. He was of opinion he had been induced to take the step he had done, by his excited feelings. Mr. HAYNE certainly did not mean to say that the Commodore was disposed to injure the discipline of the service; very far from it; but the measure of itself was calculated to have that effect, and was, therefore, objectionable. If the Senate were to take cognizance of the case, he thought it would be setting a very bad example. The gentleman from New Jersey had said that the Naval Committee had misconceived the object of the memorial. How was its object to be ascertained but from the memorial itself? How came the proceedings of the Court of Inquiry to be found on your table? They were called for by the gentleman from Massachusetts, (Mr. LLOYD) at the solicitation of Commodore Porter himself, as he has expressly stated. How came the letter of the Commodore to be submitted to the Senate? Because, he tells us, he understood from the gentleman from Massachusetts, that he did not intend to originate any proceeding in the business. Here is the letter of the Commodore, said Mr. H. and the Senate could judge if the Committee had misconceived its meaning.

[Mr. H. here read the memorial of Commodore Porter, which stated that the proceedings of the Court of Inquiry and Court Martial, had been called for at his request, and Mr. H. contended that, as the Senate had been called upon for the expression of an opinion on the subject, it was manifest that the whole proceeding was in the nature of an appeal from the decision of the Court.]

Mr. H. then proceeded to insist, that, as the Court of Inquiry and the Court Martial had determined the only questions there were to be decided in the Commodore's case, the subsequent application to the Senate was substantially, and in effect, an appeal from a military tribunal, to a legislative body, and calculated to do injury to the discipline of the service.

The gentleman from New Jersey, Mr. H. said, had gone a little further, and it would be necessary to say a few words in answer to another part of his argument. He had introduced the instructions which had been given to Commodore Porter, and asks of the Senate whether, when they called for the instructions under which the Commodore had acted, if any member had supposed that there were others which had been kept back, and which had an important bearing on the subject? Mr. H. said when the gentleman had stated this proposition, he was something startled by the imposing emphasis with which he had stated the case; but when he came out with those additional instructions which he supposed had been suppressed, what were they? Nothing more than that the Commander of the squadron might receive and transport specie in his squadron, when it did not interfere with the performance of his other duties. Was this a secret to the Senate? Did not every one in this House know it? Had they not been discussing the question for two years, whether that permission ought be continued?

Mr. H. said he was a member of the committee to whom the subject was referred two years ago, with a view to alter these very regulations. Did they not report a bill, and did not the gentleman from New Jersey vote on the bill, and yet he supposed those instructions, which were indeed the general regulations of the Navy, were a profound secret to the Senate. If the Secretary of the Navy had incumbered their tables by sending

these general instructions for the use of the Senate it would have been thought, at least, a very superfluous act. In the discussion of the case, it had always been conceded, Mr. H. said, by every gentleman, that such were the instructions under which Commodore Porter was acting. No one ever questioned his right to carry specie. The only question was, whether he had so conducted himself in this respect as to interfere with the performance of his other duties.

Mr. H. did not believe that Commodore Porter himself entertained the opinion which had been expressed by the gentleman from New Jersey, that the best way to suppress piracy was to employ the squadron in carrying specie. If he had entertained such an opinion, and had acted on it, the result would have been equally unfortunate for himself and the country.

The gentleman had thought proper to compare the case of Commodore Porter with that of General Jackson. Mr. H. said, that this was not the case of Jackson, which differed from it in all its characteristics. In that case General Jackson had been brought into the Senate, and had merely defended himself. But it would appear from what the gentleman himself had stated, that the Senate had treated Porter as they had done Jackson. What did the Senate do with the memorial of Jackson? The gentleman had told them that it had been received, it had been read, and that it was ordered to be printed: a similar course had been pursued in the case of Commodore Porter, and the House, he believed, were now satisfied that neither of the cases were of a nature to be brought properly before them. It was unfortunate they had ever taken cognizance of the one, and it would be equally so were they to take cognizance of the other.

The gentleman from New Jersey had said, and Mr. H. said he coincided with him, that it was proper not to try the merits of the case here. Then certainly it was not proper to instruct the committee to try the case. It would have occupied their time during the whole session, and would have cost this nation as much money as the Court which had already tried it; and if it were not proper to subject it to an investigation, it certainly was not proper to decide it without an investigation. They must either take the decision of the Court Martial and Court of Inquiry, or investigate fully and rigidly. We must send for persons and papers, and go into the merits of the case, which the gentleman had admitted it was not proper for us to do.

The gentleman has asked for a qualification of the terms of the report, which Mr. H. said he would read, and perhaps he should be able to show it was not necessary to make any modification.

Mr. H. then read the report, and proceeded: It appeared to him there was but one sentence in it to which the gentleman objected, which was in the following words: "The committee consider it due alike to the preservation of a proper discipline, and to the reputation of our officers, that appeals should not be encouraged from the decisions of the military courts." These words were perhaps not very material, and it was not important that the Senate should do more than concur in the recommendation of the committee in getting clear of the whole subject. But, Mr. H. said, this sentence contains the opinion of the committee, which was very clearly expressed, and therefore required no explanation. The committee, however, only requested this House to discharge them from the further consideration of the subject. It was the opinion of the committee, that measures of this kind might be injurious to the discipline of the service: and that, after the decisions had been made by the competent tribunals, the matter ought to be put at rest, and, entertaining that opinion, it would have been a fastidious delicacy not to have expressed it. Mr. H. was glad that the gentleman had done him the justice to state, that he had never manifested a disposition to say or do any thing that might be injurious to the reputation of our Naval Officers. The conduct he had, on all occasions, observed, he thought would shield him from any such imputation; and he hoped that nothing had fallen from him, even on the present occasion, that could be construed into the expression of an opinion unfavorable to the character of Commodore Porter, or any of his officers. He was merely anxious to explain the views of the committee, of which he was the organ, and to show that this case did not properly belong to Congress.

Mr. DICKERSON said the honorable Chairman of the Naval Committee allows that an appeal is for the purpose of reversing a decision. This not being the case, is not an appeal. But the gentleman says it is in the nature of an appeal. This is pushing the point to an extreme. But he says the very application is objectionable in every shape. Is it so? The manner of his application is perfectly respectful, and the most humble individual has a right to approach this Body when he thinks himself aggrieved by any act of ours, and to lay his complaint before us; and, although we may not think proper to grant the request, we treat the application with respect. Commodore Porter has forfeited none of his rights as a citizen.

The gentleman says, the instance of General Jackson is peculiarly unfortunate—that we have done for Commodore Porter all we did for General Jackson. We received his application, read it, and ordered it to be printed—that we did no more for General Jackson. Let it be remembered that Commodore Porter does not answer the arguments urged against him in the Senate last winter. Let him answer what was objected to him in this body in a memorial; let it be read, printed, and placed among our documents, as General Jackson's memorial was; and Commodore Porter will ask no more. The honorable gentleman thinks that it was of no importance to communicate the orders of the 22d of December, 1823—thinks that we all knew the provisions of those orders—that we acted upon this knowledge; that he possessed it. Whatever knowledge that gentleman might have possessed upon that subject, the observations of Senators, when this subject was discussed, prove clearly that they did not possess this knowledge. What communication contains this letter before it was submitted to the Court of Inquiry? In what document is it to be found? It was not generally known to the Senate; it was not known to the Public, and it certainly was not known to Mr. Randall and Mr. Mountain.

As the honorable Chairman does not think fit to agree to any modification of his report, it is moved to re-commit this report to the committee who reported it, with instructions to amend the same by striking out that part of the report that intervenes between the words "interference of this House," and the resolution to be discharged.

Mr. HOLMES then rose and said, that in discussing the bill which came before them during the last session for the suppression of Piracy in the West Indies, we had evidence before us which created a strong feeling in the Senate, that all was not right with the squadron. We had the communications which had been forwarded by Messrs. Randall and Mountain, and the instructions which had been first read to-day by the gentleman from New Jersey; and that was all which the Senate had before it during the discussion. Mr. H. could say for himself, that if he had known of all the instructions to Commodore Porter, which afterwards became known to the Senate, his feelings would have been very different from what they were at that time. The evidence which had been laid before the Senate as to the carrying of specie, Mr. H. said, had certainly induced them to believe that the officers had exceeded their instructions. But would that have been their belief, if those after instructions had been produced? Why they were not produced he knew not. He did not mean to cast censure any where, but the Senate ought certainly to have been in possession of all these instructions; there certainly was nothing so secret in them as to

justify their being withheld. The omission had probably arisen from an oversight. The excitement, Mr. H. said, was pretty general, and he remembered the fact, that he had proposed to amend the bill by an additional section, restraining the carrying of specie; and, on that amendment, almost the whole of the discussion had taken place in regard to the conduct of the officers of the squadron in carrying specie; that amendment failed in Committee of the Whole, but in the Senate he renewed the motion, and the amendment was carried. It was then considered that the carrying that amendment by a majority of the Senate, was expressive of an opinion, either that Government had allowed too great a latitude to the officers to carry specie, or that those officers had exceeded their instructions. Mr. H. said, the Senate could know no further of the instructions which had been given to the officers, than from the instructions which had been laid before them. These were much more limited than the after instructions, and he doubted much, if they had had all the instructions before them at the last session, whether they would have passed the amendment he had alluded to, which looked as if it was the opinion of the Senate that all was not right. Had he known then, what he now knew, it would have altered his mind much, and he now believed that the amendment which seemed to imply a censure on the officers of the squadron, would never have been carried, if all the instructions had been laid before them. He was happy the opportunity was afforded for the explanation that had been made, and he confessed, for one, if the information now before him had been at the last session, it would have altered his mind much.

Mr. DICKERSON was glad to hear the remarks of the gentleman from Maine, (Mr. HOLMES;) whatever might be the result of his motion he was glad this discussion had led to the expression of such convictions on the part of at least one Senator. He then moved to recommit the report of the Naval Committee, with instructions to strike out all that part thereof which is embraced in brackets, as above; and

The question being taken on this motion to recommit the report, it was carried, 17 to 13.

OHIO SCHOOL LANDS.

On motion of Mr. RUGGLES, of Ohio, the Senate resumed the consideration of the bill from the House of Representatives, authorizing the sale of lands granted to the several townships in the State of Ohio, for the support of education.

Mr. RUGGLES said, when this bill was under consideration, on a former day, he did not suppose that a long and protracted discussion would have been necessary, in order to satisfy the Senate of the necessity and reasonableness of its passage. He had believed that it would have struck the mind of every Member at once as being expedient and necessary. Mr. R. said, he was, however, mistaken, and he had found that there was opposition from different quarters, and on different grounds from what he had anticipated. The Legislature of Ohio has asked Congress to pass this law, by a respectful memorial; which has been printed, and now lies upon the table. The Legislature are impressed with the belief that it will best promote the interests of the State, and the people generally, to have the power of managing or disposing of these lands confided to their superintendence and control. Mr. R. said, in order to discharge his duty to the State, and to the Legislature, he now found the obligation imposed upon him to go into a particular history of the compact made between the convention of Ohio and the Congress of the United States, concerning the lands appropriated for the use of schools, within the State of Ohio, and the subsequent laws that have passed upon that subject.

This course will be necessary, in order to give to the Senate a clear and distinct view of the case; to enable them to give a just and correct interpretation to the compact made between the United States and the State of Ohio. By an ordinance of the old Congress, passed the 20th of May, 1785, for ascertaining the mode of disposing of the lands in the Western territory, it is provided, that the lot or section numbered sixteen, containing 640 acres, shall be reserved for the maintenance of public schools, within said township. This ordinance simply reserves the land from sale, but makes no grant or disposal of it whatever. It defines the object and the use for which it is intended, but confers no power or authority for its application. The lands remained in this situation while the territorial government existed, and until Ohio became a State, and was admitted into Union. By the act of Congress passed the thirteenth day of April, 1802, to enable the people within the present limits of Ohio to form for themselves a constitution and State government, the following, among other propositions, were offered to the Convention for their acceptance or rejection: First, "That section number sixteen, in every township, and where such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools." Second, "That the six miles reservation, including the salt springs commonly called the Scioto salt springs, the salt springs near the Muskingum river, and in the military tract, with the sections of land which include the same, shall be granted to the said State, for the use of the people thereof, the same to be used under such terms, conditions, and regulations, as the Legislature of said State shall direct; provided, the said Legislature shall never sell, nor lease the same for a longer period than ten years." These propositions were offered on condition that the Convention of Ohio should provide, by an ordinance irrevocable, not to tax the lands of the United States, until the expiration of five years after the day of sale. This was the consideration to be given on the part of the State of Ohio: this was the equivalent required by the United States. When the Convention met, in Ohio, these propositions were taken up, considered, and accepted, on condition that the following additions and modifications should be made to the same: That a like donation, equal to one thirty-sixth part of the whole quantity of land in the United States' military tract, should be made for the support of schools within that tract; also, that the like provision should be made, for the support of schools, in the Virginia military reservation; and that a provision of the same kind should be made for the benefit of the inhabitants of the Connecticut Western reserve. The Convention also required, that out of all the lands that should be hereafter purchased from the Indians, by the United States, within the limits of Ohio, one thirty-sixth part, or section number sixteen in each township, should be granted for the support of schools; and that all these lands, to be thus appropriated, should "be vested in the Legislature of the State, in trust," for the use of schools. The object of these additional propositions, on the part of the Convention of Ohio, was to secure to all the people of the State equal rights and equal advantages—that the inhabitants of the United States' military tract—in the Virginia military reservation—and the Connecticut Western reserve, where no lands had been granted for the support of schools, should be placed upon the same footing with the inhabitants of other parts of the State. Another object on the part of the Convention of Ohio was, to have the nature of the grant changed, and vest the lands in *the Legislature of the State, in trust*, for the support of schools in the several townships, instead of granting them directly to *the inhabitants of those townships*. These additional propositions and modifications were agreed to by the United States, as will appear by reference to the act of the 3d of March, 1803. Mr. R. said he had not recited the language of

the propositions of the Convention of Ohio, nor the acts of Congress, literally; his object was to give correctly the substance, in as condensed a manner as possible, and he believed he had done it correctly. From the history of these proceedings, we arrive at that information which is necessary to enable the Senate to form a correct decision.

It is now proper to inquire, what is the nature of this compact? What are the rights of the two parties? What title in these lands has been conveyed to the State of Ohio? Here Mr. R. went into an argument to show that the right and title to these lands was completely vested in Ohio, as had been expressed in the memorial of the Legislature—that there had been a fair exchange of equivalents between the State and the United States, and that the one was given in consideration for the other. He then stated that there was a difference of opinion on this subject in the Legislature of Ohio, and among the People of the State; and for the purpose of doing away these doubts, and removing all embarrassments, the Legislature had asked Congress to pass the present bill. Mr. R. then gave a history of the proceedings of Congress in the grant of twelve thousand acres of land to the Society of United Brethren, in trust, for the sole use and benefit of the Indians residing on the Muskingum; and referred to the act of Congress of last session, authorizing the sale of the Salt Spring tracts in Ohio. He said he perceived that a difference of opinion existed in the Senate, similar to that in Ohio; but he hoped that gentlemen would vote for the bill; for if the complete title was in the State, it could do no harm; and if any interest remained in the United States, it would tranfer it to the State. This was the object of the Legislature in asking for the passage of such a law, and he hoped their wishes would be gratified.

Mr. KANE said, that when this bill was last brought to the view of the Senate, the argument turned upon the supposed right of Ohio to alienate these lands without the consent of the United States. It was then said that a majority of the members of the Legislature of that State entertained such an opinion, and that the application for the passage of this bill was made for the purpose of quieting the doubts of those who would hesitate to purchase until Congress should, in more express language, settle the question. The earnestness with which the subject had been passed by the legislative memorial on the table, and by the delegation from Ohio in both Houses of Congress, sufficiently proved that these apprehensions were seriously and extensively felt. The evident consequence of such a state of things would be, that sales could only be made under embarrassing circumstances, and for inadequate considerations. Yet it has been objected, that the passage of the bill would be an act of superfluous and excessive legislation, and that Courts of law were the proper tribunals for settling such questions. Is that act (asked Mr. K.) superfluous or excessive, the certain tendency of which was to quiet dispute, and render available the means set apart for the encouragement of learning? Could a subject of more interesting legislation be presented to an American Congress? He contended, that the only danger to be apprehended by a purchaser, was the possibility that the United States might one day dispute with Ohio the right of unlimited control over these lands. If no such intention existed, where was the necessity of referring to judicial tribunals, a matter in which we feel no interest? It would be more kind and respectful to that great State to disavow, promptly, such motives by passing the bill. The honorable gentleman from Kentucky, has said that Ohio, by making the request, was wanting in that respect she owed to herself as an independent State, that she ought to know and exercise her privileges fearlessly and at her own pleasure. Had the interest in the land been vested in the Legislature by the People of Ohio, this objection could not easily be removed. It would then become the duty of the Representatives of the Sovereign States here assembled to discountenance in any State an act of self-degradation. This, however, was not the case. Whatever of right in this matter appertained to the Legislature or People of Ohio, was gratuitously conferred by Congress, but in terms supposed to be equivocal; and, so far from surrendering any thing, even by implication, the prayer of the memorial was, that the rights of Ohio might be rendered more certain, secure, and valuable. Was there, in such a request, any departure from the true dignity of a State? Could an objection exist to united concert and action on the part of both Governments for the sole benefit of the People of Ohio?

Mr. K. said, he had thus far considered the subject without adverting to the act of Congress, which was supposed to have conferred upon Ohio the absolute right to dispose of her school lands. This power, if it existed at all, was conferred by the first section of the act of the 3d of March, 1803, which declares substantially that these lands shall be *vested* in the Legislature of the State, in trust, for the use of schools, and for no *other use, intent, or purpose whatever*. Did this language create a trust simply for the purposes of superintendence, receiving rents and profits, and applying them to the use appointed—or did it create a trust of a more extraordinary kind, coupled with a power of alienation? The English common law had surely furnished no rule of interpretation by which such language could be made to vest so large an estate as the latter. And, to his mind, it was not clear that a more liberal rule of construction was to be drawn from the objects in view when the act was passed. These were understood to be to furnish the People of the new State with the means of educating their children, and to hold out a strong inducement to the purchase and settlement of the public domain. Such a policy would have been poorly sustained, had Ohio, in her infancy, sold these lands for any sum they would then have commanded. The amount raised therefrom would have been too small to be valuable to the People of the State, and the inducement of which he had spoken would have been withdrawn. The time had now arrived which found this State largely populated and extensively improved. The wisdom and good faith which characterized her legislation, afforded full security against any waste of the means so amply provided by the bounty of the nation, for the sacred purpose of enlightening the minds of the rising and future generations, of teaching them the value of that "liberty" which constituted the excellence, the strength, and he would add, the "power" of our institutions.

Mr. K. observed, that there was a feature in the bill which he feared would be found inconvenient and embarrassing in its operations. He alluded to the clause which made the consent of the People of the several townships an indispensable preliminary to a sale. If he had taken an accurate view of the existing law, that provision was unnecessary. The sixteenth section in each township in the States of Indiana and Alabama, was granted to the inhabitants of such townships. In the States of Illinois and Missouri the grants were made to *the States* for the use of the inhabitants of the townships. But, in the State of Ohio, by the act to which he had particularly alluded, these lands were *vested* in the Legislature of the State for the *use of Schools within the State*. Some confusion of opinion had been produced by the supposition that the laws on the subject were uniform. But as the Legislature of Ohio, which represented the People of the State, had requested that this preliminary should be required, he would vote for the bill as it stood, unless the honorable Senators from that State chose to move an amendment.

Mr. BERRIEN offered some remarks in explanation of what he had formerly said on this subject (which had

been referred to by both of the preceding speakers) and in support of the opinions then advanced against the propriety of passing the bill.

Mr. HOLMES submitted his reasons for favoring the passage of the bill, and for entertaining opinions in regard to it somewhat variant from those he had heretofore advanced.

Mr. ROWAN also added some remarks to those he before submitted, to shew that the consent of Congress was erroneously asked for, was unnecessary, and, therefore, the bill inexpedient.

Mr. HARRISON spoke in support of the bill and in reply to those opposed to it.

Messrs. MACON, CHANDLER, and EATON, successively made some remarks adverse to the propriety of passing the bill.

Mr. EATON moved an amendment limiting the minimum price for which the lands should be sold.

Mr. ROWAN moved the re-commitment of the bill, deeming a report from a Committee, that Congress have no power to interfere, sufficient for the purpose desired by Ohio.

Mr. COBB moved to accompany the re-commitment with instructions to inquire into the right of the United States in the case, and to report a bill if it should be found the United States possessed any right over the subject.

After much further discussion, all motions to amend were lost.

Mr. HAYNE suggested an alteration of the phraseology of the first section, so as to *give the consent* of Congress, instead of *authorize the State* to sell; but the suggestion was not adopted.

The bill was then ordered to a third reading by a large majority.

TUESDAY, JANUARY 24, 1826.

SEAMEN IN THE MERCHANT SERVICE.

Mr. HOLMES, of Maine, rose, and said he wished to offer a resolution in regard to an alteration in the law which provides for the government and regulation of the seamen employed in the merchant service. The acts on that subject provided, Mr. H. said, that every ship or vessel belonging to the citizens of the United States, of the burthen of 75 tons or upwards, and bound on a voyage, should be provided with a chest of medicines, accompanied with proper directions for administering them. By the provisions of that act, the apothecary was to furnish a chest of medicines, and to put up proper directions with it. Mr. H. thought it was unsafe to leave it to the discretion of the apothecary what should be an adequate list of the medicines necessary for a voyage. The apothecary could sometimes substitute spurious medicines, at others, he might get rid of a quantity of trash which was old and worthless. It was equally to the benefit of the owner as of the seamen, to have a good chest of medicines furnished; and there being no inspection for medicines, he was convinced that much injustice was frequently done to the crews of merchant vessels, in consequence of there being no further regulation on this subject. He, therefore, moved the following resolution:

Resolved, That the Committee on Commerce be instructed to inquire into the expediency of making further provision for furnishing the merchant vessels with medicine chests, and for their being properly provided with medicines suitable and necessary for each voyage.

This resolution was agreed to.

WEDNESDAY, JAN. 25, 1826.

DISCRIMINATING DUTIES.

The Senate proceeded to the consideration of the following bill, reported by the Committee on Commerce, "in addition to an act, entitled 'an act concerning discriminating duties on tonnage and impost."

"*Be it enacted*, &c. That, upon satisfactory evidence being given to the President of the United States, by the Government of any foreign nation, that no discriminating duties of tonnage or impost, to the disadvantage of the United States, are imposed or levied in the ports of the said nation, upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise, imported in the same, from the United States, or from any foreign country, the President is hereby authorized to issue his proclamation, declaring that the foreign discriminating duties of tonnage and impost, within the United States, are, and shall be, suspended and discontinued, so far as respects the vessels of the said foreign nation, and the produce, manufactures, or merchandise, imported into the United States in the same, from the said foreign nation, or from any other foreign country; the said suspension to take effect from the time of such notification being given to the President of the United States, and to continue so long as the reciprocal exemption of vessels belonging to citizens of the United States, and their cargoes, as aforesaid, shall be continued, and no longer."

Mr. LLOYD, of Massachusetts, said, the object of the bill was to clothe the Executive with the authority to proffer to any foreign nation who would reciprocate the same liberal conditions to the United States, an entire equality of commercial intercourse; in other words, that the vessels and merchandise of foreign Powers, agreeing to this condition, should be admitted into the ports of the United States on precisely the same terms, and be subject to no other or higher rates of duty, whether of tonnage or of impost, than the vessels and cargoes of the citizens of the United States. This, it would be perceived, when acceded to, amounted to a complete removal of the system of discriminating duties with the parties agreeing to it. The report, he said, which had been made by the Committee of Commerce, laid on the tables of the Members of the Senate, would give the general reasoning on the subject, and more especially would the minute statements accompanying it, furnish precise data, on which gentlemen could correctly form their opinions as to the expediency of adopting the course of policy recommended, and of passing or rejecting the bill. Most gladly, he said, he would leave the subject on this ground, but he had been informed, in the position in which he stood, as Chairman of the Committee, that something more was expected from him; and that other elucidations of the bill should be given. These expectations he would endeavor, then, as briefly as in his power, to comply with, and, in doing it, attempt to trace the origin, progress, and effect, of the discriminating duties, adverting, in his remarks, to three or four more marked eras in the commercial history of the United States; shewing the relative amount of the foreign trade at the different periods referred to; the proportion of it enjoyed by the citizens of the United States, and that part of it occupied by foreign navigation; also, the present state of this trade, and the amount of it exhibited at the date of the latest returns from the Treasury Department in 1824. He would then advert to the effect to be produced by the passing the bill, on the commerce of this and other countries, and leave it to the better judgment of the Senate for its decision.

The discriminating duties, he said, were coeval with the Government, being among the first acts after its adoption; the effect was salutary and beneficent in a high degree; at this time the navigation of the United States was in not only a depressed, but nearly a prostrate state. We had, before the adoption of the Federal Constitution, scarcely recovered from the impoverishment and exhaustion of the war for Independence; we had no common

head to protect our rights or property in foreign countries; alien duties abroad were laid on our navigation, which we had no power to retaliate; for, if one State retaliated these duties, and the others did not follow her example, her situation was only changed from bad to worse—as it drove the little foreign trade she might have from her ports to those of the States where no duty was imposed. The consequence was, we could not compete with foreign navigators; they taxed our vessels, but we could not tax theirs; and this inequality was decisive against us; the consequence in a little while would have been, that the whole, or nearly the whole, carrying trade of the United States, even for our own products, would have been in the hands of foreign navigators. At this period the General Government was most happily adopted, and the discriminating duties were imposed; the effect was electrical; the merchants and navigators of the United States saw the whole revenue of enactions of the Government based upon the interest with which they were most nearly connected; they felt they had a Government, not only able, but willing, to protect them; and that the countervailing duties would place them in some degree on a footing with other nations; from this moment the navigation and commerce of the United States most rapidly expanded, increasing in a ratio unexampled in the records of any other People. In 1789, the whole tonnage employed in the foreign commerce of the United States, was only 234,000 tons, of which more than 100,000 was in foreign navigation; but in the short space of 17 or 18 years the tonnage employed in the foreign trade of the United States had swelled to no less an amount than 1,200,000 tons, giving an increase, in this short space, of more than five fold, of which not nearly one-half, as in 1789, was in foreign navigation, but only 86,000 tons, out of 1,200,000 tons; giving an increase of the American tonnage, nine times over—it having increased during this time from about 120,000 tons to 1,100,000 tons. This was the second period to which he should allude. But this highly gratifying state of prosperity for the commerce and navigation of the United States, he could not contend, arose exclusively, or principally, from the imposition of discriminating duties; nor did it arise mainly from them; it arose from other and more powerful causes; from the political events of the times; from the wars of the French Revolution, which soon followed—which continued for twenty years, embracing in their vortex within that time, all the navigating States of Europe; deranging and overturning their commercial systems, and, when engaged in war, sweeping all their shipping from the ocean, with the single exception of Great Britain, whose naval preponderance enabled her to protect her mercantile marine. In this state of things, the commerce of the world was almost entirely thrown into the hands of American merchants and ship owners; and this, to the greater extent, was the source from which the unexampled success of American commerce and American navigation had arisen.

At this period, he said, the two great combatants of Europe were struggling for their political existence; and a great object on each side undoubtedly was, to gain powerful auxiliaries, or allies, in the contest. This motive, increased by a jealousy of the unrivalled prosperity, and growing power of the United States—and perhaps also by something of cupidity to reap a part of the profitable business they were prosecuting—probably led to that series of wrongs and insults, captures, and plunderings, to the amount of not far short of one hundred millions of dollars, with which the United States were visited; and which, from necessity, first led to remonstrances, which produced nothing; to measures of restriction, and withdrawal from the ocean, which were scarcely more efficient; and, finally, eventuated in a war with the more powerful of the maritime belligerents.

These two eras, he said, for a reason before assigned, would not test the operation of the discriminating duties. But he had now reached the period when the evidence to be derived from their existence could be perceived, and their influence estimated. The war with Great Britain was terminated by the Treaty of Ghent, in December, 1814; the peace of Europe had been secured not long before, by the Treaty of Paris. The Temple of Janus was now closed, and each nation would thereafter re-occupy its former commercial habitudes, resume its colonial relations, and cultivate its own resources to the extent of its means and ability.

As soon as this state of things was known in the United States, and intelligence had been received of the Treaty of Ghent, the Government of the United States, accommodating itself to the change of circumstances, and acting up to those liberal principles of equal trade, which the late President of the United States, a few years since, in his message to Congress, correctly stated had ever characterised its proceedings, from the first commercial treaty it had formed, that with France, in 1776—passed the act of March 3, 1815, repealing the discriminating duties on vessels and merchandise, so far as regarded the produce and manufacture of such foreign nation, to which the vessel belonged, as should abolish, in their ports, all discriminating duties on American vessels and merchandise. This act, at the time, attracted no great attention; it was considered, in some degree, as embracing an abstract proposition, which might or might not be realized; but shortly after, to wit, in July, 1815, of the same year, a Convention was formed with Great Britain, by which it was agreed that the same, and no other or higher rate of duties should be payable on the vessels of the respective countries, entering the ports of the other, with their cargoes, being of the growth, produce, or manufacture, of either, than on their own vessels when entering such ports.

This was reducing theory to practice; the American ship owners and navigators became somewhat alarmed; they very naturally concluded, that, as a large mass of our imports were of British manufactured goods; as these were procured from, and shipped by British manufacturers or merchants; that, if British ships could come into the ports of the United States, precisely on the same terms as American ships, that a fellow-feeling between the British merchant and ship owner would arise, and that the greater part, if not the whole, of the importations from Great Britain to the United States, would be made in British shipping, to the exclusion of American navigation; such also was the impression of the British ship owners; for they prepared to put some fine ships into the trade; two, he believed, went into the trade with Boston; our merchants knew British ships could be constructed on about the same terms as American ships; but, as they last longer, in the end, they might be cheaper. The British oak being more durable than the American oak—he did not mean the live oak of the country, which is the best material for ship building in the world—but it is too scarce, too costly, and perhaps too heavy, for the purposes of mercantile navigation. They also knew, that, in time of peace, the wages of American seamen were one-third, or one-half, higher than the British; that, although provisions were generally cheaper in the United States than in Great Britain; that as we gave our seamen more indulgencies and comforts, especially in port, that the cost of subsistence was also probably dearer. These were disadvantages the American ship owner knew he had to contend with, but he did not shrink from the contest; he breasted himself to meet it: also put fine ships into the trade, taking more care than usual to select active, vigorous, spirited young men, to command them, who would never strike a topsail while a mast could carry it. The result was, before the end of a twelve-month, it was perceived the American ship would perform nearly three trips to the other's two; and that goods, shipped by the

former, would be received more frequently, and enable the importers better to supply the market than by British ships; the consequence of which was, the latter quitted the trade, and we have now the whole of it in American vessels.

This, he said, was to his mind conclusive; and this was the period when the first suspension of the discriminating duties had taken place. He would trace further the operation of the act of Congress of 1815. The convention with Great Britain was for four years. In 1818, it was renewed for ten years, and is now in existence. In that year a treaty was also formed with Sweden, embracing the same provision, and for the same period. This principle has been still further extended, by diplomatic arrangements with Russia, Prussia, Norway, Oldenburg, the Hanse Towns, France, and Sardinia. Negotiations, it is understood, are depending, in relation to it, with some other of the Powers of Europe, and the States of South America, and will, probably, issue in the same result.

This, then, is the third period, 1815–16, and the principal one, in connexion with the next era, or 1824, on which a correct estimation may be formed of the effect of the discriminating duties. It was a time of peace, and they were unaided. In 1816, the whole amount of tonnage employed in the foreign trade of the United States, was 1,300,000 tons; of which 258,000 were in foreign navigation. Part of this had to come in under the disadvantage of the discriminating duties. What did not come in on equal terms with American shipping, had this quantity of foreign navigation increased in 1824, when the tonnage duty had been taken off from the vessels of nearly all the navigating Powers of Europe? Let the same record answer. The amount of tonnage employed in the foreign trade of the United States, in 1824, the latest to which we have returns, had fallen off, owing to the causes before-mentioned; but it amounted to 935,000 tons. What proportion had foreign ship owners of this, when relieved from the tonnage duties? Not nearly one-half, as in 1789; not more than one-fifth, or 258,000 tons, as in 1816. No, Sir, they had not a tithe, a tenth part, having only 89,000 tons out of 935,000; and this is decisive: it shows that, on a fair field, and a clear stage, your merchants and navigators, on equal terms, are able successfully to compete with any nation on the face of the earth, with or without discriminating duties. This, however, is only the statement of the tonnage employed: it does not show the amount or value. Pursuing the inquiry on this head, we have authentic information at command. It is to be derived from the annual report of the Secretary of the Treasury; and, notwithstanding the predictions which have been made of the general distress which was to pervade the United States, in consequence of the balance of trade being against us; the high price of exchange; the exportation of specie, and the sale of American stocks in Europe,—so far is this from being the case, the country, generally, is in a state of great prosperity. Specie, where the laws have their force, and credit is good, hardly bears any premium. American stocks stand higher than any other foreign stock in European markets; and the portentous balance of trade, so far from being against us, is, in fact, a million of dollars in our favor; the exports, according to the Secretary's account, being ninety-two millions of dollars, and the imports only ninety-one millions. This spectre, he hoped, had vanished forever; and this account was the more cheering, as it appeared that, of these ninety-one millions, eighty-six millions were transported in our own navigation; shewing the sympathy which exists between the tonnage and the value. This result, he said, if it did not give every thing that could be desired, as there was a little residuum still possessed by foreign navigators, gave, as he believed, if foreign nations were to have any concern in it at all, as much as any rational man could either anticipate or expect.

Pursuing the investigation, from the same record he would shew the proportions which the respective nations of Europe possessed of this portion of the carrying trade; from which it appeared, that, in the trade with Great Britain, of the tonnage we had 5-6ths,

With France,	9-10ths,
The Hanse Towns, the amount not large,	2-3ds,
The Netherlands	94 parts in 100
Denmark	98
Sweden	86
Spain	97
Portugal	97
Italy	93
Colombia	78
Mexico	92

While, with Russia, Prussia, Turkey, the Levant, the Austrian ports in the Mediterranean, Africa, the East Indies, China, Hayti, South America, generally, the Western Pacific, and the Northwest coast of America, the trade was all our own.

It remained to show what would be the effect if the bill became a law, and was reciprocated by other nations. The effect would be, to throw wide open the gates of commerce; all nations agreeing to a reciprocation, would have the right to send their vessels into the ports of the United States from every region of the globe, laden with every commodity, of every description, they chose to put on board of them; for, in our policy, we wisely prohibit nothing; and here other nations would have the advantage of us: for they prohibit many things, as connected with their manufactures, their treaty stipulations, or the privileges of their chartered companies. While we, on our part, should have the right to go to their ports from every other country, and to carry to them, on equal terms, whatever their own vessels could carry. More than this, for he meant to shew the effect plainly. If the principle were met by the European Powers having colonies, and was carried into effect in extenso, we should have the right to go to the colonies to furnish them with their supplies, purchase their productions, and transport them in our vessels, even to the ports of the mother country. This, he would be told, would never be realized. Be it so: we lose nothing by making the offer. If rejected, we stand where we were; and, at any rate, it is honorable to us, from the manly independence, as well as the perfect reliance it manifests, we place on the ability, the energy, and the industry of our navigators and citizens. But it is far from impossible that this trade, at some future day, not very distant, may be opened. More liberal ideas than characterized former times, are entertained by the political economists of the present day; this is, at least, the case in England, where it seems to be perceived, that a widely extended commerce, superabundant supplies in the market, with a low rate of duties, more invigorates national industry, increases consumption, stimulates to exertion, and enlarges even the revenue, than can now flow from a narrow, illiberal, restricted state of markets, with a high rate of duties. Great Britain is acting upon this principle: for, within the last year, she has reduced the rates of her tariff very greatly, and has increased her revenue, it is said, £500,000 in a quarter by doing it. More than which, some of the British statesmen, half a century since, pronounced the colonies a millstone about the neck of the mother country, and that they cost more than they produced. The same doctrine seems now to be in fashion: for, in the last number of the Edinburg Review, an eloquent writer does not hesitate to declare the monopoly between the mother country and the colonies, to be a reciprocity of injuries, and not of advantages; and the colony trade, instead of a source of wealth, a source of poverty, vexation, and disgust. If this is the fact, why then should it not be opened? Of the good effect on the colonies there could be no question; they

would constansly obtain, in abundance, supplies that are indispensable, at the lowest possible rate at which a mercantile profit could afford them; and, from the competition for their productions, would sell them at the highest price they would bear; thus, doubly benefitted, they would hold up both hands for a free trade with the United States.

This would be the effect of the bill, if adopted. It might be said, after this unreserved and most favorable exposition for the United States, that the proffer not only would not be met, but that the existing arrangements would not be renewed. The exposition he had made was no secret; our statistical accounts gave it; he did not fear a renewal of discriminating duties, and the retaliating system. Our situation secured us from them. It was beginning to be understood by European statesmen, that we had other imposing interests now, beside our navigation engaged in foreign trade. We had a new interest, into which we were driven by necessity, contrary to our inclinations, for our predilections were for the water. Our resources were turned upon ourselves, from the late war, and the aggressions which preceded it. We went into this interest reluctantly, *Invita Minerva*, without previous skill or experience. It has, however, prospered and expanded nearly equal to the navigation. It has almost literally, like Jonah's gourd, sprung up in a night, and bids fair soon to overshadow the whole building. In the short space of fifteen years the cotton manufacture for articles of common use owns no superior; these manufactures find a market in every region, and the impress of the names of the American manufacturers, on those which are sent from other countries, to recommend them, shews we have nothing now to acquire in the quality we make, from the descendants of the Arkwrights, with all their skill, their experience, their immense establishments, and their capital; and from the hold this interest is taking, no intelligent man can visit this country without perceiving that, if this disposition continues, and is improved, in a half or a quarter of a century, if he is desirous of finding other Manchesters and Leeds, and Lyons and Rouens, he may look for them, and possibly find them, as readily in the Middle and Eastern States, as in France or Great Britain. This is an interest which an embarrassed or crippled foreign trade would not keep back, and an interest which the leading nations of Europe have no desire to encourage. We are also secure from the effect of discriminating duties from others, by our ability to retaliate them, as well as by the character of our trade. What is it? From Europe, we import principally articles of luxury, by habit needful for our comfort, but which, if necessary, we can do without; or, if needful, do better—procure for ourselves. What is the character of the articles we export? Articles of necessity. Such is, when wanted, our bread stuffs; such is our great staple, cotton. It is a necessary, as it supplies subsistence to the multitudes in Europe who depend on it for their means of industry. It might be said, it could be procured elsewhere. This apprehension, once entertained, had passed away; even the productions of the vegetable kingdom would not thrive under the united and malignant influences of the plague, the scimetar, and the bow-string. In time of peace, no one would go to the den of the lion, with the mouth of it strewed with carcases, when his object could be effected better and more securely elsewhere. He had no fears of the competition of the Pasha of Egypt. Cotton could not, in time of peace, be brought from India, where the quality was much worse, under thrice the freights from the United States. In South America we might have a competitor; but if, with our skill, our experience, our nearer proximity to the markets of consumption, we could not compete with supplies from that source, we would deserve to suffer. Discriminating duties on this article must advance the price, which must be paid by the manufacturer, who must seek his remuneration from the fabric made from it, which, when it reached this market, or any other to which we have access, would operate as a bounty to our manufacturers. This, he repeated, other nations would not desire.

There was no other interest, the growth of which, also, would not be retarded by a depression of the foreign trade by discriminating duties;—it was an interest, little known or noticed, but ere long, was to have no rival in any other quarter of the globe. It was carried on silently and obscurely—the statistical tables gave no account of it; you had no right to take an account of it; you had no right to pry into the value of one neighbor's surplus wheat which he exchanges for another neighbor's surplus sugar or tobacco;—this is a family concern. The interest to which he alluded, was the invaluable coasting trade of the country, neither known nor valued, in any degree compared with its merits. What would be the course of your coasting vessels? Follow one of them: take any starting point, geographically the City of Washington; follow her down the Potomac, skirting the Chesapeake, passing your Southern trading cities, entering the Gulf of Mexico, ascending the majestic stream of the Father of rivers, ascending still higher the equally majestic Missouri, passing into the great lakes, descending to Erie, entering, if you please, the noble canal of the state of New York, and passing along the centre prong of the future trident of Neptune, stopping at the great emporium of the Western World, the city of New York; or, if not stopping thus shortly, follow her round the canal at the Falls of Niagara, which a short time will place there, into Ontario, thence down the St. Lawrence, coming round the Northeastern border of the United States, and in front of the principal commercial cities, returning to the Potomac, after having performed a circuit of eight or ten thousand miles; of a space which, before the lapse of many years, will be studded with trading towns and populous settlements; and this trade is exclusively your own: not a single ton of foreign shipping is employed in it: it is yours in war as well as peace. In a few years you may prosecute it, under a covered way, from Maine to the Mississippi and the lakes, wholly beyond the reach of an enemy, except for a small portion of it on the Canada shore. What is this trade now? The returns give as employed in it for the past year 700,000 tons. Does this shew its value? Nothing like it. This is only the capacity contained within the wooden walls of the vessels that are registered and enrolled for the coasting trade. These vessels perform ten voyages on an average in a year, taking a cargo each way. Estimate them at a half; five voyages in each year with full cargoes; then you would have seven millions of tons of productions transported in a year between the different ports and inhabitants of the country. This would give some idea of its importance, and this is the commerce that is most invaluable to us. An interruption to our foreign trade would increase it; this other nations also would not desire; power is relative; nations are strong as others are weak.

This subject he would not pursue further. The Committee, from all the reflection they had been enabled to give, were unanimously of opinion, that the policy recommended by the Executive in his message at the opening of the session, was a wise and judicious one. In consequence of this, they had presented the report before referred to, accompanied by the bill on the table, which they hoped would meet the approbation of the Senate.

The bill was then, without further debate, ordered to be engrossed and read a third time.

ACCOUNTABILITY OF OFFICERS.

The Senate then took up the bill "to secure the accountability of public officers."

The Committee on Finance had reported some amendments to this bill, amongst them, recommending the striking out of the following (3d) section.

"That no person shall be appointed a collector or receiver, or to any office which entitles him, in any way, to receive, and makes it his duty to account for public moneys, who shall, at the time of such appointment, be indebted to the United States."

This recommendation of the committee was explained by Mr. SMITH, to have proceeded from an opinion that such a provision would improperly restrict the Executive in the latitude of choice to which he was entitled, in the selection of officers.

Mr. HOLMES opposed striking out the section, at considerable length, and called for the Yeas and Nays.

The Yeas and Nays were then taken, and the Senate refused to strike out the section by the following vote:

For striking out—Messrs. Berrien, Bouligny, Eaton, Edwards, Hayne, Johnston, of La. King, Knight, McIlvaine, Mills, Seymour, Smith, Van Dyke—13.

Against it—Messrs. Barton, Bell, Branch, Chandler, Chase, Clayton, Cobb, Dickerson, Ellis, Findlay, Harrison, Hendricks, Holmes, Kane, Lloyd, of Mass. Macon, Marks, Noble, Robbins, Ruggles, Tazewell, Thomas, White, Williams, Woodbury—25.

The bill was then laid on the table.

THURSDAY, JANUARY 26, 1826.

The Senate sat to-day, but no public business of importance was transacted.

FRIDAY, JANUARY 27, 1826.

The Senate met this day, but no business of general interest came up: the Senate adjourned to Monday.

MONDAY, JANUARY 30, 1826.

Mr. DICKERSON rose to submit a resolution. He said, as, by the report of the Secretary of the Treasury, it appeared, that, after the year 1830, the whole amount of the Public Debt, on the principles assumed in that report, would stand at about forty millions of dollars, and as our revenues upon commerce are increasing in a way to leave large surpluses, beyond the exigencies of the General Government, it has been deemed important that such surplus should be appropriated to the purposes of Education and Internal Improvement; but as these improvements, by the arm of the United States, meet with constitutional as well as other objections, the only way to obviate these difficulties, and at the same time serve the public interest, would be to distribute these surplus funds to the different States and Territories for these important purposes, to be appropriated according to their discretion. The sums to be distributed may be taken in part from the sinking fund—in part from the retrenchments in our present expenditures—and in part from future excesses of revenue above the present receipts. Mr. D. concluded by offering the following resolution:

Resolved, That provision ought to be made by law to authorize and require the Secretary of the Treasury to distribute, annually, to the States and Territories of the United States, three millions of dollars for the purposes of Education and Internal Improvement—to be apportioned among the States and Territories according to the rate of direct taxation.

AMENDMENTS TO THE CONSTITUTION.

The Senate then, according to the order of the day, proceeded to the consideration of the resolution proposing amendments to the Constitution, in regard to the election of President and Vice President of the United States.

Mr. VAN BUREN rose and said, that the resolution under consideration referred to a subject confessedly of great interest: it had been but a short time since laid before the Senate by the able report of the committee, by whom the matter had been considered; and, if there was no disposition on the part of the Chairman of that committee, to urge the subject at this moment, it would perhaps be well to postpone it for a short time. He should therefore move that it be postponed to, and made the order of the day for Monday next.

Mr. HAYNE said, as one of the committee who had reported that resolution, he should not object to any reasonable postponement asked for by the gentleman from New York, or by any other gentleman. But it was a subject of such vital importance, that he hoped, when next it should be called up, it should be for the purpose of decision, and that gentlemen, if any there were, in the Senate, that objected to the provisions of that resolution, would come prepared to submit their objections. The committee had made an elaborate report, stating the grounds on which they supposed the amendment could be supported. He, therefore, hoped that gentlemen would examine that report, and come prepared to show, either that these arguments were not well founded, or to give their hearty support to the propdsed amendment.

Mr. BENTON said, that, in making their report on this subject, it was the design of the committee to accelerate the consideration and decision of it. The committee had before them two modes of proceeding; one was, by submitting a resolution, and, when called up for discussion, for the Chairman, or some other member of the committee, to rise, and explain the reasons in support of it. The other method was, by exposing their reasons, by means of a report, in the first instance. The committee had adopted the latter mode, as thinking it the most respectful to the Senate, and in every way the best. It was thought that every gentleman, having before him the reasons on which the committee acted, when the subject was set for a day, it might be taken up on that day, and acted on without further delay. He acquiesced in the motion which had been made for the postponement, as the gentleman from South Carolina had done, in the hope and expectation that, on that day, it would be taken up in earnest, and disposed of.

The motion was then agreed to.

TUESDAY, JANUARY 31, 1826.

On motion of Mr. HOLMES, the Senate took up the bill "to secure the accountability of Public Officers, and others," the question being on the adoption of an additional section, reported by the Committee of Finance, which, being modified on the suggestion of Mr. HOLMES, was agreed to in the following form:

"SEC. 5. *And be it further enacted*, That, in all cases provided for by this act, the fact that the person is indebted to the United States shall be evidenced by a judgment of some competent tribunal, or by a statement of his accounts at the Treasury Department, according to the provisions of the 2d section of the act of the 15th March, 1820, "providing for the better organization of the Treasury Department," and notice thereof given to such person: *Provided*, That, if the person so found indebted, on such settlement, shall, on such notice, file his exceptions thereto, in writing, denying, on oath or affirmation, that he is indebted to the United States, he shall not be subject to the provisions of this act, until the fact of his being indebted to the United States shall have been judicially determined."

Mr. KANE then, for the purpose of supplying imperfections which he conceived to exist in the bill, in its present shape, moved to add to the section, just adopted, the following provisos:

"*Provided*, That no person shall be considered a debtor within the meaning of this section, unless he shall have failed to pay over the public moneys in his hands upon notice of the debt duly given, and demand of payment thereof by the proper authority.

"*And provided further*, That nothing in this act contained, shall be so construed as to prohibit the re-appointment to office of any debtor who has failed to make pay-

ment as aforesaid, and who shall make it clearly appear that such defalcation accrued from unavoidable accident and misfortune."

Mr. HOLMES thought the first proviso rendered unnecessary by provisions of the existing law, and called for a division of the question on the two. Mr. SMITH thought the difference of opinion respecting the details of the bill could be better accommodated, and the bill be better matured in committee, and therefore moved its recommitment with the proposed amendments. Mr. FINDLAY spoke to show that the provisions of the bill were inadequate to its professed object. Mr. KANE acquiesced in the expediency of its recommitment; and the bill was recommitted to the Committee on Finance, and the proposed amendment ordered to be printed.

WEDNESDAY, FEBRUARY 1, 1826.

Mr. KING, of Alabama, rose, and said it had become his painful duty to announce the death of his honorable colleague, HENRY CHAMBERS, who died on the 25th of last month, while on his way to the Seat of Government to enter on the discharge of his duties in the Senate.

Mr. KING said he would not attempt the eulogy of the deceased; but Alabama would long have cause to regret the loss of the valuable services of one of her best, and most enlightened, and most useful citizens: and his numerous friends would long deplore the loss of one of the best of men. Without further comment, Mr. K. said he would offer the following resolution:

Resolved, That the Members of the Senate, from a desire of showing every mark of respect due to the memory of the honorable HENRY CHAMBERS, deceased, late a Senator from the State of Alabama, will go into mourning for him, one month, by the usual mode.

The resolution having been agreed to unanimously, Mr. KING again rose, and said that no case had occurred in the Senate, precisely similar to the present, but it was well known that the other House had thought proper to adjourn, on learning the death of one of its members while on his way to the Seat of Government. Mr. K. therefore moved the following additional resolution:

Resolved, That, as an additional mark of respect for the memory of the honorable HENRY CHAMBERS, the Senate do now adjourn.

The resolution was agreed to, nem. con.

THURSDAY, FEBRUARY 2, 1826.

The Senate took up the following resolution, offered yesterday by Mr. NOBLE:

"*Resolved*, That the Committee on Indian Affairs be instructed to inquire into the expediency of making an appropriation of 50,000 dollars, or such other sum as may be considered sufficient, for the purpose of extinguishing the residue of Indian title to lands in the State of Indiana."

Mr. NOBLE said, in support of his resolution, that the adoption of it might be considered in two points of view: First, whether the Indians, within Indiana, had given any evidence that they were willing to sell the residue of their lands. His object, in introducing the resolution, was, to enable the Committee on Indian Affairs to inquire at the War Department to ascertain that fact. It would be found, upon inquiry, that abundant evidence was in the Department, obtained through Governor Cass, who had been engaged for years as Superintendent of Indian Affairs, in the Northwestern country, that the Indians were willing to sell the lands in question; and that the information, coming through Governor Cass, would be, as it ought to be, satisfactory on this point; for no man had excelled him, as yet, in point of information as to Indians, or Indian affairs, or in integrity on such subjects, when and wherever he had been entrusted. Mr. N. said, he had the same information from Mr. John Conner, who was ensitled to credit wherever he was known; who, for many years, had resided with the Indians, and on the Kankakee river, and spoke the language of several tribes of Indians.

The second point to be considered, regarded the agricultural and commercial interest to the State and the United States, in extinguishing the title to the residue of Indian lands in Indiana. Hitherto the enterprise of the citizens of the State had been confined to the margin of the Wabash. By the extinguishment of the title of the Indians, they would be relieved from the difficulty, and, in a commercial view, free commerce with the States, by an outlet through the Lake Michigan and the Straits at Detroit, to Lake Erie, would be the result, as well as a port of entry, at the margin of Lake Michigan. The benefits from obtaining these lands would not cease here: it would put a check to foreigners embarking and participating in the valuable fur trade with the aborigines of the country. The fact is, at this time, said he, those traders who are engaged in the fur trade from abroad, with the Indians, frequently transport their goods into the States, whether smuggled or otherwise, by ascending the river St. Joseph's of the Lake to the head of the same river, and then conveying them to the river Kankakee, a portage of six miles, thence down the latter river to the mouth of Yellow River, thence up the same to a point crossing over to the fine and bold river Tippecanoe, a portage of only twelve miles. The fur trade is commerce to all intents and purposes, is highly valuable, and should, (embracing self-defence and preservation,) belong to the citizens of the State and the United States. By the extinguishment of the Indian title to lands in the State, commerce and agriculture will be promoted, and flourish accordingly.

Mr. HOLMES thought there was another point in which the resolution might be viewed—it was that it was a naked proposition to appropriate 50,000 dollars out of the Treasury; and, although, Mr. H. said, he knew the Constitution only restricted the Senate from originating revenue bills, yet it was not customary for this body to originate appropriation bills. and it would be as well not to depart from the usage of the Senate in this respect.

Mr. NOBLE replied, that, whatever the practice of the Senate was, in originating appropriation bills, there was no impropriety in doing so, as the Constitution prohibited it only in regard to revenue bills; but, Mr. N. said, the present resolution did not even propose a direct appropriation—it simply directed an inquiry into the expediency of making an appropriation for a certain object, and he hoped it would not be refused.

The resolution was then agreed to, *nem. con.*

The Senate adjourned to Monday.

MONDAY, FEBRUARY 6, 1826.

A good deal of business was transacted to-day, but none which led to debate.

TUESDAY, FEBRUARY 7, 1826.

The Senate took up the bill "to authorize the legal representatives of the Marquis de Maison Rouge, and those claiming under him, to institute a suit against the United States by petition, in the courts of the United States, to try the validity of their title."

[This case has been repeatedly before Congress in one shape or other, has been often discussed with great attention, and is familiar to most readers. The claim is for two or three hundred thousand acres of land, in Louisiana, and the title rests on the validity of a Spanish grant to de Maison Rouge. The claim has passed from hand to hand, and is now understood to be owned by Mr. S. Girard, of Philadelphia.]

On this bill a debate took place, which continued more than two hours, comprehending, in its scope, the history

of the claim, the propriety of giving to an individual the new privilege proposed by the bill, the other modes by which it was suggested the title might be ascertained, &c. Those who advocated the bill, were Messrs. VAN BUREN, BERRIEN, ROWAN, and JOHNSTON, of Lou.; and those who opposed it, were Messrs. RANDOLPH, TAZEWELL, HOLMES, and EATON. In the course of the debate, Mr. RANDOLPH moved the indefinite postponement of the bill; and, on the question being taken thereon, it was decided in the negative, as follows:

YEAS—Messrs. Barton, Bell, Chandler, Dickerson, Eaton, Edwards, Hayne, Lloyd, of Mass. Macon, Marks, Randolph, Tazewell, Woodbury—13.

NAYS—Messrs. Berrien, Bouligny, Branch, Chase, Clayton, Cobb, Ellis, Findlay, Hendricks, Holmes, Johnson, of Ken. Johnston, of Lou. Kane, King, Knight, McIlvaine, Mills, Noble, Robbins, Rowan, Ruggles, Sandford, Seymour, Van Buren, Van Dyke, White, Willey, Williams—28.

The question then being on certain amendments reported to the bill by Mr. VAN BUREN, from the Judiciary Committee, a motion was made to adjourn, which prevailed.

WEDNESDAY, FEBRUARY 8, 1826.

The Senate took up the unfinished business of yesterday, being the bill to authorize the claimants under the title of the Marquis de Maison Rouge, to institute a suit against the United States, to try the validity of that title.

Some verbal amendments, reported by the Judiciary Committee, having been agreed to in Committee of the Whole, and being reported to the Senate,

Mr. WOODBURY moved "that the bill, with the proposed amendments, be recommitted to the Judiciary Committee, with instructions to make the bill general—providing a similar mode of settling controversies, as so similar titles in all cases, with a general limitation as to claims under such titles, if not thus settled;" and Mr. W. followed his motion with a statement of his reasons in its favor.

A debate ensued, which occupied the remainder of the day's sitting. Mr. VAN BUREN opposed, briefly, the motion for recommitment. Mr. HAYNE submitted, at large, his objections to the bill, and his reasons for doubting the validity of the claim. Mr. RANDOLPH followed on the same side, and delivered, further, his objections to the bill. Mr. WOODBURY made some additional remarks in support of the modification which he had proposed to the bill. Mr. JOHNSTON, of Louisiana, spoke at considerable length against the motion to re-commit, and its object—in support of the bill, and of the considerations, both towards the State of Louisiana and to the claimants, which made it incumbent on Congress to settle the claim without further delay; and in reply to those gentlemen who had opposed the bill, or the claim. Mr. TAZEWELL replied, also, at considerable length, to Mr. JOHNSTON, and against the bill. Mr. VAN BUREN then intimated a desire to submit his views on the subject; but, it being near the usual hour of adjournment, moved that the Senate now adjourn; and then the Senate adjourned.

THURSDAY, FEBRUARY 9, 1826.

The Senate was principally occupied to-day in the consideration of Executive business.

FRIDAY, FEBRUARY 10, 1826.

The Senate was principally occupied to-day in the consideration of the bill for the relief of James Dickson & Co. and other business not of a general nature; after which, adjourned to Monday.

MONDAY, FEB. 13, 1826.

REPAIR OF POST ROADS.

The Senate proceeded, as in committee of the whole, to the consideration of the bill "appropriating a sum of money ($15,000) for the repair of the Post Road between Jackson and Columbus, in the State of Mississippi."

Mr. JOHNSON, of Kentucky, (Chairman of the Committee on the Post Office and Post Roads) explained the object of this bill, which appropriated $15,000 for the repair of the Post Road, in the Indian country, between Jackson and Columbus, in the State of Mississippi, to be expended under the direction of the Postmaster General. A similar bill had, he said, passed the Senate, during the last session of Congress, but failed, for want of time, in the other House. The committee who had reported the bill, had received ample information, from the Postmaster General, and from other quarters, of the vast importance of this road, of its being out of order, and of the necessity of the appropriation at present asked for. The road runs through the Indian lands, over which no State has any control, therefore, would not involve any constitutional question. In its present state, the road is so bad that the communication is very precarious, and sometimes impossible.

Mr. CHANDLER, of Maine, said he should be unwilling to lay out any money within the State of Mississippi, for making a post road, especially as the writer of a statement (read by the Secretary) on which the committee seemed to rely, was doubtful whether this was the best road that could be had. In the State of Maine, when they made a road passing through lands owned by Indians, they were under the necessity of doing it themselves; and he thought the State of Mississippi was as well able to make its own roads as they were in the State of Maine.

Mr. KING, of Alabama, said the State of Mississippi had not the power to make this road. The road runs through the Indian country, over which the State of Mississippi had no control. The appropriation asked for is not more than sufficient to accomplish the desired purpose. They had formerly made an appropriation for the object contemplated by this bill—how that had been expended he could not say. The committee had had the subject under their consideration; they had communicated with the Postmaster General, and Mr. K. said he was not disposed to delay the passage of the bill, as, from the great confidence that was placed in the Postmaster General, they might be satisfied he would not require a larger sum than would be sufficient to put the road in a proper situation for the transportation of the mail.

Mr. ELLIS, of Mississippi, said the object proposed was, that this route should be so improved as to enable the mail to be transported with safety from Jackson to Columbus, in the State of Mississippi, and this could not be effected unless this appropriation was made. The water courses which intersect this road in various directions, require bridges, the swamps also require causeways, that post carriages may pass in security. He knew, from an experience of several years, that the mail arrived at Natchez and New Orleans in a very wretched and torn condition; and merchants complain that their losses are immense, in consequence of the negligence of Government in this respect.

The gentleman from Maine had said that, because this bill did not provide for opening roads in Maine, that it should not be done in the present instance; but this road has already been opened by the Government of the United States, and it is now proposed to put it in such a state that the mail might be transported in covered carriages to Natchez and New Orleans; this he thought was an object well worthy the attention of the Government, and he hoped no opposition would be made to the passage of the

bill, as the question did not involve the constitutional power of Congress in regard to roads, &c.

Mr. CHANDLER could not see why the constitutional question would not be brought up as much in this case as in making any other road—if the committee were in possession of no further information on the subject, sufficient proof had not been produced to show that this road was the best possible road that could be had; and he was not willing that the United States should lay out any money on it. If any were to be laid out, he admitted there was no officer in whom he would place more confidence than in the officer at the head of the Post Office Department. Let the State of Mississippi make the road, and the United States would have no objection to giving them all the authority they could require.

Mr. JOHNSON, of Kentucky, said this was not a road belonging to a State, but was one in which every part of this Nation was interested in keeping open. All communication, by land, from Boston, New York, Philadelphia, Baltimore, all the great cities on the seaboard, and all the towns and villages in the country North of the Southern point of our Union, must pass on this route. It was a road opened by the United States, according to a treaty stipulation with the Indians; and because it served to connect the United States together, they had appropriated seven or eight thousand dollars for the purpose of opening it, and the present appropriation was required to put it in a state of repair.

Mr. COBB, of Georgia, was perfectly satisfied of the expediency of opening this road, if it were to be considered merely as a matter of expediency—but he concurred in the opinion of the gentleman from Maine, that, if the constitutional question was not involved in this bill, it would not be involved in any one. Did the circumstance of this road passing through the Indian territory, change the principle at all? In what way does it? [Mr. JOHNSON, of Kentucky, said, by treaty stipulation.] A treaty stipulation gives to the United States no other powers than are conferred on the Government by the Constitution. Suppose the Government of the United States stipulated by treaty with Great Britain to do a thing it was not constitutional to do, was a power thereby communicated to the Government to do that thing? Mr. C. said he did not like this plan of the United States acquiring power by stipulations of treaty. It was a dangerous doctrine. It seemed to him that when they came to view this question fairly, it involved all the great principles as to the power of this Government to make roads and canals. Supposing they were to take the reason assigned by gentlemen in support of the present measure, that this road was necessary for the purpose of facilitating the transportation of the mail. In the route from Baltimore, somewhere on towards Philadelphia, it was just as necessary that the road should be repaired; the mail is obstructed almost daily on that route for the want of a proper road, and in some weather it is almost impossible to get on at all; and was it not just as expedient to have the route from Baltimore towards Philadelphia repaired, so as to facilitate the transportation of the mail between those two cities, as it was to have a road through the Chickasaw or Choctaw territory, to facilitate the transportation of the mail between New York and New Orleans? Certainly it was. Mr. C. said he should like to see which was the clause in the Federal Constitution under which they claimed authority to make this road through the State of Mississippi; he could not see any reason why this circumstance of the road passing through the Indian country should change the principle in the smallest degree, or confer any new power on the General Government. His ideas on this subject, Mr. C. said, he had occasion to submit to the Senate some time ago, and it was not his intention now to go into any remarks that would make him repeat what he had then advanced. There was no power in this Government to make this or any other road through the State.

Mr. ELLIS said the road did not pass through one-seventh part of the State of Mississippi, and it was impossible for the State Government of Mississippi to have any authority over those lands till the title to them was extinguished. The gentleman seemed to suppose that the great power which had so often been controverted in that House was now about to be advocated by the friends of the bill. Mr. E. said he was not about to advocate it, nor to indicate an idea of this kind, that this Government possessed the power to establish a road, or to cut a canal, through the several States, without their approbation; but the power does exist in the Congress of the United States, under the existing state of things relating to the Indian country within the several States, to establish roads, in the exercise of the provisions established by the Federal Constitution.

Mr. EATON, of Tennessee, said a treaty had been entered into in 1801, between the United States and the Choctaw Indians. The question of State rights had not then arisen, and the Government of this country was in the hands of Mr. Jefferson. Under such an administration, no attempt would have been made to enter into a treaty with a distinct sovereignty, that went to invade the principles of the Constitution. By the second article of that treaty, the Indians gave their consent that a wagon road should be constructed through their lands, and if the idea was a correct one, that to make such a road was unconstitutional, was it not strange that the Senate should not have conceived this idea in 1801, or, if they did conceive it, that they should have acted as they did? Mr. E. said, a road had been made from the State of Georgia to the State of Tennessee, which was at present the main high-way between these two States. A road had also been made through Alabama to Fort Stoddart, and the road which was at present the subject of discussion, was considered in this House, and an appropriation made for it. Ever since this Government had existed, Mr. E. said, they had proceeded on the principle that the Indians are a distinct sovereignty; it was an anomaly that one sovereignty should exist within the orbit of another, but they always had proceeded on this principle, and if they had any right to interfere with them, why did they proceed with them in the character of sovereignties? Mr. E. was present when the Postmaster General made an inquiry of the Mail Contractor for this section of the country, as to the state of the road, and the answer was, it is almost impassable. The principal part of this road was opened in 1801, and the portion for which they were now about to make an appropriation, was opened some years ago. It is against the religious principles of an Indian to work in any way, and the consequence is, that the roads through their country are worse than elsewhere. If there was any force in the objection urged by the gentleman from Georgia, at least so far back as 1801, something would have been thought about it in the Senate, when they entered into this treaty with the Indians; by the second article of which, privilege is granted to the United States to open a road through their country.

Mr. CHANDLER had no doubt the road wanted repairs; but the treaty announced nothing more than that the United States had extinguished the Indian title to that portion of the country. If the State of Mississippi had no jurisdiction over the land, let them come to Congress and ask for it.

Mr. EATON contended there was no cession of property, on the part of these Indians, by the provisions of this treaty; there was not even a cession of sovereignty. They, in their sovereign capacity as Indians, yielded their consent to the United States to open a road. The United States could not give the State of Mississippi any sovereignty over it.

Mr. HOLMES, of Maine, observed, that the Indians were considered as sovereign within the States wherein they reside, unless the title and jurisdiction are extin-

guished. We are in this singular predicament. The United States is a great wheel; there are twenty-four little ones within it, and there are several others within each of these little wheels. If the United States have no right to make a road through either of these sovereignties, and the Indians will not make a road, it follows that we are to have no road. Mr. H. said he did not perceive the force of the constitutional objection bearing on that part of the State that is under the jurisdiction of the Indians. The State cannot exercise its laws; it cannot administer justice; its laws could not reach the Indian country. The State could not lay out the road through the Indian country, unless they legislate for the Indians, and consider them as citizens of the State. There might arise a very grave question out of all this, whether Indians, within the limits of an individual State, can be considered as a sovereign power, acting with and negotiating with the United States. The Constitution of the United States, in apportioning the Representatives among the several States, in that enumeration, says, "and excluding Indians not taxed, three-fifths of all other persons." The Constitution contemplates Indians not taxed as not coming within the power of the Government of the United States. But there is still another question behind that; the question whether the State has the power to tax the Indians within the limits of that State. Until they have done that, till they consider the Indians as subject to their laws, so long will they legislate for themselves, and the State jurisdiction will not extend to them, and they will have a control over the territory, exclusive of the State. How, then, would this constitutional objection apply? It was contended that we had no right to exercise jurisdiction over a road of our own making, within the limits of a sovereign State. The reason of this was, that the State had reserved to itself this jurisdiction, and had never given it to us by the constitution. Mr. H. said he understood this treaty was made before that State became a State; the stipulation was made by the Indians to the United States, and the United States had the power to stipulate with the Indians and to receive stipulations from them. Could the State, by being incorporated into the Union, do away with any of those stipulations previously made, and which, at the time of making them, they had a right to make? The compact was made by Powers competent to contract, by which a road was to be made through this identical territory. If this compact is done away, by admitting the State of Mississippi into the Union, then that goes for nothing.

Mr. WOODBURY, of New Hampshire, observed, that the State of Mississippi could not tax the land, because the land was exempted from taxation—it belonged to the United States—it was Congress alone that could tax it. When roads passed through lands owned by individuals in Mississippi, the State did not ask Congress to interfere—they taxed the land. But, when roads passed through the United States' lands in Mississippi, they taxed them by asking for a grant from Congress; and, the question was, Mr. W. said, whether Congress should make that grant, when it was so much for the public benefit?

Mr. COBB was sorry he did not see this question in the same point of view as the gentleman from Maine, (Mr. HOLMES,) and he would put this question to the gentleman: To what clause in the Federal Constitution did they trace the power of making this road? The gentleman from Tennessee had supposed his objections to be, that it was an invasion of State rights. Mr. C. said, whenever they exercised a power, which was not authorized by the Constitution, it was an invasion of the rights of the States or the rights of the People. The great objection he had to adopt these measures was, that it was an usurpation by the Federal Government, of power not conferred on it. He denied that any thing could confer a power on the Federal Government, but the Federal Constitution; and this brought him again to the question put to the gentleman from Maine—to what clause in the Constitution did he trace the power to make or repair this road? Would the gentleman say it was from the treaty-making power? Mr. C. admitted, that the Government of the United States, so long as the territory was theirs, perhaps might, under the clause of having a right, exclusively, to legislate for the territory, adopt ways and means to have a road made through the territory. When this treaty was made with the Chickasaws, it was the Territory of the United States, and the Government at that time proceeded to open the road, precisely on the same principle that it had done in the territory of Florida, or in Michigan, or in any other Territory, before being admitted into the Union. Mr. C. said, his idea was, that the moment a State was admitted into the Union, that portion of the sovereignty of the United States which could be exercised under the Constitution, and which might be defined to be the right of jurisdiction, ceased, except in cases specially provided for by the Federal Constitution. Sovereignty consisted, he thought, in something more than the right of soil. The mere right of soil is a very small portion of the sovereignty of a nation. He admitted that, till the lands were sold by the United States, they had the right of soil; but, as soon as the State of Mississippi was admitted into the Union, the whole right of State jurisdiction accrued to that State, so far as regarded the exercise of any sovereignty, except what was specially conferred by the Federal Constitution. The United States have no other jurisdiction in the State of Mississippi, than they have in the State of Georgia or Maine.

As to the expediency of this measure, Mr. C. admitted the road might be very necessary, and the gentleman from Maine stated this difficulty: The State of Mississippi cannot, or will not; the Indians will not; the General Government cannot make it; therefore there must be no road. Concerning the road in Maryland, to which he had before adverted, Mr. C. said, one portion of the inhabitants of Maryland and part of Delaware, wished to have it in one direction, and another part wished it to be in another. The upper portion of the People are not rich enough to make it themselves, or have not the power, and they apply to Congress for an appropriation to repair the upper road; here is a case presented to us: they want to make the road where it ought to run, and where the mail is subjected to all those inconveniences to which it is subject in the road which we are now discussing. Mr. C. said, his idea was, that whatever power the United States could have exercised over the territory, in opening this road, the moment the State of Mississippi was admitted into the Union, so far as regards the right of jurisdiction over this road, it devolved to the State. Look to the treaty, said Mr. C. and see whether the Indian title is not extinguished to this portion of land; and all gentlemen would admit that the moment the Indian title was extinguished, the jurisdiction would accrue, over the lands thus extinguished, to the State. Mr. C. then quoted the treaty—"and the same shall continue forever a highway for the citizens of the United States;" and contended that it was as clear a renunciation of jurisdiction by the Indians as ever was made; they gave up their power; they ceded to the United States the right of making this road; and from the moment the treaty was ratified, the power was vested in the United States, because it was a territory; and so soon as the State of Mississippi came into the Union, this jurisdiction over the road, which belonged to the United States, as sovereign over the country, whilst it was a territory, devolved on the State.

Mr. HOLMES said, he felt a little alarmed when he saw his friend from Georgia rise, and ask the question which he had put to him, with so much confidence—and if he could not put his finger on that clause of the Constitution of the United States which authorized the appropriation for this road, he would not make it. He was not one of those who believed that they might obtain that power by

construction, which was not plainly and unequivocally granted in the instrument. He was not an advocate for constructive or implied powers. He understood that, at the time this Territory belonged to the United States, they made a compact with the Indians that a road might be made, which should not be interrupted. Afterwards the State of Mississippi was admitted into the Union, and the road had not been made, and now they applied to Congress to make this road. This was the clause of the Constitution on which he relied for the power to make it. "New States may be admitted by the Congress into this Union, but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress." The main proposition here, Mr. H. remarked, was connected with another clause: "The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the Territory or other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State." This, Mr. H. said, was all to be taken into consideration, referring to the Territory that then was to be carved into States, and the Territory that should afterwards remain. The last clause was a very important one: "new States may be admitted into the Union." Connect the last clause with that, "nothing in this Constitution shall be so construed," &c. Why was it inserted? "New States may be admitted into the Union," but the property which was reserved for the Territories was intended, some of it, to belong to the States, when they should become States. This clause was intended to preserve all the rights of the United States and of the States, when they were admitted into the Union, and all the stipulations previously made between the United States and the Territories of the United States, were to be firm and inviolable, in this latter clause of this article of the Constitution. If that were the case, and Mr. H. said he could conceive no other reason why this clause should be inserted, he would recur to the fact, that the right of the United States to make a road within the Indian country, had been stipulated for, and had been vested in the United States, before that State came into the Union. The State afterwards came into the Union, and there was nothing by that admission that would go to prejudice the claim of the United States to make this road, or the claim of the State to any thing that was granted to it as a Territory of the United States. The stipulation was fairly made and never rescinded, and was reserved by the express clause in the Constitution to be valid, and effectual. Mr. H. thought, on this point, from this clause of the Constitution, the power might be fairly inferred.

Mr. JOHNSON, of Kentucky, referred to the second volume of the Laws of the United States, and cited, as cases in point, in answer to Mr. COBB, the roads which had been made by the United States, from Fort Hawkins, in Georgia, and Fort Stoddert, in Alabama. These precedents he thought conclusive, as to the power to make the road now under discussion. There had been an appropriation for opening this road, and they now asked for an appropriation for repairing it. The appropriations for opening this road, had been made under the administrations of Jefferson, Madison, and Monroe; and, if his friend concurred with him as to the *expediency* of the measure, and it was not to be doubted, where repeated appropriations had settled this question, he hoped he would permit the Constitutional question to rest, till he came to matters of greater moment, when it would give him more pleasure to hear him, and he always heard him with pleasure on that great and vital question. On the present occasion, Mr. J. did hope that, if the Senate believed in the propriety and necessity of the measure, they would make the appropriation, after what had been stated by way of matter of fact, on the subject.

Mr. COBB remembered the circumstances alluded to by the gentleman from Kentucky; he was a member of Congress at that time, and he voted against the appropriation for the road from Fort Hawkins, although it was in Georgia. He hoped the time was not yet come when the Senate were to be tied down by a precedent of such a character as that. He could refer the gentleman to other precedents. In that same book, he would probably find a certain law, called a sedition law: the gentleman would certainly not deny that that law was unconstitutional; if he admitted that, it was no precedent to settle a question of constitutionality, and it would be still lawful for them to object to another sedition law, on the ground of its unconstitutionality. The gentleman would also find a law for the making of the Cumberland Road, which originated during the good old days of Jefferson. Mr. C. said, in his opinion, that also was unconstitutional, and, so far as regarded himself, it would form no precedent to him, and he should make the same reply in regard to every other statute that the gentleman should bring in support of this bill. He contended that no constitutional question could be settled in that way. When a measure was brought forward, every man would judge for himself, and he was bound to do so, not only by the general principles of duty, but by the solemn and only oath he had taken in this House. Therefore, when gentlemen produced precedents of this kind, he gave notice now, he should not admit them in Constitutional questions. They might do very well for a Court, but not for a Legislature. On constitutional principles, there could be no precedent.

Mr. ELLIS moved to lay the bill on the table, at the suggestion of a friend from Georgia, but subsequently withdrew his motion.

Mr. HOLMES made some further remarks, in support of the positions he had advanced, and in reply to Mr. COBB.

Mr. HARRISON, of Ohio, supposed that the gentleman from Georgia had been so completely driven out of the field, on the constitutional question, that he would not have entered it again; but he found he was like the character ascribed to the American soldier by the European soldier: it was very difficult to make him believe he was beaten. With regard to this point, Mr. H. said, he should consider him so, and should say nothing in relation to the constitutional part of this question. And, then, the question recurred, as to the expediency of the measure. They were told this was the only approach, by mail route, to the great commercial depot of New Orleans; and it was in such a state as to be nearly impassable. From this statement of the case, he imagined there was no member in the Senate that would deny the necessity of this work. The question was, who was to do it? It was one of those cases, he acknowledged, that presented the importance of the constitutional power, vested in Congress, to make these roads, in a better point of view than any other that he knew of—the right of passing through an intermediate country (a State if they pleased) in which the interests of all the other States of the Union were more involved than the State through which the road passed. Such was the fact, in the present instance. There was not a State in the Union—certainly ten of them—but was more interested in passing this road, than the State of Mississippi. They were told that the State could not do it if she would, because she would be considered a trespasser on those parts of it which did not belong to her, and to which no title had been given by the United States. Under these circumstances she could not; and if she could, she would not do it; because she is less interested in it than many of the States. Therefore, it is, that an application is made of a grant of this small sum of money, to facilitate the conveyance of the mail on the most important route in this coun-

try. Mr. H. said, it was his belief, that, from the situation the road is at present in, a much larger amount of property might be lost, by losing a single mail, than what was asked for by this bill. He hoped, therefore that the bill would pass. He hoped no further objection would be made to it on constitutional grounds; for gentlemen might be sure there would be plenty of opportunities for discussing that question during the session.

Mr. BERRIEN, of Georgia, said, the motion made by the gentleman from Mississippi, to lay the bill on the table, was made at his suggestion. At the moment when this question first presented itself to his view, he did entertain a serious doubt whether the great question which agitates and divides this Union, and which perhaps is destined still more to do so, was not involved in the subject now presented to the consideration of the Senate. If he could believe it necessary to trace to the treaty of 1801, the rights of the United States to do that act, which it was contemplated by this bill to do; in other words, if he could think it necessary to affirm the general proposition, that the United States could acquire, by force of any treaty, the right to do an act, the right to do which could not be traced to the only legitimate source of its power, the Constitution, he should still be disposed to pause. But the moderate reflection he had been able to bestow on this subject, during the discussion, had reconciled his mind to the admission of the principle, that the effect of this treaty was certainly of limited extent. This treaty was concluded before the admission of the State of Mississippi into the Union, and the parties to that treaty being considered as distinct Sovereignties, might have imposed on the United States certain obligations, from which obligations they could not disengage themselves by any new compacts entered into with the People of Mississippi, on their admission into the Union. To this extent, Mr. B. said, the power of the United States was to be deduced from the treaty, and might be admitted without involving the question of which he desired to steer clear in this discussion.

As to the general right asserted for the Union, to make roads through all the Indian countries, against such a doctrine he should desire to protest. He would draw a distinction between those lands of Indians, living within the limits of the States which came into the Confederation, with certain chartered limits, and those living within States, who, at the time of the formation of the Constitution, had no limits, and whose limits were only defined by the laws regulating their admission into the Union. It seemed to him, that the present bill steered clear of all these difficulties; and, though they had desired this question to rest, yet, if they were required to act on it, he was prepared to act according to the best of his judgment. The general subject having been presented in a formal manner, and in such a manner as to require a formal discussion, he was solicited by no meaner step to interfere with that course which the convictions of his duty had prescribed to him; but, if the members of the Senate, generally, were satisfied that, as to this question, the bill was free from doubt, he should not press on their consideration, at this moment, the motion for laying it on the table.

Some further conversation then passed between Messrs. COBB and WOODBURY, and, after an ineffectual motion to postpone the bill to Wednesday next, it was ordered to be engrossed for a third reading, without a division.

TUESDAY, FEBRUARY 14, 1826.

FLORIDA CANAL.

The Senate, on motion of Mr. HENDRICKS, proceeded to the consideration of the following bill for the survey of a route for a Canal, between the Atlantic and the Gulf of Mexico:

"*Be it enacted, &c.* That the President of the United States be, and he is hereby, authorized to cause to be made an accurate and minute examination of the country South of the St. Mary's river, and including the same, with a view to ascertain the most eligible route for a canal, admitting the transit of boats, to connect the Atlantic with the Gulf of Mexico, and, also, with a view to ascertain the practicability of a ship channel; that he cause particularly to be examined the route from the St. Mary's river, to the Appalachicola river or bay, and from the St. John's river to the Vassasousa bay, with a view to both the above objects; that he cause the necessary surveys, both by land and along the coast, with estimates of the expense of each, accompanied with proper plans, notes, observations, explanations, and opinions, of the Board of Engineers, and that he cause a full report of these proceeding to be made to Congress; and, to carry the same into effect, the sum of twenty thousand dollars be, and the same is hereby, appropriated, out of any money in the Treasury, not otherwise appropriated."

The Committee on Roads and Canals, to which the bill had been referred, proposed to strike out the three last lines of the bill, and add the following section:

"Sec. 2. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to cause a further survey to be made of the country between the Appalachicola and the Mississippi rivers, with a view to the formation of an inland navigation between the same, with notes and explanations, and an estimate of the probable expense of the same; and, to carry this law into effect, the sum of twenty thousand dollars be, and the same is hereby, appropriated, out of any money in the Treasury, not otherwise appropriated."

The question being on the adoption of this amendment—

Mr. RANDOLPH of Va. rose, and said he was not so much of a political Quixote, as, at the end of six and twenty years of public life, to run a tilt against a wind-mill in full operation; he would only say, that, it being his misfortune to doubt the constitutional power of Congress to act on a subject of this sort within the body of a State, he was equally stupid, he would not say "ineffably" so, to doubt its power within the body of a Territory: for he really could not very well see the distinction, the difference—indeed, it was a distinction without a difference—of pouring out the money of the Treasury—the money of the People of the whole United States—upon these projects, whether within the body of a State, or within the body of a Territory. He thanked God he was not so much of a political metaphysician, as to think such nice distinctions of any great importance. It was one of those cases where the play was not worth the candle. It was from this motive that he had voted against the bill, which had, to-day, passed the Senate, for making a road through the State of Mississippi. This Government, said Mr. R. has been in operation now some seven and thirty years, and what road, or what improvement has been made, at its expense, in the adjoining States of Maryland, Virginia, or Carolina? I appeal to the honorable Senator from South Carolina, if there is any piece of road—and, in South Carolina, I understand—I hope I may be mistaken—that there exists none of this political squeamishness, which exists in us Virginians, about the exercise of this right—I appeal to the Senator from South Carolina, if there is a peace of road, in the whole world, that more requires the interposition of Government, than that road about Marlborough Court-house—the causeway on this side of Pedee? No, Sir. Has there been any proposition to mend it at the expense of the United States? None at all. I, therefore, who go for the fact, do not care one button, whether the public treasure is poured out in doing for the States, that which it behoves the States to do for themselves, or in doing it in the first instance for those particular favorites

of Executive patronage, the Territories; where the power of this Government, the Executive branch in particular, is almost all powerful, that they may be dandled and swaddled, and nurtured up, into ready made States, and gain all their improvements at the expense of the General Government. I have not the slightest idea of arguing this question; it has been argued so often, and so much better and abler than I can pretend to do it, that I rise only for the purpose of recording my vote on the present question, and asking for the yeas and nays on the amendment.

Mr. HENDRICKS, of Indiana, said this was a question of mere expediency; a question which has often been been decided. It was a question for a survey; one on which a general law, and a general appropriation, had, heretofore, been passed; and, in reference to which, an item in the appropriation bill had passed the other House during the present session, and was now before the Senate. If, on this proposition, the constitutional question was to be canvassed a broad field would be opened, and a broad discussion would of course ensue. Mr. H. said he would state, as briefly as he could, the object of the committee in reporting this amendment to the bill. The bill itself authorizes a survey and examination of the Peninsula of Florida, with a view to a canal to connect the Atlantic coast with the Gulf of Mexico, at the Appalachicola or the Suwanee Bay. The section under consideration authorizes a continuance of the same survey and examination to the Mississippi River. The committee were induced to report this amendment from an examination of maps of the coast, from the Appalachicola to the Mississippi, and from other sources of information on the same subject. The maps of the coast alluded to, show, with little interruption, a continuation of lakes, bays, sounds, and inlets, almost the whole distance; show the practicability of a perfect inland navigation for 350 miles, by cutting at various points, short distances; which, according to the information given, and now on the table, amount to no more than twelve miles. The importance of this communication may not, at first view, appear. It may be said that from the mouth of the Mississippi to the Peninsula of Florida, the Gulf is open, admits of safe and easy navigation, and that an inland navigation is here unnecessary. This may be good doctrine for ship owners, and those who follow the coasting trade, but it is very much otherwise for the growers of, and traders in, the produce of the Western country. If the navigation be thrown into the open Gulf, the produce of the West, seeking a market, is stopped at New Orleans; and if it would progress any further South, it is subjected to the expense and delay of transshipment. Even the Mobile and Pensacola bays, to which the navigation is at present almost complete, are shut against the produce and the navigation of the Western country. Sir, said Mr. H. more than one half the Territory, and more than one third of the population of the Union, depend on the Mississippi river for the transportation of produce to the Southern market. That whole extent of country, and mass of population, are interested in the success of the measure proposed. This inland navigation completed, and the produce of the western country, in the same vessel in which it shall have been shipped at Pittsburg, or at any point on the Mississippi, or any of its tributary streams, may pass directly into the harbors of the Florida coast, into the canal of the Peninsula, and find its way to the Atlantic borders and the markets of Georgia; and if in a vessel calculated to stem the currents of the Mississippi, may return laden with the cotton and sugar of Louisiana and Florida, and with the productions of all the countries watered by the rivers which fall into the Gulf of Mexico, through the coasts of Florida. The half of the States of the Union are in a greater or less degree interested in the measure now before the Senate. But, the constitutional objection, so often urged against the power of Congress to construct roads and canals, is brought to bear on this amendment. This objection he did not expect to meet on a mere proposition to explore, to survey, to do that which is doing every day by the Secretary of War, under the authority of Congress. Two years ago a law of Congress was passed, authorizing surveys, estimates, &c. and the employment, for that purpose, of the topographical and civil engineers of the country. This bill appropriated $30,000 for carrying the objects of the law into effect; and, sir, but for the fact that the appropriation under this law is exhausted, the Secretary of War would direct the progress of this very work, which, according to the opinions of some gentlemen, we have no power to direct here. How many roads have you surveyed through the various States, and what are some of your engineers doing now? Are they not employed in surveying a road from this City to New Orleans? This, said Mr. H. is, according to my humble judgment, a work to which considerations of expediency will alone apply; and, in this view of it, it was to be presumed, there would be but few objections to the amendment. Sir, said Mr. H. what is the cause of our solicitudes about Cuba? It is, that Cuba is the key of the Gulf Stream. It is becuase this island, in the hands of a maritime Power, could command and control the navigation and the commerce of the Gulf of Mexico, and of the West Indies. This canal from the Atlantic to the Mississippi completed, and the power of this position over our commerce must, in a great measure, cease. The exports of the half of the Union would no longer be exposed to the piracies of the West Indian seas, or the no less fatal casualties of shipwreck off the Florida Cape. This canal would afford an inland navigation, which would avoid the dangers of the Cape; and the day is, perhaps, not far distant, when a canal, at the isthmus of Panama or Darien, would give to it much of the commerce of the East Indies, and of the Pacific Ocean. This, properly speaking, is a measure for the protection of commerce, and not a question of internal improvements.

Mr. RANDOLPH said it had been suggested to him by a friend on the left, that he would have an opportunity of getting at his object better, when the question came on the engrossment of the bill; therefore, he would withdraw his motion for taking the yeas and nays, in this stage. Before he sat down, he begged to be permitted to say, that he did not mean, at all, to question the utility, or the beneficial effects of this scheme, because he knew nothing about it; and, he never called in question that of which he was ignorant; but, it did suggest itself to him, without the mention of the Isthmus of Panama, by the gentleman who had just taken his seat, that perhaps the next appropriation that might be called for, might be from that Congress to cut that canal.

Mr. HOLMES inquired if they intended a total inland navigation. He thought there was scarcely any necessity for an inland navigation, along the shores of the Gulf of Mexico, to the Mississippi.

Mr. HENDRICKS replied, that the object of this section was to procure a passage for the trade of the Western country, through the canal that would pass through the Isthmus of Florida, without transshipping, which would, otherwise, be necessary, in order to sail round to the mouths of the Mississippi. If this inland navigation was affected, the produce of the Western country would arrive at the Atlantic Ocean in the same boats it set out in from the Ohio, or any other tributary stream.

Mr. JOHNSTON, of Louisiana, said that the object of the amendment was to continue the survey along the coast, according to the plan which was presented about two years ago. His opinion was, that if a ship channel were practicable, it would supersede the necessity of an inland navigation; but while the Engineers were on the spot, it was a matter of economy to continue the survey.

It was a saving of time, and it would enable the Government to act more speedily. He was apprehensive, however, that it would embarrass the bill by presenting constitutional questions; though, in relation to our territories, he believed our power was sovereign, and that we could exercise over them all the rightful powers of legislation; and this was the first time he had ever heard an intimation that Congress did not possess it.

Mr. J. said he had no objection to the amendment. It proposes merely to extend the survey along the proposed line of interior communication, the whole of which is extremely interesting. But the ship-channel which this bill contemplates, is of infinitely more importance, and calculated more strongly to engage the attention of this House.

The object of this work is to draw all the navigation of the Bay of Mexico, which now passes through the Strait between Cuba and Florida, to a more convenient and safe channel through the Peninsula, the effect of which will be to diminish the length of the voyage; to produce great economy in time and expense; to avoid the usual dangers and losses; to give to the Western country, at all times, in peace and in war, a free and open communication with the Atlantic; to deprive Cuba of her position, and to place the trade of that sea under the control of this Government.

Of the localities of the country, I have before spoken: of the practicability of the work, not a doubt exists on the minds of the scientific and experienced Engineers; and I wish not to detain the House by an account of the magnificent works of this kind which genius, labor, patience, and enterprise, have accomplished in other countries, for objects of comparatively small importance. The Caledonian Canal, uniting the two seas through Scotland, constructed with twenty-three locks, and forming a line of seventy miles, and the Canal from the Helder to Amsterdam, of forty-eight miles, below the level of the adjacent sea, both capable of passing frigates of thirty-two guns, demonstrate the practicability of such works, where nature has not interposed physical impossibilities. I understand that a work of great magnitude in Sweden is still continued with unabated zeal and confidence; that the apparent delay is owing to the extent of the work—the partial appropriations of the Diet—not to any insuperable difficulty, or physical impossibility. It is under the direction of an able minister, who perseveres in the object with a zeal that ensures success. It is expected to be completed in 1828. They began by survey, as we do; they acted as we shall, upon the opinions of Engineers. A failure is not anticipated.

To form some idea of the present and future extent and value of commerce of this region, we must look to the great expansion of this Mediterranean sea, the country that surrounds it, with the population that inhabits it, and the productions it affords for exchange.

It extends from Appalachicola Bay, West, along our own coast and the Bay of St. Bernard; thence, South, to the same extremity of the Isthmus of Darien: thence, twenty degrees East, through the Carribean sea, and thence, Northwardly, along the coast of Jamaica and Cuba, occupying all the space between those islands and Florida, Louisiana, Mexico, Guatemala, and Colombia.

It embraces a country of immense extent, with a population of fifteen millions, and producing the richest productions of the earth, the whole of whose commerce necessarily passes through the only outlet to the Atlantic, a narrow, crooked, and dangerous channel between Cuba and Florida—bound by shoals, reefs, and keys, with a strong, irregular, and unequal current, exposed alike to the calms and the storms that prevail there.

The loss of property and lives is incalculably great. I have evidence of the loss of sixty-four vessels, estimated at $700,000, during the last year. Here Mr. J. said he had an accurate schedule of all the losses during the last year, furnished by a gentleman of Boston. It appeared by that statement that the five first vessels were estimated at $470,000.

But let us take a more accurate and particular view of this commerce. The whole of the country West of the mountains, and by far the best and largest portion, depends on the Bay of Mexico, and furnishes alone an extensive trade. It produced last year 273,000 bales cotton, (Mississippi River, 208,294; Mobile Bay, 58,797; Florida, 6,000 bales,)—nearly half of the productions of the United States, besides sugar, molasses, tobacco, flour, and other provisions. They are stated to have equalled twenty-three millions last year, and to have employed, from the Mississippi alone, 150,000 tons shipping. There entered the port of Orleans, in 1825, seven hundred and thirty-two vessels, making 1,464 voyages; and, including the Mobile Bay and Florida, probably amounted to 850 vessels and 1,700 voyages.

To form a correct opinion of the value of this interior communication, we must bear in mind that our vessels will pass due East, from the mouth of the Mississippi River, in the shortest time, on an open sea, free from danger, almost out of the range of the violent winds of the West Indies, and under the protection of a naval force that will find in Pensacola the same advantages of position that Cuba presents to a maritime Power, and that each of these vessels, in each of these voyages, traverses fourteen degrees of latitude in distance, and increases her passage about eight days, and the outward voyage will require a long time to beat up against the current. It may be safely calculated, that on the outward and return voyage from New York to New Orleans, one half of the time, and one third of the distance, will be saved, and a corresponding diminution of expense.

This export of our country, which employs so many vessels and seamen, of which I have spoken, is entirely the production of the earth, from our own labor, and not liable to any deduction for raw material, foreign skill, or capital. It is the production of three millions of People, with ample space, a rich soil, and favorable climate, which, in twenty-five years, will, probably, double their number, and whose productions will increase in a corresponding ratio. Besides this export, it must also be remembered, that a supply equal to the consumption of nine States, is brought into our ports from the Northern States, or from Europe; that these importations must likewise increase with our numbers and wealth.

I am unable to furnish a full statement of the navigation and commerce of the Spanish Americas, bordering on the Bay of Mexico. The exports of Liverpool alone, for the South American markets of British goods, at the Custom-house price, for the year 1823, amounted to thirty-four millions of dollars, of which more than twenty millions pass by this route. This is independent of the amount shipped from other ports in England, or from the rest of Europe, the reshipments from this country, and the direct trade of American supplies, which is equal to six millions. In addition to which, a large amount of the export trade of Jamaica and Cuba pass by this route. The whole of this trade, with the exports of Mexico, Guatemala, and Colombia, will employ 150,000 tons of shipping, equal to seven hundred vessels, forming an aggregate, with our own, of 300,000 tons of shipping, and 1,500 vessels.

This country, like our own, is rapidly augmenting in numbers, and daily developing its resources. They have just emerged from a long and ruinous war; and the influence of peace, independence, and freedom, has not yet produced its effect upon the industry of this portion of our hemisphere; and we may anticipate, when this influence shall be felt, that, from the extent of territory and population, and the value and variety of their productions, this trade will greatly increase.

We might cast our minds forward, to a period not dis-

tant, when a similar work, now contemplated, will open a safe and short passage to India, through the isthmus of Darien, which will form, with this connexion with Florida, a new and interesting field of enterprise.

It is in vain to calculate the extent of trade in twenty years through this sea, with the rapid increase of population, and the new springs of industry and enterprise which this commerce will excite.

There are other considerations, of little less weight, of a political character. The Island of Cuba occupies a strong position on our continent. She is called by military men the key of the Bay of Mexico, and capable, with equal naval force, to lock up the navigation of that entire region. She holds the same relation to this continent that England holds to Europe—and to the Bay of Mexico, the same position that Gibraltar holds to the Mediterranean; and in the possession of a People equally enterprising, skilful, and powerful, would attempt to exercise over us and our trade the same uncontrolled influence that the greatest maritime nation has for a long time exercised over the rest of the world.

I do not doubt, myself, that into whatever hands it may fall, we shall be at all times competent to defend our trade, and able to maintain in that sea a force sufficient to restrain the power of the most ambitious. Yet, it is true, that a naval force, with a secure and fortified harbor in possession of the island, would operate with advantages which nothing but superiority of force could conquer, and would cost great sacrifices to maintain. This is the point where a naval force could act upon us with the greatest effect. This is our vulnerable point. The occlusion of the Gulf would have a powerful influence on the social and political condition of the West. It would result in the ruin of agriculture, and the annihilation of commerce, or in the sacrifice of their independence; and, perhaps, in consequences fatal to the Union. This sentiment is so strongly felt, that any attempt to occupy this position would rouse this country.

But there is reason to believe, at some future day, when war is renewed, that the dominion of this sea, and perhaps this island also, may become a prize to be fought for; that a great naval action may decide the question of power, and that day may not be far distant.

This view of the subject will strikingly illustrate the value of our naval force to the Union, independence, and security of our country, which some supposed was required only to protect the commerce of the Atlantic States; but which, to my mind, is equally necessary to the safety and liberty of all. The time is rapidly approaching when our increasing numbers, strength, and means, will place us beyond the reach of danger. But, if a competent force could, by any combination in Europe, be collected to close this narrow passage, we should instantly feel the necessity of this private covered way of our own through the peninsula, which would induce the navigation to desert is natural channels—deprive Cuba of her position, and the enemy of his power.—It would produce an entire revolution in commerce. The difference of expense alone would give so decided an advantage, that no State could compete with us in that sea: and if the unjust discriminations and unequal regulations of foreign nations render it necessary to countervail their measures, we shall have the means of rendering it effectual.

In fine, whether we take a commercial, political, or military view of this subject, whether in a state of peace or war, whether at present or any future time, we shall be convinced of the advantages it will give, the security it will afford, and the power it will confer.

Mr. RANDOLPH said he did purposely abstain from entering into the merits of this question: he did purposely abstain from entering into the principle, much less into any of the details: he would not even go into one of the least degrees of that principle: but he felt called up by a remark which had been made by a gentleman who had just taken his seat, that this is the first time he had ever heard it questioned, that Congress possesses sovereign and omnipotent power over the Territories of the Union. I am very much afraid, said Mr. R. that the gentleman and myself will be found, in the course of our political journey, to differ, not on this point only, of constitutional law; and I ask his leave to tell him that not only is the power of Congress, whether Legislative, Executive, or Judicial—of either branch or all combined—and much less of a single branch—not sovereign and omnipotent over the Territories, but that the power of no other free Government under the Sun is sovereign and omnipotent any where: it is utterly inconsistent and incompatible with the principles of free institutions that a Government should be sovereign and omnipotent. I know, sir, we hear a great deal about the omnipotence of the British Parliament, and, I am afraid, we hear more of it than we rightly understand. In some senses of the term, the British Parliament has been said to be omnipotent, and some of the worshippers at the shrine of power have gone so far as to say, that Parliament can do any thing but change a man into a woman, or *e converso;* but it is well known to those who have studied the constitutional law of England—it is well known to those who have been conversant with the history of that country, and who have seen its system emerge from the darkness of barbarism and feudalism, to its present state, that there is a great deal that Parliament itself cannot do, although that is an integral and simple Government, *totus teres atque rotundus*, complete within itself, and not a dependent and limited Government, owing its power entirely to a grant, the voluntary grant, of free, sovereign, and independent States. Now, the idea, that a Government, confessedly instituted for certain purposes, and those principally of exterior relation; a Government that cannot show any power it possesses out of the deed of gift; a Government that has to resort perpetually to the parchment to uphold its capacity to act; a Government which, so far from being self-dependent, rests entirely on the will of its creators;—put a case: suppose the several States refuse to send delegates here, what becomes of your omnipotence?—I say, sir, to suppose such a Government to be sovereign and omnipotent any where, is a figure of speech, which I believe rhetoricians call catachresis—but, thank God, I am not a rhetorician. If it were necessary, I could state a great many things which the Congress of the United States, and the President of the United States, cannot do, even in these poor, miserable, abject Territories. They cannot violate the person of a free American. "I am an American citizen;" this is a protection, a panoply that their spears cannot pierce. In regard to those Governments, from the first institution of that of the Northwest Territory, down to the last, which I believe was Arkansas, I have held them to be abhorrent to the nature and genius of our institutions. I shall not go into the point, and why? For the same reason that I did not go into the expediency and the benefits of this canal. They are Governments proconsular in their very nature, and they are exercised over obscure and remote provinces by a satrap who never forgets that he has been a satrap.

Sir, I did not rise to favor the Senate with a geographical lecture, though, even on the subject of geography, I too have had some shallow spirit of judgment; nor to give a statistical lecture, or a lecture on the subject of commerce, which would come much better from the Chairman of that Committee. I merely rose to state that I am one of those who are so stupid—I said, expressly, not "ineffably stupid"—as to believe that Congress does not possess this power; therefore, all I asked, was the yeas and nays, so as to be able to record my vote. I said, that, after so many years of public life, I was not so much of a Quixote as to run a-tilt against a wind-mill in full operation, with the wind at Northwest; but, if I had been

disposed to favor the Senate with a geographical lecture, I certainly should not have been able to inform them that either Cuba or Great Britain occupied positions on this or the other continent. I have always been under the deplorable mistake, that both of them were insular; I readily admit that Cuba occupies the same position on this continent that Great Britain does on the other continent; because, neither of them occupy a position on either continent.

With regard to this question of canals, if we must go into the expediency of a canal of some three or four hundred miles, between the Appalachicola and the Mississippi, it will extend through two very large States, and part of another—through the whole breadth of Alabama and Mississippi, and a small part of Louisiana. It is very well known to persons conversant with canals, that it is much easier to dig even through the granite of Scotland than to make a canal through morasses and quagmires. The difficulties which have been experienced in the construction of the Chesapeake Canal have not been found in the hard ground, but in the nature of the ground of an opposite quality—in the quagmires. We are told of the canal that the Dutch have cut, from the Zuyder Zee to the North Sea. Really, Sir, the distance which is in that little narrow strip of land in North Holland, or West Friesland: for it bears both appellations—between the Zuyder Zee and the German Ocean—what is it? If Holland, itself, were put down on this country that we propose to cut through, you would hardly be able to find it; either the Marquis de Maison Rouge's, or the Baron de Bastrop's, claim would go very near to cover it. Holland is the country, of all others in the world, the most dense in population, and most abundant in disposable capital and labor, except, and that very lately, this same Island, which occupies a position on the continent of Europe; and this country is to be put in competition with the sand banks, the hammocks, the savannahs, pocosons, and swamps of Florida, Alabama, Mississippi, and Louisiana! How many inhabitants are there to the square mile? What the surplus disposable capital? All this only shows that, when once the fever is up, whether it is for internal improvement, or external operations; for Colombian scrip, or Poyas's bonds —look to the situation of England now—it will run its course, unless the doctor should cut it off, and the patient with it, by the plentiful administration of the lancet and calomel. What, Sir, is this *argumentum ab inconvenienti* which induces us not to look at the charter of our powers, because it is very convenient for us to have a canal here, or a road there, or a something else elsewhere? I will push it to its legitimate consequence; and, if we must have an appropriation contrary to the Constitution; if we must pour out the money of the whole United States for these purposes, because of the position which Cuba occupies on this continent; I say let us annex Cuba to this country in fact. While you argue from the convenience of the thing, totally forgetting all the great landmarks of the Constitution, I am clear that, instead of cutting this canal, we should take Cuba; and there never was a better time for it—let that committee, or some other, bring in a bill for really making Cuba take a position on this continent: To be sure there are consequences that might ensue; but what are the statesmen, the poor purblind and timid statesmen, who look to consequences? No, Sir, your gallant statesman, when once he is mounted on his Rosinante, and fairly in the lists, looks to no consequences but to his own consequence.

Mr. WHITE, of Tennessee, said he designed to have voted for the bill in its original shape, believing, for one, that they had the power to make an appropriation for the object specified in it, though he was not so sanguine as some other gentlemen as to the practicability of this canal. Should the present amendment prevail, however, the bill would assume a new shape. It provided not only for an examination for a route for the canal in Florida, but also for a pretty extensive route for a canal through States. Mr. W. said that it might be that the Congress of the United States, under the Constitution, is vested with the power to make such roads and canals; and when he was satisfied that such was the fact, and a fit case presented itself, he should agree to exercise it. While, however, he doubted this power, he could not consent to exercise it, and, therefore, in the shape which the bill would assume if the amendment were agreed to, he could not be amongst those who would vote in favor of its final passage. He should, on this account, be sorry if this amendment was adopted, as he wished to vote for the bill as first introduced.

Mr. JOHNSTON, of Louisiana, rose to make a few remarks in reply to the gentleman from Virginia. He was very unwilling to enter into any discussion with that gentleman; he would reply to the arguments he had used, without taking any notice of the manner in which he had thought proper to treat this subject. Mr. J. regretted much that that gentleman should have thought it necessary, in the discussion of a bill of so much importance, to have changed the customary style of argument in this House, and to make such a display of raillery as he had thought proper to apply in relation to him, (Mr. J.) They stood in different relations in this House, and, Mr. J. said, the age and standing of the gentleman from Virginia forbade his taking the same liberties with that gentleman that he had taken with him.

[Mr. RANDOLPH explained. He meant no personal offence to the gentleman from Louisiana. It was his argument only which he had referred to.]

Mr. JOHNSTON proceeded. He had stated that Congress possessed over the Territory of Florida all the powers of rightful legislation, and, on those subjects, her power was omnipotent. Could he be supposed to be so ridiculous as to say that Congress possessed omnipotent power to legislate over Territories?

[Mr. RANDOLPH again rose. If the gentleman had used the expression that Congress possessed all the powers of *rightful legislation*, he should not have questioned the gentleman's position. He was willing to believe that he *intended* to say it, and he was also willing so to understand him; but he could assure him, on his word, that if he did mean to express himself so, he had done what he, (Mr. R.) had often done—he had not succeeded in so expressing himself. He was not such a caviller as to take him or any other gentleman in this House, in a sense in which he did not mean to be understood.]

Mr. JOHNSTON resumed. He believed he had said that Congress possessed all the rightful subjects of legislation, and that it had complete power over all the subjects of legislation. He did not mean to say that Congress might exercise arbitrary power over the Territories, that they might exercise the power of life and death, or the judicial or executive powers over them. No one could suppose him to be so ignorant as to say so. But, in relation to all the usual powers of legislation, in regard to all the subjects on which legislative bodies usually act, he said they possessed omnipotent power. There was no limitation to the power. The present was a proper subject for legislation, and it was a power which could not be exercised without legislation. This being a subject of legislation, and Congress having all the rightful subjects of legislation within its jurisdiction, it followed they had a right to legislate on this subject. The gentleman from Virginia had cavilled on the phrase "occupies a position." Mr. J. had said that the Island of Cuba occupied a position on this continent, or in relation to this continent, that England occupied in relation to Europe. It was a very common expression. We say a fleet has anchored on our coast; a fleet has taken a position on our coast. It is a common military expression. Great Britain occupies a position, in relation to the continent of Europe,

and on the continent of Europe, though not connected with it. All the islands in the Mediterranean are positions on the coast of the Mediterranean, exactly as a fleet anchored in our waters has taken a position on our coast and on our waters.

Mr. HOLMES was in favor of the bill and against the amendment. He had no doubt that Congress has the power to survey this ground forthe purpose of making a canal in the Territory, or a right to make it. He believed, however, his friend from Louisiana had defined that power by a figure a little too broad; but he was well satisfied of his meaning, even before he had made the explanation. Congress, Mr. H. said, possessed the same power of legislating over the Territory as it had over the District of Columbia; and it was a legislation over these Territories, subject to the stipulations of the Constitution of the United States. No one would contend that they could regulate the religion of the Territories, nor that they could quarter troops on the inhabitants in time of peace, because it was prohibited by the Constitution. They might legislate, subject to the rights of the People of the Territories, but they could not take the property of these individuals, and convert it into this canal, without giving them an equivalent. Whether the attempt to make the Florida canal succeeded, or not, Mr. H. said he was willing to incur almost any expense, if there was a prospect of success. He would do almost any thing to avoid the navigation round the capes, the keys, and reefs of Florida. It is the bane of sailors; it is a Golgotha—a grave yard. He should not think it much of a loss to the United States were the whole Peninsula of Florida sunk into the Gulf of Mexico. He believed it would be a blessing to this country if they could dig it down with shovels and sink it into the deepest place in the Gulf. He thought that, within the last half century, it had been the grave of more persons than now inhabit the whole of both Floridas. He considered the present subject as most important in every point of view, whether as regarded the United States, or the mariners; and he would venture almost any thing to avoid this dangerous navigation. Mr. H. said the Western and South Western States were usually very modest in their claims; but they seemed to have adopted the maxim, never to lose any thing for want of asking, and perhaps it was a very good one; but he thought the better maxim was the one they were accustomed to teach their children —(though he did not look on *them* in that light,) if they wanted to get much, to ask for a little at a time. On their tables there was an appropriation bill, which appropriates a small sum for the purpose of surveys. If this doctrine was to be established, first, that they had a right to survey routes for roads and canals, and afterwards that they had a right to make them—a doctrine which he had always combatted—yet, if he was to be beaten in that, he agreed with the gentleman from Virginia, that, if they broke open the chest and took out the money—though, Mr. H. said, he protested either against breaking open the chest or giving up the keys—give him his share. A little money is to be applied for this purpose of surveys, and surveys have been made in almost every State and Territory, except in Maine, the *Ultima Thule:* a place which had been quite disregarded. Mr. H. concluded by saying, if the amendment prevailed he should be constrained to vote against the bill.

Mr. FINDLAY of Pa. said, this bill contemplated nothing more than to make a survey to ascertain the capacity of the country for improvement—a thing which they had been in the practice of doing for several years. Mr. F. was against the proposition, that the United States had the power to make roads and canals through the sovereign States, without their consent; but he did not think they were warranted in drawing the inference that they possessed this power from the circumstance of employing the United States' engineers, to ascertain the capacity of the country for improvement. He thought this canal was important to all the States bordering on the Mississippi, and the tributary streams. At present, there is only one market for the sale of their produce; but, if this canal was found to be practicable, they would have a choice of markets; and there would be another advantage to be derived from it—in case an epidemic raged in one place, they might proceed to another. He was, therefore, in favor of the amendment.

Mr. HARRISON, of Ohio, offered a few remarks in support of the bill and the amendment, both of which he considered of great importance. The gentleman from Maine thought the new States were not remarkable for their modesty, and that, on all occasions, where they could get any thing by asking, they never failed to demand it. Mr. H. said he had never known that the portion of country which the gentleman came from, was remarkable for its modesty; and, if it was, the gentleman himself was in a fair way to get rid of it: for he had told them, he was about to ask for something for his *Ultima Thule*. Mr. H. said he should not have noticed the remark that fell from the gentleman from Virginia, (Mr. RANDOLPH,) on his own account: for it was a matter of indifference to him, what that gentleman thought of the persons who had the good or bad fortune to exercise the appointments of Governors of Territories; but it was necessary to defend his constituents. He represented a State, the inhabitants of which understood all the duties, and were alive to all the feelings of freemen, as well as that State which the gentleman himself represented, and for which he (Mr. H.) had the greatest respect. Mr. H. said he had, for twelve years, exercised the power of *Satrap*, and, he trusted, during that period, he had never forgotten that he was an American citizen; and that they were citizens for whose benefit the power was conferred upon him. There was evidence now in this City to shew, that one, at least, of the very respectable States that composed the Territory that he had the honor to govern, had very different feelings on this subject, from those which were entertained by the gentleman who had alluded to the subject.

Mr. HAYNE, of S. C. thought a few moments reflection would satisfy the gentleman who had offered the amendment, that it involved a principle different from that which was involved in the bill. When questions agreed in the same principle—if, for instance, it was proposed to act on a single case, there was no reason why you should not embrace others of the same class: but, when it could be shewn that an object, which every one agreed was a proper one, would be jeopardized by being connected with another of a different character, then they certainly ought not to be placed together. In the present case, the original proposition was to make a survey through a *Territory* of the United States, for the purpose of ascertaining whether an object was practicable, which all admitted to be very desirable; and it was now proposed, as an amendment, to make another survey through a Sovereign State, without a provision for the consent of that State, when gentlemen well knew, that there were several individuals on this floor who believed that the power of the General Government extended to the one case and not to the other. Without entering into the argument on the subject, Mr. H. said, it appeared to him that the two subjects ought not to be connected together, because they involve, in the declared opinion of many gentlemen, a different exercise of power. The gentlemen from Tennessee, and from Maine, had both stated this to be their opinion. It would, he therefore thought, be best to finish one subject first. Let us ascertain, by a survey, whether the ship channel could or could not be cut across the Florida Peninsula, over our own Territory, and then it would be time enough to proceed further, and inquire whether this additional survey, from the Chattahouchie to the Mississippi, would be necessary, and was

fairly within our constitutional powers. He would intreat the friends of this measure not to embarrass it by a proposition differing somewhat in principle, and also in its details.

Before he sat down, Mr. H. said, he would notice a remark that the gentleman from Virginia, (Mr. RANDOLPH,) had made, in speaking of the State he (Mr. H.) had the honor to represent, though not in any terms of which he complained. He had asked, whether South Carolina had received any portions of the favors of the Federal Government, in this respect, and whether some of her roads did not need it? It so happened, Mr. H. said, that he never had, like the gentleman from Virginia, travelled the road to which he alluded; he, therefore, could not say what was its present condition; but he would inform the gentleman that the State of South Carolina, within a few years, had expended nearly two millions of dollars in cutting its own canals, and making its own roads; and if that gentleman should ever honor that State with another visit, and accept of the hospitality of its citizens, he would find the ways open, and in good order, and he would, he hoped, have a pleasant journey. As regarded the favors of the General Government, Mr. H. said, it was true they had received none. Though their harbors had been surveyed with a view to fortify them, the works had not yet been begun. They had never asked for favors, and were not much in the habit of complaining; but, when they did ask, he hoped they would not be refused.

Mr. RANDOLPH said, the gentleman from South Carolina had misapprehended him; and it was probable it arose from the clumsiness of his (Mr. R's.) own expression—a fault to which he was afraid, from the consequences that had followed his addressing this body, he was too much addicted. He did *but* mean to state that there was a distinction between these questions, taken upon political metaphysics—between the power of Congress within a State, and over a Territory, taken upon political metaphysics—but he was almost sick of political metaphysics. He did not believe that Congress had all the powers within a State, that they had within a Territory; but he did not see the difference between Congress putting their hand into his pocket, for the purpose of cutting a canal in the State of Alabama, which was a Territory yesterday; or in the Territory of Florida, which will be a State to-morrow. Some of the earliest lessons he received in politics, Mr. R. said, were under that great teacher, old Roger Sherman; and another great teacher, the most sagacious man, perhaps, that Virginia ever bred, old George Mason. They always went for the substance of the thing, and not for the shadow. Sherman's rule was, give me the vote, and take the argument. He was for the practice; as the gentleman from Maine said, he was for the money—keeping it within the Treasury of the United States, or in the pockets of his constituents, where it was more safe to lodge it than in any Government under the Sun, and from which it was Mr. R's belief, it ought to be, by no Government that consults the interest and happiness of the People, ever taken, without real and obvious necessity. In regard to this necessity, in regard to this Scylla and Charybdis, it has been about as much exaggerated, as in the old story that we have read of in our youth, in the blind old man of Scio's Rocky Isle. Go to the Insurance Offices and ask what is the insurance against the sea risk, pirates and all? Was it ten per cent.? It was long, Mr. R. said, since he had any thing to do with the Treasury; it was long since he had devoted his mind to statistics—to such minutiæ; but he was convinced, that insurance of the United States, to no part of the world, even doubling Cape Horn, amounted to ten per cent. A gentleman near me, of commercial experience, says it is from one and a half to two per cent.

Mr. R. said, he did expect that, when the gentleman from South Carolina gave him so warm an invitation to his native State, he would have reminded him that the first step in this, as in some other cases, constituted the chief difficulty—he meant from this place to Fredericksburgh—the great Serbonian bog between Occoquan and Chapawamsic. He would only say to the gentleman from South Carolina, that such was the hospitality of his reception, when in that State, that he did not require an invitation to repeat it. The hospitality of South Carolina was proverbial.

Mr. R. was very sorry, that, in the use of ridicule as an argument on this floor, he had fallen under the censure of any member, but he should be permitted to take shelter under a high authority—one of the strong positions on the continent of Literature. As this very high authority had asserted that ridicule was the best weapon by which to cut up great things, *a fortiori*, it must apply to little ones.

He could not agree, with the gentleman from Maine, that Congress possesses the same power over their other Territories that they possess over the District of Columbia; and why so? Because it was not necessary for him to tell the gentleman from Maine that *nullum simile est idem*. The Territory of Florida or Arkansaw is a Territory, and the Territory or District of Columbia is a Territory; and so far they are alike—as like as Macedon and Monmouth; there is a river in Macedon, and there is a river Monmouth—so says Fluellen; and there are salmons in both: this was to prove the parallel between Alexander the Great and Harry the Fifth; but in no other respects, but that they are called Territories, is there any similitude, much less identity. Indeed there is not even a similarity—not even in name. What are the words of the Constitution? Mr. R. said he was very sorry that this book [holding up the Constitution] was so seldom resorted to. It was like the Bible, in which we kept receipts, deeds, &c: and never looked into it except when we happen to want them; and even then we are so little in the habit of using it, that we forget where they are mislaid. The words of the Constitution are these: "Congress shall have power to exercise exclusive legislation in all cases whatsoever, over such district, (not exceeding ten miles square,) as may, by cession of particular States, and the acceptance of Congress, become the seat of Government of the United States, and to exercise like authority over all places purchased, by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." Here, said Mr. R. was their authority over the District of Columbia; which, adopting the nomenclature of the Constitution, was not even a Territory—and now for the authority over the Territories. "The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the Territory or other property belonging to the United States." If Congress possess the same power over the other Territories, Michigan for instance, that it possesses over the District of ten miles square, then Michigan could never become a State—and he should not be very sorry to hear it. Could this ten miles square ever become a State? No, it could not. If it were to become as populous as London, and the district ten miles round London, it never could become a State; it never could have a Representative in the other branch of the Legislature, or two Senators on this floor. It could only have a Delegate, to speak, but not to vote; and he was not quite certain that the Constitution would authorize even that. What was the case with Indiana, Ohio, Illinois, &c.? They were under a certain ordinance, which will live forever in the statute book and in history, a monument (he was sorry to say it) of the folly, the infatuation of his parent State. They are, if you please, a Territory over which Congress shall have power to make all needful rules and regulations. Does that sound like omnipotent sovereign authority? But let that pass. But they are in an inchoate condition—They are—as old Lilly

hath it, in the future in *rus*—about to become a State. And is it possible? I cannot believe that the authors of this instrument, who were very sagacious men, though their sagacity did not, because it could not—it was not in the nature of things—it is not in the nature of man—that it should extend to the point of seeing how this political machine, when they put it into operation, would work. I cannot believe that they intended, by "needful rules and regulations respecting the Territory," any such monstrous grant as this—that is now claimed for "The Congress." We have had to cobble several parts of it, and we are now tinkering the very same part of it again. Such is political foresight. I hope to be permitted to speak as a plain and unlettered man. I never shall enter into a dispute on the subject of philology as long as I live. I speak in the plain vernacular tongue, level not only to the comprehension of this august assembly, but to that of my constituents, the People, the State of Virginia. Men commence with the control of things—they put events in motion—but after a very little while, events hurry them away, and they are borne along with a swift fatality, that no human sagacity or power can foresee or control. All Governments have worked so, and none more than ours—no man ever supposed that the British Constitution, taken theoretically, was to produce the present result; no man ever supposed that the different French Constitutions, with their councils of ancients and their councils of youngsters, were to turn out as they had done. A government on paper is one thing—it is such a government as we find here in this book—and a government of practice is another thing—it is such a government as we find here—in this body I mean. The authors of the Constitution would never have used separate sets of words to convey one and the same thing. If they had been scriveners from the Inns of Court, and wanted to draw out their parchment to the greatest professional length, though they might have used the set of words applied to the District, they would have used the same set of words applied to the Territory—but you see there are two distinct, and in some regards, discrepant grants of power.

I have learned a lesson to-day, (said Mr. R.) which I hope will not be thrown away upon me; that is, hereafter, when I want to record my vote on a question that I conceive to be of consequence in its principles, however regarded by others, not to be betrayed into a discussion, even of that principle, where I know discussion will do no good, or into details, when the details are quite foreign to the matter in hand. I accord my thanks to the Senate for the patience with which they have heard me, and I promise them not very soon to trouble them again.

Mr. HOLMES offered, in reply to Mr. R. a few reasons for the difference between the phraseology of the two clauses, and then said, in reply to the gentleman from Ohio, (Mr. HARRISON,) he did not, when he observed that, from the modesty of his Western brethren, they never lost any thing for want of asking—he did not intend any disrespect to their very respectable Representative. If the People required him, he was obliged to urge their claims. He did not wish to enter into any discussion with the gentleman as to which of the two possessed the most modesty. If they were to agree to renounce their modesty, they would have no difficulty in doing it, and their intimate friends would probably not observe the loss.

Mr. MACON, of N. C. said, the opinion had been expressed that, while the Territories remain such, it was competent for the Government to make improvements in them; but, suppose improvements begun, and before they are finished, the Territory becomes a State—what is to be the consequence? The moment a Territory becomes a State, the General Government must cease to act, and, if it cannot go on, all the money and labor expended may be thrown away. In the work now proposed, Mr. M. said, they ought to have proceeded as in all other similar objects—they ought to have estimates of the cost before they begin the work. As for himself, he did not now, and never did, like these Territorial Governments; and, by this course of making improvements in them, it only retards their becoming States: for, when they acquire the requisite population, they will still put it off, until all the improvements they desire are made. One wants a canal, another a road, and when they get all they want, they come into the Union flourishing States, with nothing more to ask.

Mr. M. thought gentlemen in an error when they spoke of ten per cent. being charged for insurance to Cuba; he was under the impression it was never so high as that, and now, he understood, it was from one to one and a half per cent., and this includes the dangers of the coast, particularly the two Capes of North Carolina, &c. Mr. M. did not agree with Mr. HOLMES, about sinking this Territory in the Gulf of Mexico; he had rather have the land than so much more water. This Territory of Florida was, by the way, a strange country; sometimes it is very good—no country like it—then, again, it is so worthless it is not worth having, and to be sunk in the sea.

Mr. M. said, he did not like to go on in this way—the Government was constantly gaining power by little bits. A wagon road was made under a treaty with an Indian tribe, twenty odd years ago; and now it becomes a great national object, to be kept up by large appropriations. We thus go on by degrees, step by step, until we get almost unlimited power. Little things were often of great importance in their consequences. The Revolution in this country was produced by a trifling tax on tea. There were five or six different ways found out of getting power—by construction, by treaty, by implication, &c. He was not willing to take any of them. He was willing to execute the Constitution just as it was understood by those who made it, and no other.

Mr. M. concluded by saying, there were constant applications before Congress for these objects; yet nothing was more clear to him than that, if they could be executed with profit, they would be done by private enterprise, and that it was only when the case was different that Congress was appealed to.

Mr. BRANCH, of N. C. did not wish to detain the Senate any further than to assign the reason for giving the vote which he should give. He considered the Territory of Florida as the property of the United States; it was an infant State, and he considered it as the bounden duty of Congress to foster and cherish this property, and to lead it to a state of maturity as speedily as possible. They must nurse the Territories; they were constrained to do this as regarded their natural offspring, and they were under the same necessity as regarded the Territories, which would hereafter become States. The unappropriated lands in the Territory of Florida belong to the United States, and whatever was bestowed for the work in contemplation would be amply repaid, at a period not very remote, by the enhanced value of the lands which would there be brought into market. Mr. B. perfectly coincided with the gentleman from Tennessee, (Mr. WHITE,)—doubting of the constitutional right of the United States to cut roads and canals through the States, he had hitherto abstained from exercising it; but as regarded the territory, the objection did not seem to exist. Mr. B. said he should, on all grand questions, feel himself at liberty to vote for every measure that had a tendency to advance the general weal, and should feel himself bound to support the interest of the State he represented, so far as he could do it consistently with a conscientious discharge of his duties. This was the course he should pursue, and he knew the People at home too well to believe that they would not sustain him in it.

Mr. HENDRICKS offered some further remarks in support of the amendment. It only proposed to do that which was doing every day, and which the Engineers

were even now employed in doing, between this place and New Orleans. It had been suggested to him, since this discussion had commenced, to withdraw the amendment, and that the Secretary of War would have power to order this survey. This, Mr. H. contended, was a strange circumstance; that the Secretary of War should have the power to do that which this House doubted its constitutional power to authorize. Amongst the several maps and charts with which the committee had been furnished, there was one which tended to show that, of the survey alluded to, the greater part had already been made, under the authority of the War Department, probably for ascertaining suitable sites for fortifications. He thought that they had so far progressed, and had so often adopted this principle, that he could not have expected that any objection would have been made on constitutional grounds, to the section before them; but these objections having been made, if they were to meet them on every proposition that was made, they might as well meet them on this question as on any other. He should, therefore, be disinclined to accede to the wish of those who wished the amendment to be withdrawn, even if he had the power.

Mr. MACON said that, whether he voted liberally or not liberally, he would willingly leave it to his constituents to decide on his votes. The fact was, in regard to the anticipated augmentation of the value of lands, in consequence of making the canal in the Territory, that the highest lands ever sold by the Government were sold where there was no improvement, not even a road—he meant (so he was understood) Madison county, in Alabama. As to voting the public money liberally, Mr. M. said he wished to see every thing saved that could be saved, to meet those sixteen millions of the public debt which fell due this year. The Secretary of the Treasury had said we must borrow to meet it. Mr. M. thought it best to husband our resources, and pay off as much as we could, and satisfy every body that there is a prospect of paying the debt off. He repeated, he did not think it was necessary to expend money in the Territory in this way, to advance the value of the lands. He had no doubt the land would sell as fast as the Indian title was extinguished. It was the country where sugar and other valuable articles would be produced, and the bounty on sugar would make the lands sell fast enough.

Mr. BRANCH said he had ever yielded to the force of the arguments of his worthy colleague, and to his long tried experience, and he should examine well the ground on which he stood, before he ventured to differ from him. He took it a little unkind in his colleague to put the construction he had done on the remarks he had made to the Senate. He should have considered the different grounds on which they stood; a patriotic devotion of thirty years to his country had placed him (Mr. M.) firmly in the confidence of his friends at home. Mr. B. said no man ever paid more respect to his talents and real worth than he did, and he did not wish to contrast any course he should deem it his duty to pursue, with the course of his honorable colleague. He appreciated his motives; he venerated the man; but his conscience told him he must pursue a course, on this occasion, which differed from that of his honorable colleague. His friend, in the course of the remarks he had made to the Senate, had alluded to the vote given yesterday in relation to authorizing the opening a road from Tennessee to Mississippi; and he did vote for that appropriation: for, not only had Congress the right to make this appropriation for a road through the Indian country, acquired by treaty, before it came into the Union, but it was an obligation on the General Government to complete the work it had commenced, and he had therefore voted for it.

Mr. MACON protested that he meant no improper reference to his colleague, in the few remarks he had made. He never entertained a thought that any one was to be influenced by the opinions of another. He was very sorry that his colleague had misunderstood him.

Mr. ROWAN, of Kentucky, said, that, so far as related to the disbursement of money, he was one of the liberals. He was not one of those who thought it a blessing to have an overflowing Treasury. Whenever there was more money in the Treasury than sufficed to meet the current expenses of the Government, it belonged to the People, and it ought to be distributed amongst them to swell the tide of industry. The survey proposed by the bill, as related to the Territory, he conceived to be a very important measure; and he had no doubt as to the powers of the United States to expend the money within the Territory; but, so far as he was at present informed, he was of opinion, with those who contend that the Government has not the power, without the consent of the States, to expend their money on the soil of the State. The territory of the State belongs to the State as a sovereign State; and was a sovereign State to talk about being the object of a favor? Was a sovereign State to demand a favor, and receive it in the shape of a favor? Was it consistent with the sovereign character so to do? The very term implied component power, wealth, and every thing that was necessary for the existence of a State. The wealth of a State, whether of the United States or of an individual State, in his opinion, did not depend on the surplus millions in the Treasury, but exists always in the muscles, and enterprize, and hardihood of its citizens; and this is a source that could be drawn on for every reasonable purpose, and at all times when the wisdom of the State chose to make the draft. He considered an appeal to the United States, by a State, in the shape of a favor, as a renunciation of its sovereign character. He was one of those who believed not only that things influence terms, but that terms influence things; and when they used the language of dependence, they would prepare the temper of the People for the reception of the thing; and in this discussion, and all such discussions, he wished terms to be excluded that were incompatible with the intrinsic meaning of the substance to which they are applied. In inquiring into the power of the State, he did not look into the Constitution to find what powers were conferred; he looked into it to see what powers were denied—what the People have denied to themselves. Every thing is subject to their will, and the Constitution is but the delineation of the manner in which this will is to be exercised, in what we call the Government: and what is not fairly denied to the State, exists by the social compact.

In the General Government, they were, Mr. R. said, to look into the Constitution for all the power they possessed—there was no such power given in the Constitution; and he believed, with deference to the opinion entertained, that, to convey the exercise of such a power, was incompatible with what was the acknowledged power of the States. There was no power given to expend money in roads and canals in the States; there was no such power specifically given to the United States; and when once it was settled in this House that power could be derived to this Government by construction, you have discovered the means by which the whole power of a State might be frittered down and annihilated. Construction is a thing of inconceivable dilation. But without going into political metaphysics, there was one aspect of the case which should present itself on all such questions. We are apt to say, this Government has power, and that Government has power; and the general phraseology seems to import, that this Government has a double sovereignty—the sovereignty of the United States, and the sovereignty of the State. Mr. R. thought there was but one sovereign in America, and that is the People; the public will is the sovereign power; and there are two sovereign machines—one for external purposes, and one for internal purposes. The People within a State are sovereign, and that State is li-

mited by the restraints imposed in their own Constitution, and by the power conceded to the General Government. Imposed by themselves, in their own Constitution, or in the Constitution of the General Government, their will is the power, where these restrictions are not found. When we hold any communion with Foreign Powers, we put on this armour—we use the machinery of the United States' Government for this purpose; and with that machine is connected the different State agents. The governing power is not inherent in the Legislature of a State or Nation; but they are machines through which the real governing power, the will of the People, operates. They are their agents. As to the Territory, then, they must either govern themselves, or they must look to some other quarter for government, or they must have none. They do not govern themselves, and the Constitution has provided they shall be governed by the sovereign will of the People, as displayed in the national machinery, by this General Government.

As regarded this improvement in the Territory, Mr. R. said it must always be a question of expediency; and believing it to be so, he was prepared to vote, and not only prepared, but he was eager to vote, to further the objects of that part of the bill which relates to the Territory of Florida. But he could not, consistently with his present impressions, vote for that part which relates to the States of Mississippi, &c. If the amendment prevailed, he should vote against the bill; and he thought it would have been most expedient, in many points of view, not to have brought forward this question, so far as it relates to the States in connection with the question, so far as it relates to the Territory.

Mr. KANE, of Illinois, said this was a question he never had an opportunity of hearing discussed in Congress before; and he should not now rise to say one word, but for the intimation that there was no doubt but this question could be carried by a sufficient number of votes, connected with the further intimation, that most of the speaking on this subject had been made by those who expressed doubts on the constitutional question. He did not see that the constitutional question raised here, was essentially connected with the object of the bill. There was nothing in the word *road* or *canal*, which, *ex vi termini*, imported an object of internal improvement. Was a canal, proposed to be cut across the Isthmus of Florida, an object of internal improvement? Did not all the reasoning that had been employed on this subject, go to show, that its object was to protect commerce? And the bill, as proposed to be amended, had in view the further object of the further protection of commerce, by opening a communication to the Mississippi river. The amendment proposed to appropriate a certain sum to make an examination; and when that examination shall have been made, if the report should go to show that the object of this canal was only for the purpose of internal improvement, then would be the time to raise this objection. But, if the report went to show that the further object was to accomplish the protection of the commerce of the United States, then this question could not arise. If it went to show that it would be an immense saving to the Treasury of the Nation, and, moreover, afford protection to a greater degree than would be afforded to the commerce of the United States by cutting a canal, than by building a fort, he would ask why the constitutional question should, in that case, necessarily arise? He merely wished to give his reason why he should vote for the amendment proposed by the committee. He viewed the object of the bill as no more unconstitutional than those laws which provide for the survey of our own coast. Suppose the Engineers had reported, that the best way of protecting the commerce of North Carolina, was by cutting a canal along the coast, would gentlemen say, this canal was not to be cut, because canals are used as the means of facilitating internal commerce only? He thought not.

Mr. KING, of Alabama, did not intend to have said a word in the discussion of this subject, if he were not placed in a situation that required him to explain his reasons for the vote he should give. He was as much opposed to the violation of the principles of the Constitution, as any man on this floor; and, in regard to those constructive powers, so dangerous to the liberties of the country, and to the rights of the People of the sovereign States, he should be the last man to attempt to exercise the power under such construction. But he thought the Constitution had nothing to do with the subject now under discussion. Where was there any violation of State rights in authorizing the Government to make this survey? Did they not do it every day, under an express appropriation, year after year, without any of those fears about the Constitution? If the Government of the United States had not the power of employing the Engineer Corps, to examine the state of the coast, with a view to fortify the harbors, rivers, &c. to facilitate the commerce of the country, what, he asked, were the powers of the General Government? He should vote in favor of this amendment, under the impression that it was right and proper that the Government should be informed of the advantages which would result from making this communication, by the examination of enlightened men; and when the proposition was brought forward to make an appropriation to open any canal, within the limits of a State, the assent of that State not being obtained, he should vote against it.

The debate continued until four o'clock, when the question being taken on the amendment, it was rejected by the following vote:

For the Amendment—Messrs. Barton, Bouligny, Chase, Findlay, Harrison, Hendricks, Johnston, of Lou. Kane, King, Marks, Noble, Robbins, Ruggles, Seymour, Thomas, Williams—16.

Against it—Messrs. Bell, Berrien, Branch, Chandler, Clayton, Cobb, Dickerson, Eaton, Edwards, Ellis, Hayne, Holmes, Johnson, of Ken., Knight, Lloyd, Macon, Mills, Randolph, Rowan, Sanford, Smith, Van Buren, VanDyke, White, Willey, Woodbury—26.

The bill was then ordered to be engrossed for a third reading, without a division.

Wednesday, February 15, 1826.

This day was principally spent on Executive business, and of course with closed doors.

Thursday, February 16, 1826.

This day was spent in the same manner as yesterday.

Friday, February 17, 1826.

The same: and adjourned to Monday.

Monday, February 20, 1826.

The day was spent on Executive business, except receiving a few petitions, &c.

Tuesday, February 21, 1826.

BANKRUPTCY.

Mr. HAYNE, of South Carolina, from the Committee to whom was referred a resolution to inquire into the expediency of establishing a uniform system of Bankruptcy, reported a bill "to establish a uniform system of Bankruptcy throughout the United States;" which was read, and ordered to be printed.

Mr. HAYNE, in reporting this bill, said that the committee to whom the subject had been referred, had bestowed on it the attention due to its importance; and though they deeply regretted the delay which had taken place in submitting the bill to the consideration of the Senate, yet he could assure them that this had arisen unavoidably, from the great difficulty of arranging the details of a system so extremely complicated, and of such

immense magnitude. The Committee were fully aware that it was not possible to digest a plan which would be free from substantial objections, and it was altogether hopeless to attempt to conciliate in its favor universal approbation. The evils, however, resulting from the inefficient and contradictory laws now of force in the several States on this subject, were so severel felt;—such were the frauds to which they gave rise, and so great the injustice practised under them; that the committee were strongly impressed with the belief that some effectual remedy ought, at least, to be attempted.

The Committee, he said, had taken up the subject with a sincere desire effectually to secure the just rights of creditors, and, at the same time, to protect the honest and unfortunate debtor, from oppression. These were the leading objects of the whole bill. The Committee had not felt themselves authorized, in a subject of this nature, to indulge in speculation, or to adopt theoretical views. They had taken as their guides, the former Bankrupt Law of the United States, and the bill concerning Bankruptcy, which had passed the Senate in 1821, with the improvements and modifications that had either been suggested by the former experience of the country, or by the able men who had repeatedly, of late years, brought the subject to public view. The bill which passed the Senate in 1821, was, substantially, the same as that which was reported to the House of Representatives in 1820. It is well known that it had been revised and corrected by, and finally received the approbation of, some of the most profound lawyers and ablest statesmen this country has produced. Taking this bill as the basis, the committee, Mr. H. said, had carefully compared it with the provisions of the old Bankrupt law and the new British Act, and now submitted the result of their labors to the indulgent consideration of the Senate.

Mr. H. further stated, that it was a fortunate circumstance, and not a little remarkable, that the Bankrupt system which had been in operation in England ever since the time of Henry the 8th, should have received, during the last year, a full revision—and that a complete system of Bankruptcy, founded on an experience of three hundred years, should have been there established in a single Act, providing for the repeal of no less than twenty-one statutes, and embracing within itself every provision which time and experience had shown to be necessary. Of the flood of light shed on the subject of Bankruptcy by this Act, the Committee have availed themselves, and had incorporated into the present bill, so many of the provisions of that act as appeared to them to be valuable, and suitable to the condition of the United States. Having thus explained the course which the committee had pursued on this subject, Mr. H. said he would only now add, that they had deemed it advisable to submit to the consideration of the Senate, whether, in adopting a system of Bankruptcy chiefly applicable to mercantile men, it would not be proper to provide for a system of voluntary Bankruptcy for the rest of the community. The committee, he said, were aware of the difficulties inseparable from this question—they know that the fate of former bills have depended, and that the fate of this may depend, on the decision of the question, whether the Bankrupt system shall be extended to persons, other than traders; nor are they unacquainted with the constitutional objections which have been raised against such an extension of the system. But the committee had, notwithstanding, deemed it advisable to report the bill in the shape which would certainly be most acceptable—leaving it to the Senate to decide on the weight of the objections which may be urged against it. With these brief explanations of the views of the Committee, Mr. H. said he would ask leave to report the bill.

This bill was read the first time by its title, and 600 additional copies thereof were ordered to be printed for the use of the Senate. [The bill is the longest ever reported in Congress, on this subject, embracing no less than ninety-four sections.]

WEDNESDAY, FEBRUARY 22, 1826.

After receiving some petitions, &c. the Senate went into the consideration of Executive business, and remained with closed doors till past five o'clock.

THURSDAY, FEBRUARY 23, 1826.

Spent in Executive business.

FRIDAY, FEBRUARY 24, 1826.

After spending some time on Executive business, the Senate adjourned to Monday.

MONDAY, FEBRUARY 27, 1826.

The Senate met at 12 o'clock, and, after the Journal had been read—

Mr. HAYNE, of South Carolina, rose, and said: It becomes, Mr. President, my melancholy duty to announce to this House, that my respected colleague, the FATHER OF THE SENATE, is no more. After a faithful and uninterrupted service in this body, of more than twenty-one years, he has fallen, in the fulness of his honors, and in the midst of his usefulness. Though he had lived to see almost every friend who had entered with him into Public life (and all with whom he served were his friends) successively retiring from the busy scene, or swept from the stage of existence—though he had for many years found himself the *oldest Member* of the Senate, yet he had not much passed the meridian of life, and we might have flattered ourselves with the hope that a long course of honor and usefulness was still before him. Mr. GAILLARD took his seat in the Senate on the 31st of January, 1805, and it is perhaps the highest tribute we could possibly pay to his memory to state, that he was four times successively re-elected to his high trust, and retained to his last hour the confidence of his fellow citizens. In 1810, (when he had been but five years a Member,) Mr. GAILLARD was elected PRESIDENT PRO TEMPORE of the Senate, to which office he was *nine times* most honorably chosen, having, for a period of *fourteen years*, presided over the deliberations of this Assembly. I am sensible that it is not admissible, on an occasion like the present, to indulge myself in a studied eulogium on the virtues of our departed friend; and I deeply regret that the office of touching briefly on his character, had not fallen to the lot of one who could have spoken from long experience, and in the eloquent language of an early and well-tried friendship. My personal acquaintance with my late colleague was comparatively of recent date. Since I have served with him, however, in this House, the mutual exchange of kind offices has never been, for a moment, interrupted, even by those unhappy differences of opinion which plant thorns in the path of the politician, and often estrange the dearest friends. Judging of his past course by what I have myself witnessed, and by the concurring testimony of his associates, I will not be accused of doing more than simple justice to the memory of our friend, when I say, that, during a term of service altogether unexampled in this body, he conciliated universal esteem and confidence. In his private intercourse with the Members, his mildness and urbanity won all hearts. In fulfilling his duties as a Senator, the solidity of his judgment and his dignified and unostentatious deportment, elicited the esteem and commanded the respect of his associates. But it was in the performance of the high duties of the PRESIDING OFFICER of the Senate, (which he discharged for a longer period than has fallen to the lot of any other man) that the conspicuous traits of his character were most fully developed. The ease and fidelity with which he fulfilled these duties,

—always arduous, and often of the most difficult and delicate nature—his perfect command of temper—exemplary patience—strict impartiality, and clear discernment—have never been surpassed, and seldom equalled. Whatever might be the state of his health, no labor was too great for his industry, no privation too severe for his patience. So thorough was his acquaintance with Parliamentary forms, and especially with the practice of this House, and such was the confidence reposed in his justice, that his opinion on all questions of order was considered as a binding authority. Though Mr. GAILLARD was not in the habit of engaging in debate, yet, when it became necessary for him to explain the grounds of his decision, or to shed the lights of his experience on questions before the Senate, no man could express himself with more simplicity, perspicuity, or force. I know not how better to sum up the merits of the deceased, than in the words of my venerable friend, (Mr. MACON, whose eulogy is no common praise,) and who lately declared "that Mr. GAILLARD was designed by nature to preside over such an assembly *as this*"—thus assigning to him, as his appropriate sphere, a station of no common dignity, and duties of a most exalted nature. Such was the man whose loss we are this day called upon to deplore. On this occasion it becomes us to mourn; and I know, that, in paying the highest honors to his memory, we are giving utterance to the feelings of every Member of the Senate, by whom the recollection of the virtues of our deceased brother will be long and fondly cherished.

Mr. DICKERSON, of New Jersey, then rose, and said: The honorable gentleman from South Carolina has spoken of the character and services of his late distinguished colleague, in a manner highly creditable to the feelings of his heart. The facts he has stated have already become a portion of the history of this country. The services of his late colleague are to be found in almost every page of our statute books and our records, for the last twenty years. There are other facts, however, connected with his character, for which his memory will be more cherished by his intimate friends, than even for his public services. His urbanity, his uniform mildness of deportment in his intercourse with his associates in this body, and while presiding over our councils, we have all witnessed; but the innate goodness of his heart could only be known to those with whom he lived on terms of intimacy. It has been my good fortune, said Mr. D. to be associated with him, as an inmate in the same families, for the last seven sessions of Congress—in which time, I have never observed the least approach to harshness or severity towards those with whom he associated, or the slightest departure from those rules, by which gentlemen ought to be governed, in their intercourse with each other; but, on the contrary, the most undeviating observance of the forms and customs of politeness, which give to social intercourse its greatest charm. For such a character, I could not but be inspired with sentiments of the most unfeigned attachment and respect. His society I have courted when he was in health—when in sickness, I have endeavored to soothe his moments of languor and distress; and I watched, with the most painful solicitude, the last ebbings of a life thus endeared to me. In the death of this distinguished individual, the country has lost an able and faithful servant—and I have lost a most valued friend—and I trust, that, while mourning over the loss of the Public, I have the indulgence of the Senate in thus deploring my own.

Mr. DICKERSON then offered the following resolutions, which were successively and unanimously adopted:

Resolved, That a committee be appointed to take order for superintending the funeral of the Honorable JOHN GAILLARD, deceased, which will take place at eleven o'clock to-morrow morning: that the Senate will attend the same, and that notice of this event be given to the House of Representatives.

Resolved, That the Members of the Senate, from a sincere desire of showing every mark of respect due to the memory of the Honorable JOHN GAILLARD, deceased, their late associate, will go into mourning for him for one month by the usual mode of wearing crape round the left arm.

Resolved, That, as an additional mark of respect for the memory of the Honorable JOHN GAILLARD, the Senate do now adjourn.

The committee of arrangements, appointed in pursuance of the first resolution, were Messrs. HOLMES, BERRIEN, RUGGLES, VAN DYKE, and FINDLAY.

TUESDAY, FEBRUARY 28, 1826.

This being the day appointed for the funeral of the Honorable JOHN GAILLARD, a Member of this body, no legislative business was transacted.

WEDNESDAY, MARCH 1, 1826.

Mr. RANDOLPH, of Va. rose, and said he wished to do what was with him a very unusual thing—not only to make a motion, but to make one asking information from the Executive branch of this Government. He had seen a proclamation purporting to have been issued by the celebrated General BOLIVAR. He had learned—and he had learned with satisfaction, as far as regarded the fame and reputation of that distinguished individual—that that proclamation had been disclaimed by the consular authority here as a fabrication; at least a fabrication so far as it related to that particular part of the proclamation which had attracted his attention. Mr. R. said he was glad of it; but although, said he, that proclamation may be a fabrication—and no doubt it is so—it is as unquestionably true as that proclamation is false, that the principles contained in that proclamation are the avowed principles of the renowned individual to whom I refer; they are the avowed principles of the Governments over which he exercises almost unbounded sway; they are the avowed principles of the People composing those States—if States they may be called which States are none—and therefore it is, said Mr. R. that I wish for some official information, —not to satisfy myself—not to delay any business that is, or may be, before the Senate; I do not wish to wait for it; but official information that may satisfy the American People as to the true character of those States.

It is well known, said Mr. R. that in his public message to Congress, the President of the United States has intimated to us, and to the world, through us, that an invitation of a certain character has been given to him, and that in consequence, ministers *will* be sent to the Congress about to be assembled at Panama. He hoped that the Ministers, whoever they might be, would be of that character and description who would labor under none of the odious and exploded prejudices, which revolted and repelled the fastidious Southern man from Africans—from associating as equals with them, or with People of African descent—that they may take their seat in Congress at Panama, beside the native African, their American descendants, the mixed breeds, the Indians, and the half breeds, without any offence or scandal at so motley a mixture. Mr. R. believed it was well understood as to the State—not the State in which this Congress is to be held, but in the immediate vicinage of the province where this Congress is to assemble—Guatemala—he believed it was considered as much a black Republic at this time as Hayti itself. There is, said Mr. R. a great deal of African blood in old Spain—in the South of Spain—though not all negro blood—from the opposite coast of Barbary. There is a further deterioration—if a deterioration it be—in the Creole Spaniards, in all the Spanish and Portuguese possessions, but above all in Guatemala, the immediate adjacent province to Panama, and in Brazil. Now these things said Mr. R. which are of no sort of importance to some

people, are of vital importance to that district and description of country, and not altogether contemptible, whether in point of extent or numbers, not quite unworthy of being taken into consideration in the deliberations and decisions of this body, and of the Federal Government. He would not detain the Senate farther than to suggest, that he had heard that this great man—he had no doubt he was a great man—a good man—there were a great many such great and good men—LAFAYETTE was one of them—at the commencement of the French Revolution—would not hear of any parley at all with what they called the imprescriptible rights of man; they played the whole game, they would not hear of qualification, and we see what this desperate game has eventuated in—extremes always beget one another. This General Bolivar, called the South American Washington—as every man, said Mr. R. now a days, who has commanded a platoon, is a Cæsar or a Hannibal, a Eumenes or Sertorius at least—so he is the South American Washington. I remember, sir, that when the old Earl of Bedford, when he was condoled with by a hypocrite, who wished in fact to wound his feelings, on the murder of his son Lord Russel, indignantly replied that he would not exchange his dead son for the living son of any man on earth. So I, Mr. President, would not give our dead Washington for any living Washington, or any Washington, that is likely to live in your time, Mr. President, or mine; whatever may be the blessings reserved for mankind in the womb of time. I do know—the world knows—that the principle of the American Revolution, and the principle that is now at work in the peninsula of South America and in Guatemala and New Spain, are principles as opposite as light and darkness—principles as opposite as a manly and rational liberty is opposed to the frantic orgies of the French Bacchanals of the Revolution, as opposite as a manly and rational piety is opposed to that politico-religious fanaticism, which, I am sorry to see, is not at work only in the peninsula of South America and new Spain, but has pervaded, or is pervading, all this country, and has insinuated itself wherever it can, to the disturbance of the public peace, the loosening of the key-stone of this Constitution, and the undermining the foundation on which the arch of our Union rests. No, sir; they are as different as light and darkness—as common sense and practice differ from the visionary theories of moon-struck lunatics.

The Message of the President is before the world. The President of the United States has told us that he *will* act, and that he has the power. Let him—let him act—let him act on his own responsibility; but let the American People—and especially that part of the American People—that portion of them who reside South of the Ohio, and South of Mason and Dixon's line—know what are the deputies whom hereafter we are likely to receive in return from them, in character and color to our Congress—that is what I want to see. I want this to open their eyes—I want, instead of public opinion re-acting on us from uninformed public bodies, however respectable; from toasts given at public dinners, however respectable the guests; a holy Alliance of liberty in opposition to a Holy Alliance of tyrants—I want the good sense of the People of the United States to be informed as to the fact; having the most perfect reliance on their decision when they shall have the facts, and having a disposition to submit most implicitly to that decision, whether it shall agree with my opinions or not: From these causes, I move that the President of the United States be requested to lay before the Senate such information as may be in the possession of the Executive, touching the principles and practice of the Spanish American States, or any of them, late colonies of old Spain, in regard to Negro slavery—I will submit the motion in writing.

[Having done so; and the resolution having been read—]

Mr. RANDOLPH again rose, and said he wished to supply an omission in the remarks he had made. It is, said he, generally of public notoriety that the Island of Cuba has been in a state of alarm from a threatened invasion from these Spanish American States; and that the chief cause of that alarm arises from the principles of those States in reference to this very question. Cuba, possessing an immense Negro population, which has been increased since the destruction of St. Domingo, incalculably, by importation, as well as by natural means—Cuba lies in such a position, in reference to the United States, and especially to the whole country on the Gulf of Mexico, as that the country may be invaded from Cuba in row-boats; and, in case those States should invade Cuba at all, it is unquestionable that this invasion will be made with this principle—this genius of universal emancipation—this sweeping anathema against the white population, in front; and then, sir, what is the situation of the Southern States? I throw out these only by way of hints; it would not be decorous, in a preface to a resolution, to enter into an elaborate argument, which I could do. This is one of those cases in which the suggestions of instinct are worth all the logic in the world—the instinct of self-preservation. It is one of those cases in which our passions instruct our reason. I shall not consider whether the President of the United States will send these Ministers or not—He says he will do it, and he is generally understood to be a man of his word—at least, as much so as to do what he has officially said he will do. But I must consider how far I feel disposed, by my vote, to pledge Virginia in the common cause of States possessing these principles—and to place our neutrality at the disposal of a belligerent Congress.

Mr. R. then gave notice that he should respectfully ask for the consideration of the resolution to-morrow morning.

AMENDMENT OF THE CONSTITUTION.

Mr. BENTON, of Missouri, from the Select Committee, to which was referred the proposition to amend the Constitution of the United States, with respect to the appointment of Senators and Representatives to offices under the Federal Government, made an argumentative report on the subject, of considerable length, and, it may be added, of much ability, concluding with proposing the passage of the following joint resolution, on the principle of which, the report states, the committee was unanimous:

"*Resolved, &c.* That the following amendment to the Constitution of the United States be proposed to the Legislatures of the several States, which, when ratified by three-fourths of said Legislatures, shall be valid, to all intents and purposes, as part of said Constitution:

"*No Senator or Representative shall be appointed to any civil office, place, or emolument, under the authority of the United States, until the expiration of the Presidential term in which such person shall have served as a Senator or Representative.*"

The report and resolution having been read—

Mr. DICKERSON, of N. J. inquired whether the committee had not agreed to recommend that the exclusion from office should apply not only to the time for which each Senator and Representative should be elected, but to one year thereafter?

Mr. BENTON replied, that the committee had not agreed on the precise terms of the resolution, but only on points—on the substance, not on the form. On the principle reported, the committee were unanimous.

Mr. RANDOLPH said he liked the suggestion of the gentleman from New Jersey, and not the less, said he, because it agrees with one of high authority, Horace, who says, "Nono prematur in anno."

The resolution was then, on the motion of Mr. BENTON, read the second time, and made the special order of the day for next Monday week; and, on the motion of

Mr. HOLMES, 1,500 copies of the report and resolution were ordered to be printed.

On motion of Mr. EDWARDS, of Conn. the Senate then proceeded to the consideration of Executive business, and continued with closed doors until four o'clock.

THURSDAY, MARCH 2, 1826.

NEGRO SLAVERY IN SOUTH AMERICA.

The Senate took up for consideration the following resolution, submitted yesterday by Mr. RANDOLPH:

"*Resolved*, That the President of the United States be requested to lay before the Senate such information as may be in the possession of the Executive, touching the principles and practice of the Spanish American States, or any of them, late colonies of old Spain, in regard to Negro slavery."

The resolution having been read, and the question being on its adoption—

Mr. HAYNE, of South Carolina, said he had listened with great attention, and certainly with much interest, to the eloquent remarks made by the gentleman from Virginia, (Mr. RANDOLPH,) yesterday, on the principles and policy of the new States of South America, in relation to the slave question. It was a subject on which no one, coming from the part of the country which he represented, could possibly be indifferent. The gentleman from Virginia had given us a clear, and, doubtless, a very accurate statement of the principles of these new States. Mr. H. believed, that the facts connected with this subject were notorious, and were as well known to the Senate now, as they could be from any communication the Executive could make in answer to the call proposed in the gentleman's resolution. Whether the Proclamation, attributed to the LIBERATOR, was genuine or not, this House and this Nation are not now to be informed that the new Republics were marching under the banner of universal emancipation. Mr. HAYNE was, therefore, induced to doubt the necessity of calling on the President for information which was already in their possession. Certainly such a call ought not to be made, unless there was some reason to believe that it would furnish us with some facts with which we are not already acquainted. Mr. HAYNE said, he did not rise to oppose the resolution, but merely to suggest the propriety of postponing the consideration of it for a few days, in order to give time for further deliberation as to the necessity of acting upon it. Having some doubts on that point, he hoped the gentleman from Virginia would not object to the postponement of the resolution to Monday next, which Mr. H. moved accordingly.

Mr. RANDOLPH then rose, and said, I had certainly not intended to have said one word more on the subject of this resolution, in case it should not meet with opposition; and, as a matter of courtesy, certainly should acquiesce in the request of the gentleman from South Carolina, if there was any probability of getting the motion taken up on a day fixed for the proposed amendment of the Constitution. But, at the same time, I hope that gentleman will pardon me for saying that the fate of my resolution reminds me of a very favorite old Spanish proverb of mine—for, although I am not very much smitten, or inoculated with the Spanish American fever, yet, the old Spanish proverbs are great and deserved favorites of mine, being perhaps the most pithy and pungent in the world: it is this—save me from my friends and I will take care of my enemies.

I did not apprehend, said Mr. R. that any gentleman here would have raised any opposition to this resolution. Sir, this session is drawing to a close I hope: for it will very soon be time to plant corn. Under existing circumstances, I wish this resolution to be acted on now; therefore, though it is no very great time from this to Monday, yet, as that day is assigned to a *special* order on the amendment of the Constitution, I cannot consent—and I hope the gentleman will pardon me in saying so—I cannot consent, by my vote, to the postponement—deeming it equivalent to a rejection of the motion—though, if it be the pleasure of the Senate to decide against me, I shall submit to it, as I always do to the majority, I hope with decency—but without the slighest change in my opinion—as to the expediency of the course proposed.

Sir, said Mr. R. I can say with a sincerity of heart that no man can question the truth of, that it is a matter to me of mortification and distress, that I have had so often, of late, imposed upon me, as I conceive, (whether truly or falsely,) the duty of throwing myself on the attention of this body. It has not been my habit elsewhere; it has not been my habit of late years more especially—Indeed, I have understood, since I took my seat in this body, that an imputation of a contrary nature—that I should be here an inactive member, a slothful public servant—was feared by some, even of my friends, and was the strongest amongst the objections of those candid adversaries, who damn with faint praise—to my being here at all, and while I disclaim that motive, it is possible that I may be unconsciously actuated by it. But, sir, under the circumstances in which I stand—in the place in which I stand—[Mr. R. was standing in Mr. TAZEWELL's place, who is absent on account of family sickness]—in the situation in which the State of Virginia is placed by the absence of my associate—and in which I am happy to say she is placing and has placed herself in array—in array against this Government—no, sir, not this Government, but the mal-administration of it—it is under these circumstances that I have been, as I conceive, bound in duty to offer my, perhaps, crude conceptions—but which have been as well concocted as long and patient thought could digest them—to the attention of this body. I know, sir, that the habit of frequently addressing this, or any other legislative body, but this body more especially—has a tendency to cheapen far greater talents than any that I possess, or ever laid claim to, and to impair the value even of the greatest abilities. I know, sir, that, in this body, which is in itself a *Congress*, consisting of deputies from sovereign and independent States, co-ordinate and co-equal; where the least is equally on a footing with the greatest—where a State, which sends but one member to the other House, is on a footing with one that sends forty, and on a footing there, too, under certain contingencies—foreseen and provided for by the Constitution, that, for any individual member too frequently to obtrude himself on its attention, is fatal not only to any little reputation that he may have happened to acquire in the course of his public life, but—what is of far more consequence—to his capacity to be useful to the Power that sent him here. It is a wise and salutary jealousy on the part of the Senate. I know, sir, that this is a body, above all others, in which they "shall not be heard for their much speaking;" in which "vain repetitions" do as little good as we know they will do in another place; and yet, sir, circumstanced as I am, I am compelled not only to break through that rule of propriety, which otherwise would restrain me, but to be guilty sometimes of those very "vain repetitions" also. May I hope to be pardoned for this, not only in consideration of the peculiarity of my situation—of my condition—but in consideration of a defect—whether of nature or of education, it is perfectly immaterial—perhaps proceeding from both—a defect which has disabled me, from my first entrance into public life, to the present day, to make what is called a *regular speech*—which, sir, like some other regular things, although constructed according to every rule of criticism, is sometimes extremely dull—not always convincing. There is no positive fault in the speech, or composition; the unities are all preserved—there is no

fault to be found with it, but as to its general effect, which is a want of effect altogether. Sir, although I give to the subjects submitted to the Senate the most patient consideration; though I turn them, and re-turn them, over and over again, in my mind, yet when I come to utter the results of that rumination, I am compelled to do so as an irregular—rather as a partizan officer than according to the regular art military; as an improvisatore—that I believe is the name which the Italians give to those who speak, not without much previous thinking indeed, but without the book, or even without notes. Sir, in respect to these regular arguments, it has often struck me that they resemble, in more regards than one, the modern invention of a chain bridge—which, provided the abutments and fixtures are perfectly strong, and provided there is no defective link in the whole chain—are amongst the finest and most useful specimens of human ingenuity: but, sir, when we reverse the proposition—when the abutments are not sufficient—and there is one single link which is defective—one is as good—as bad rather, as a thousand—that one is fatal to the whole structure, and souse down into the water comes the unwary passenger, who trusts himself to the treacherous edifice. There are artists, indeed—and some of them not far off either—who have the skill to elaborate those technical regular arguments of induction with such exquisite finish as to defy the eye, or even the touch of any man alive; but, while they puzzle and confound the understanding, they can never convince it, because they lead us to such monstrous and frightful conclusions, that no fair exercise of that reasoning faculty which has been given us by our Maker for our guide, can bring a plain man to. Here is a case, in which, if it be not safe to reason *to* conclusions, which perhaps is too much my habit; it is quite safe to reason *from* conclusions. Whenever any chain of reasoning, however learned and ingenious it may be, leads to conclusions so monstrous as to offend the common sense of mankind, I say that, although you may not be able to detect in which link of the argument the defect is, yet you know, from the results to which it carries you, that it is radically defective—that there is a something somewhere about it, although neither your eye nor your touch can detect it, that renders it radically defective and unworthy of trust; and if I were called on for an illustration, I could give it, and would give it, in the opinion of the Supreme Court in the case of Cohens against the State of Virginia.

Sir, I know there are gentlemen, not only from the Northern, but from the Southern States, who think that this unhappy question—for such it is—of negro slavery—which the Constitution has vainly attempted to blink, by not using the term—should never be brought into public notice, more especially into that of Congress, and most especially, here. Sir, with every due respect for the gentlemen who think so, I differ from them, *toto cœlo*. Sir, it is a thing which cannot be hid—it is not a dry rot that you can cover with the carpet, until the house tumbles about your ears—you might as well try to hide a volcano, in full operation—it cannot be hid—it is a cancer in your face, and must be treated *secundum artem;* it must not be tampered with by quacks, who never saw the disease or the patient, and prescribe across the Atlantic; it must be, if you will, let alone; but on this very principle of letting it alone, it is that I have brought in my resolution. I am willing to play what is called child's play—let me alone and I will yet you alone; let my resolution alone, and I will say nothing in support of it: for there is a want of sense in saying any thing in support of a resolution that nobody opposes. Sir, will the Senate pardon my repeating the words of a great man, which cannot be too often repeated? A small danger menacing an inestimable object, is of more importance, in the eyes of a wise man, than the greatest danger which can possibly threaten an object of minor consequence. The question before us is, is this an object of inestimable consequence? I do not put the question to you, sir. I know what your answer will be. I know what will be the answer of every husband, father, son, and brother, throughout the Southern States; I know that on this depends the honor of every matron and maiden—of every matron, (wife, or widow,) between the Ohio and the Gulf of Mexico: I know that upon it depends the life's blood of the little ones, which are lying in their cradles, in happy ignorance of what is passing around them; and not the white ones only: for shall not we too kill—shall we not re-act the scenes which were acted in Guatemala, and elsewhere, except, I hope, with far different success; for if, with a superiority, in point of numbers, as well as of intelligence and courage, we should suffer ourselves to be, as there, vanquished—we should deserve to have negroes for our task-masters, and for the husbands of our wives. This, then, is the inestimable object which the gentleman from Carolina views in the same light that I do, and that you do too, sir, and to which every Southern bosom responds: a chord, which, when touched, even by the most delicate hand, vibrates to the heart of every man in our country. I wish I could maintain, with truth, that it came within the other predicament—that it was a small danger—but it is a great danger—it is a danger that has increased, is increasing, and *must* be diminished, or it must come to its regular catastrophe.

Mr. President, within the last thirty years, or thereabouts—for I have been contemporary with the facts—a total change has taken place in public opinion, in Great Britain—which always acts as possessing a common language and almost a literature and laws in common, she must and she ought to act with great force on us—and in certain other parts of other countries, which I shall not now designate, in reference to this question. There was a time, sir, when the advocates for the abolition of the Slave Trade found, in almost every bosom possessing common humanity, and common sense, a friend. There were some few, to be sure, old veteran Swiss of State, who, upholding all administrations, and all abuses and corruptions, had gone more than knee deep in corruption—followers perhaps of Dundas, fellows of old George Rose, pledged five fathom deep in corruption—who still upheld that abomination. There were some few, indeed, of a very different description. From my early childhood, all my feelings and instincts were in opposition to slavery in every shape; to the subjugation of one man's will to that of another; and from the time that I read Clarkson's celebrated pamphlet, I was, I am afraid, as mad—as Clarkson himself. I read myself into this madness, as I have read myself into some agricultural improvements; but, as with these last I worked myself out of them, so also I worked myself out of it. At the time, sir, that the abolition of the Slave Trade was made piracy, and we had as good a right to make it treason, if the Constitution had not already defined treason—for it is as much treason as it is piracy—did I say as good a right?—I say you have the right—it has been settled by practice here at least already—you can define treason by law—for what is the Constitution, opposed to the established practice under it? what is the old version to this, which is only one of the new readings, *longe emendatior*, of the old edition of the Constitution? You have, in a time of profound peace, suspended the privilege of the *writ* habeas corpus—the personal-security-act—so far as a bill passed by the Senate could do it. I do not often agree with William Cobbett, but I wish it had this name of personal-security-act, that the People might understand its real meaning and importance better than they seemed to do, when they gave their confidence to them that proposed and supported that suspension, in the teeth of an express constitutional prohibition. Then, the Society was got up, of which I was a most unworthy member; but, so far from keeping the faith, I have become a backslider; and whether I have left the Society, or the Society has left me, I cannot tell, and do not care. I had not much faith in it from the beginning; but I thought it a very desirable

thing, and still think it to be a very desirable thing, to get rid of the free negroes and colored people of this country, on the principle, and with the view of promoting the quiet, safety, and happiness, of the slaves themselves, as well as of their masters at home. "It is a vile bird"—and I shall not do any thing to disparage the nest, although it be no longer mine. Without meaning to say a word, at this time, against this Society; as an experiment, I must say it has failed; and, so far as it has done any thing, it has done mischief instead of good.

As regards the principles of those who were the first promoters of the abolition of the Slave Trade—I don't say it of this Society—I am borne out by the facts when I assert that they have held, and yet hold, perhaps I ought to say, endeavor to hold, a language *exoteric*, and a language *exoteric*—one language for the novice, and a language for the initiated: or, to speak in terms more familiar to us, a language *official*, and a language *confidential*. They affected to have nothing in view but the abolition of the Slave Trade. Sir, they had another object—they had an object in view, which *now* they have the courage to declare, for which they have very lately united themselves into an anti-slavery society—they have given no small impulse, if not the first impulse, to this *black* "ball of Spanish American Revolution." It is they who have done it—it is they who have been the fosterers of Hayti: for I could name illustrious names that are laboring under delusion as strong as that which led away the French Convention, when they thought they were establishing liberty, equality, and fraternity, on a foundation slippery and red with human blood and judicial murder. I will name, I must name Wilberforce—I will name master Stephen, the celebrated author of "War in disguise," and "The Dangers of the Country"—Macauley, the principal conductor of the "Christian Observer." I do not mean to include all of that numerous and respectable body of men, who generally think and act with them, as equally intemperate; because I know that some, and believe that others, of those who associated with them, in religious opinions, who do not see, or seeing do not approve, the rash ulterior measures of these well-meaning, but misled men; amongst them I would name, if I dared to do it, the venerable President of the English Bible Society.

Sir, the same great authority whom I before quoted, lays it down as a principle, that, when men are furiously and fanatically fond of any object, of any set of opinions whatever, they will sacrifice to that fanatical attachment, their own property, their own peace, their own lives, and (he adds) can there be a doubt that they would prefer it to the peace of their country? Will the love, then, of another country, of Jamaica, or the Southern States, be a consideration strong enough to induce them to halt—to pause? Fanaticism, political or religious, has no stopping place short of Heaven—or of Hell. All history upholds me in this. What were the crusades? I speak it in sober sadness—they were, in my opinion, as regarded their object, incomparably more worthy, more desirable, in the object, more wise in the means taken to attain it, than this modern *black crusade*. What did they fight for? For the sepulchre of the Redeemer of an otherwise undone world. It was a noble object, however mistaken the principle. But what were they fighting for? For a hewn stone, if it yet existed, which had belonged to a rich and pious Jew of Arimathea—for they knew—they believed—they said they did, and no doubt they were sincere—but they did not recollect that it was not a place of human sepulture—that the body, never subjected to the animal law, was gone—that the incarnate part also had ascended to its Father that is in Heaven. They might as well have got up a crusade for the manger in which the lowly infant had lain in its swaddling clothes; still here was a sentiment, something elevating and ennobling, that the heart is better for having felt; and whose blood did they seek to shed when they poured out their own like water in this cause? That of the Saracens—of infidels—of Mahounds and Termagaunts—who were painted in the same colors by the priesthood and fanatics of that day that the Pharisees and Fanatics of this day, paint every man in, whose misfortune, or whose good fortune it is, to be master of slaves. Sir, I have no hesitation in saying, that the affections of these men whom I have named, are more strongly rivetted upon the French African descendants of Hayti—on the Negroes of Jamaica and Sierra Leone—than they are not only on us unfortunate Southrons—than they are on their own fellow subjects of Jamaica—and I verily believe of Old England also, of Lancashire or Yorkshire. There was once a time, Sir, when a ministerial member had the indiscretion—no minister can *always* stop the mouth of an indiscreet friend—to say—it was during the Prussian war, which consisted of the battle of Jena—that Hanover ought to be as dear to England as Hampshire; I suppose for the sake of the alliteration. I do believe that I should not be far wrong in saying—I know that to a great portion of these misled men, the black population of the West Indies and the Africans of this country, are dearer than their English fellow-subjects: and why so? I judge them partly by their language which I have heard—not in private—but in Freemason's Hall—in London—with an applauding auditory of thousands—but chiefly by their acts, which never lie. I have heard as pious, as good a man, apparently, as ever lived—I believe—I dont know it—he had every characteristic of a good man and pious Christian, except this mania—setting this aside, he was all that could be wished, and in this he manifested that there was no guile in him—he is an officer in the British army—I could have had him cashiered—say that, in case of a revolt in the Island of Jamaica, he should feel himself compelled to take part with the blacks, as the oppressed party. I say that is a general sentiment throughout Old England—I say *Old* England—I wish it may not extend any where *else*—I hope it does not. One thing it behoves me to say—one act of justice it behoves me to do—and I trust I shall never refuse justice to any man:—up to this time, the conduct of the President of the United States—I mean prior to his becoming President of the United States—has been such as no Southern man could take exception to, in this behalf, at least—I restrict my admission to that. I will go farther in saying, that this body has already shown that it possesses the will, as well as the power—which I trust it will exercise on more than that occasion—of resisting influence within, and clamor from without—I speak in reference to the Treaty on the subject of the Slave Trade and the Right of Search. Sir, the Senate have acquitted themselves like men, like Senators, like conscript fathers, I hope, as I believe, that they will never acquit themselves otherwise—"Be just, and fear not."

And now, Sir, one word. I will readily agree that, if the gentleman from South Carolina had made the motion to amend, I would have accepted his modification with great pleasure, if it had been to this effect—to inquire officially what proportion the black, the sambo, the mulatto, and the mestizo population, and the proportion that the Indians, the mixed, and the half-breeds, of that race, bear, respectively, in those States, to what is called the white population—for a great deal of it, although not the major part, is white population, whether Creoles or natives of Old Spain. This is an important thing to be taken into consideration. If, therefore, the Senate will indulge me in not postponing my resolution, I will so modify it as to obtain the thing by the best authority accessible to us.

Sir, I said yesterday, that I was very glad to find that this Proclamation of General Bolivar was denied by the consular authority here. I said so on the information of a gentleman, whose information on such subjects I very much respect, and of whose accuracy, in this instance, I entertain no doubt; but when I said so, I did not mean to say, that the disavowal by the consular authority would satisfy me, when there was a regular diplomatic envoy

from that court at our court. I would follow the good rule of courts that I am more conversant with—not to take a worse proof when a better was within my reach; therefore I shall wait with patience, and trust, (whether this resolution shall pass or be rejected,) that the President will be enabled to inform this body, that the proper Spanish American Minister—I dont know his name or designation; I never saw one of them in my life—has disavowed this Proclamation. That he can disavow the principles, which, I agree with the gentleman from South Carolina, are of general notoriety, is impossible. But, sir, there is a wide difference between invading another country, with this proclamation of negro emancipation in the van, and setting the slaves of that country to cutting their master's throats—by way of making allies of them—by way of effectually invading and conquering the country—and doing with them in your own country whatever you please, however wild and mischievous—and, indeed, wicked—it may be. If the State of Virginia was, in a moment of phrenzy, to pass an act of general and immediate emancipation—that would be one thing. If the State of Virginia—supposing the control of this Government to be out of the way—should go on a crusade into the Carolinas with these principles before them, and the negroes behind them, it would be doing a very different thing. It is, therefore, of importance to us to know officially, if we can, whether these provinces mean to make use of this instrument of revolution and conquest, as the French Convention made use of their weapons, their *liberté, egalité, fraternité*, against the rest of the world. It is of the utmost importance that we should know it officially, although it be a matter of notorious alarm to Cuba, as I said yesterday. Cuba has labored under this apprehension, not without cause, and has taken means to guard against it.

There is another circumstance to be taken into our estimate of danger, whether on this quarter or on that of our neutrality, and that is, the present condition of these former colonies of Spain—those South American States—whether it be pacific and neutral, like our own, or, as it notoriously is, belligerent. Have they not armies on foot, and navies afloat, and does this count for nothing in the calculation of wise men and statesmen, as to what they may do, or we may suffer from Powers so circumstanced? Are we to consider and treat with a country as if in time of peace, and with its armor thrown off? Are we to consider what she even says, then, in the same light that we would consider it in, when she is bristled with steel, armed cap-a-pie for war? The two cases are very different—whereas they are belligerent, the United States are pacific—every thing is on the peace establishment—our armor thrown aside, and our attitude that of the most amiable and enviable repose. The U. States are, moreover, not only what every peaceable People ought to be—*neutral;* but they have a treaty of amity with Spain; they have a positive stipulation with Spain to do no un-neutral act. Does this, or does it not, affect the question? It does. It affects the question vitally, as affecting the capacity, as well as the disposition, to act without breach of neutral duty and of faith, express as well as implied. How long is it since our neutral rights ceased to be dear to us? Do they not imply neutral duties? How long since the faith of the United States has become so cheap? The warlike attitude and armor of these belligerents will, with every man of sober sense, enter into the calculation of their means of enforcing their principles of universal emancipation upon us, through the instrumentality of an invasion and servile war of insurrection in Cuba—for, sir, a wise man will disregard threats coming from a quarter which has no capacity to enforce them; they indicate only a silly malignity, that is best treated with contempt. Any man who should be blockhead enough now to say, that he would take the President of the United States out of his palace in the dead of night, and put him into a boat, and take him down the Potomac, and ship him off to a foreign country, would be taken for a moon-struck madman. Yet he who is said to have once uttered that threat, passed for a man of very uncommon abilities. But this, sir, is a threat which the parties have not only the capacity, as well as the disposition, but the peculiar capacity to carry into execution; and shall we stand idle? Shall we sit still, like those Roman Senators who had no other resource, Mr. President, until the Gauls shall come into this room, and after offering indignity to our persons, finish the tragedy with our blood? No, sir; we are not brought to that point—the capitol is untouched; the sentinels, it is to be hoped, are vigilant; the God Terminus has not gone back—yes, sir, he has gone back—he has given way, and, at the very point, too, of weakness; and he who is now considered to be the right arm of this administration, was the loudest and fiercest denouncer of that retrograde movement, and of the councils under which it was made. I speak of the cession on the Southwest; I speak of Texas, of the cession adjacent to the country known to us as New Mexico; of the cession of the Upper Red River; of the cession of the Gates, of the Keys of New Orleans; and shall Louisiana support *this*, whether it be the man or the measure? I hope not. Yes, sir; they have the capacity, and they have the will; and, unless we take some steps to arrest it, the evil must come home to your bosom, to mine; and we must then do what all other People do under like circumstances, never fail to do, or perish: for, sir, when things get to extremes, the ink and parchment fail. It will signify very little what my notions, or yours, or any other man's notions may be, of the powers of the Federal Government or the rights of the States, because, according to the exigence of the case, we shall act for our self preservation: "for, as self-preservation is in individuals the first law of nature, so it is with societies." The Southern States will look to their safety as States and as individuals, whatever the ink and sheepskin may say, or be made to say, whatever Congress may decree.

If, said Mr. R. I were, what I am not—an acute philologer—I should sometimes amuse myself with the manner in which words slip from their original meanings, and come to purport something very different from what any body ever attached to them when they first came into use: the word sophist, (a wise man,) got so much into disrepute, that philosopher, (a lover of wisdom,) had to supply its place; the word *libertine* meant what a liberal means now; that is, a man attached to enlarged and free principles—a votary of liberty; but the libertines made so ill an use of their principles, that the word has come, (even since the days of Shakspeare,) to be taken in a bad sense; and *liberal* will share the same fate, I fear, if it contracts this black alliance. There are some other words, such as *principle*, "*conscience*," which are also in great danger. But I am coming to a word which is in the mouth of every man in this country every day, and all day long—it is *Congress*. Why, sir, although this body, this Senate, be indeed, in some sense, a Congress of deputies from sovereign States, yet—the Constitution to the contrary notwithstanding—(for if there is any thing that I find in the Constitution itself which I deem not to be true, I shall not scruple to deny it—or in any bill of rights, or declaratory act, or any where else—always excepting the Bible—because I do not believe that there is any thing in that book that is not true—not meaning, however, to make a confession of my faith)—this word Congress was properly applied to the deputies first assembled at Albany, to bring about a closer colonial union, and afterwards at Philadelphia, to create a Confederacy that might enable us to carry on the war with more effect against the common enemy. At first, she was not the common enemy—we did not so consider her, or call her—we did, indeed, call her our unkind mother, but we professed the most dutiful love for her, and only asked

to be treated on the footing of her other children. We distinguished between her and the unworthy hands to which she had committed her authority—but avowed that, if she would deny us the rights which we claimed as British subjects, as her legitimate children, of voting away our own money; would insist and persist to do what we suffer every day to be done here—plunge her hands into our pockets *ad libitum con amore, da capo*, for purposes utterly foreign to our interests—we should be driven, however reluctantly, to resist her injustice.

This was a Congress—its objcct was the formation of a new Confederacy, and the name is endeared to every man of the good old thirteen States of America, and is deservedly dear to them and to the shoots, the scions that have sprung from them—the other States; and what are the other States? They are bone of our bone, and flesh of our flesh. This word Congress, sir, was deservedly dear to the American People: for out of it grew their Confederation and their Independence; and when the new Constitution was made, the framers of it were men well enough versed in human nature to know that words were things, and they called the new project the Congress of the United States of America. It is a Congress by force of the Constitution, but, to all intents and purposes, it is not a Congress according to the meaning of the word in the English language. What, then, is it? It is a convention, or legislature, like another proposed Congress for a confederacy. Suppose that, during the late war, every State in the Union had sent a deputation, as Mr. Jefferson had said—to "the Hartford Nation"—it would have been a Congress, such as we are now invited to. Suppose, now, under the Constitution, a convention, to be got up to amend the Constitution, according to its provisions in article five, will it not be what the Constitution declares it to be—a convention—a coming together of States for particular purposes? Now, sir, in reference to that on which my resolution bears: suppose that, during the last war, France, or any other neutral Power—France was not a neutral Power—any neutral Power, if such could have been found—had sent deputies to our Congress at Hartford, for purposes certainly not of embarrassing, much less endangering, the Union, but of giving force and effect—such I understood to have been the avowed motive of that meeting—to the war—could they have shown authority from their Governments for so doing? would they not have partaken of your belligerent nature and character? I go further, and say, that, in a Congress of States, it is a very strange sort of bargain that the Congress should be constituted by deputies from each of its States, and that we twenty-four States should be represented by deputies only from the aggregate body of States. If we are to go, let *us* go, the Representatives of all the States; let each of our States be represented as well as their States; and why not? This is the fact—they, as a Spanish American Confederation, are one body politic; we, as a North American Confederacy, are another. Whoever heard of a Congress of Ministers from two Governments? No, sir, I should as soon expect to hear of a concert of two instruments; we might have a duet; but whoever heard of a Congress where there were only two parties? We have a treaty with Great Britain that makes special provision for an umpire to decide in certain cases of difference. Our umpire is dead—he does not sleep, he is dead—and his death will constitute to any man who can and will look before as well as after—who is not engrossed with the present—and that with his own advancement—a consideration that will make him pause before he does any thing that might influence, directly or indirectly, the peace, the safety, the neutrality, of these United States, which, under the new circumstances in which the world is about to be placed, we shall find it no easy matter to preserve without any foreign entanglements.

Mr. Fox was a statesman; he was not only an orator, confessedly the first debater that the world ever saw, but a statesman. I am one of those who think that this world has been much injured by Parliamentary eloquence; by a false notion, that ability of this sort is a necessary qualification for Government; and England to her dying day—if she ever does die—will repent her of the dialectics of Mr. Pitt. He was admirably qualified for a Professor of Rhetoric; he would have filled that Chair well at Cambridge—I do not mean Cantabrigiæ Nov-Anglorum, but Cambridge in Old England—but as a Minister, his great measures all failed. He was, indeed, a most expert gladiator on the floor of Parliament—a good Palinurus in smooth water—but he, too, must be a soldier, and from that day, as to his measures, they every one failed; and his friend and admirer, Mr. Windham, assigns their failure in justification of his vote of a refusal to grant him the honor of a public funeral—for there, and every where but here, a public funeral counts for something as it ought to do—on the ground that public funerals and monuments should never be erected except to eminently *successful* statesmen, generals, or admirals, not to the defeated—and the public funeral and the monument of Pitt, Mr. Windham, with his manly independence and sagacity of character, was unwilling to pay for—(he did not grudge the money—that was another consideration—he voted to pay the debts of Pitt)—and that funeral and monument voted to the defeated statesman—the monument to the pilot that did *not* weather the storm—was the forerunner of the monument voted to General Pakenham for *his* glorious attack on New Orleans.—This is the way to render that cheap and worthless, which is above all price; that which indeed may well be called the cheap defence of nations.

Mr. Fox said, speaking of the history of James the Second and Charles the Second, that of all Governments in the world, restorations were the worst: he applied it to the restoration of the House of Stuart, not against the consent of the People—but by general acclamation, which soon led to as general a vote of expulsion, of that misguided, unteachable, bigot race. The House of Bourbon, restored by foreign bayonets, forced upon France against the wishes of a large majority of her People, was not then an example to which the illustrious historian could have referred—a yet stronger proof of the truth and sagacity of that wonderful man. There is, said Mr. R. another restoration of *another* illustrious house—I push the parallel no further—by what means it has been brought back upon us, I shall not *now* stop to inquire, though in my heart and conscience, I believe the sceptre having been clutched, this is the last four years of the Administration of the father, renewed in the person of the son. I am not afraid of the re-enactment of the sedition law—No, not at all. One of our diplomatists said, in Paris, I think, speaking of their Protean vexations of our commerce, that the mode only, not the measure, was changed—so it is here—For old federalism, we have ultra federalism—I do not speak in the future but in the *plus quam perfectum*, in the preterpluperfect tense.

But, sir, I shall be told, perhaps, that there is only a *nominal* war between Spain and these belligerents—that there is nothing else—a war of name—and that Spain is unable any longer to wag a finger—to use a familiar phrase—or any thing but her tongue in the contest.—If that be the condition of Spain, by what arguments can king-craft and priest-craft be prevailed on to renounce this nominal claim, which will, like some others, keep cold until the chapter of accidents may realize it. Did Philip the Second ever recognize the independence of the Dutch, the illustrious ancestors of my friend, [Mr. VAN BUREN] on my left, when that independence was more firmly established than his own? No, sir—Spain is made of sterner stuff. Truce after truce was patched up without any such recognition—and they were the united *Provinces*, and so remained till the French gave them the coup de grace by the true fraternal hug.—What, sir, was the con-

dition of the war between England and France a little while ago—one not having a ship at sea, except a few frigates, which she employed in burning our ships in a friendly way, so as to induce us to join in making a diversion in aid of her crusade against Moscow—from which I hope we shall take warning: for that attempt was not only plausible, but promised success—was quite practicable, compared with the crusade to which I have alluded—and England had not a man, at the time I speak of, after the battle of Jena, in arms on her side, on the continent of Europe—not one man; and there they stood, a complete non-conductor interposed between them, except the United States, who received the blows of both!

But, though that war was for a long time little else but a suspension of arms, from the inability of each to attack on the other's element—was it nominal—was it war like a peace, or even a peace like a war, as was said of Amiens?—Oh no—old England had nailed the colors to the mast; she had determined to go down rather than give up the ship—She wisely saw no safety for her in what might be called a peace; and it was a glorious determination: and it is that spirit—it is not thews, muscle—though I have the greatest respect for the authority of the gentleman from Kentucky (Mr. ROWAN)—it is not *brawn*, it is that spirit which gives life to every nation—that spirit which carries a man, however feeble, through conflicts with giants, compared to him in point of strength, honorably, triumphantly. Sir, I consider the late conflict between England and France—England against the congregated continent of Europe—to say nothing of any other make weights in the scale—confident against a world in arms—as far surpassing, in sublimity of example, the tenaciousness of purpose of Rome during the second Punic war, as that surpasses any of our famous Indian wars and expeditions. It is a lesson of the constancy of the human mind, which ought never to be thrown away; and I have sometimes been inclined to believe that it has done that nation more good than—I know I make a dangerous admission—than the debt accumulated by the war has done her harm. But when we look at her present condition under the operation of that system, I think we shall pause, as she might have done, before we take any measures that may lead to a suspension of specie payments, to the dissolution of all law, and of all morals; to that state of things which places the honest man not merely on a footing with the dishonest, but far below him.

But, sir, perhaps I may be told, that in case I do not accede to the proposition of the gentleman from South Carolina, the answer is very plain and triumphant to my resolution. That the principles of these South American States are the principles that were of high authority on another great question—the Missouri question—are the principles of the declaration of Independence. What more will you have, what more can you ask? What resource have you now left? Sir, my only objection is, that these principles, pushed to their extreme consequences—that all men are born free and equal—I can never assent to, for the best of all reasons, because it is not true; and as I cannot agree to the intrinsic meaning of the word Congress, though sanctioned by the Constitution of the United States, so neither can I agree to a falsehood, and a most pernicious falsehood, even though I find it in the Declaration of Independence, which has been set up, on the Missouri and other questions, as paramount to the Constitution. I say pernicious falsehood—it must be, if true, self-evident: for it is incapable of demonstration; and there are thousands and tens of thousands of them that mislead the great vulgar as well as the small. There are some in bald Latin, such as *principia non homines*—principles not men—*that* sounds quite antithetical and quaint, and is quite taking with some folks—but what are principles without men any more than men without principles? and how can you tell the principles of the man until you are shown the man of the principles? But this and such like conceits are given over and again in toasts and sentiments, until the People at last come to believe that there is something in them besides a clinch of words. What would be said to a proposition just about as true and sensible as this principia non homines, announced in these words: "Love, not women"—worth just as much as your principles not men. There is another, which, taken from a different source, I shall speak of as I trust I shall always feel, with reverence—I mean faith without works, as the means of salvation. All these great positions, that all men are born equally free, and faith without works, are in a certain sense, in which they are hardly ever received by the multitude, true; but in another sense, in which they are almost invariably received by nineteen out of twenty, they are false and pernicious. I hope I am understood, sir. The principles to be sure are what make the man; but you must see the man, to be a judge of his principles; you must know the man; it is not his making a profession of faith, political or religious—you must know his conduct—thistles do not produce figs; so, sir, it is impossible that weak, wicked, or bad public councils can proceed from a man of good public principles: So is it as it regards works and faith: there is no question in the minds of nineteen out of twenty Christians, that it is the faith and not the works that they are to be indebted to—and they are in fact so far right; but then they forget that the works constitute the only competent evidence of faith; and that with a bad life there is no true faith; yet Christians go on tearing one another to pieces about these things, and yet may find, if they will but take the trouble to consider, that they have been all along beating the air and disputing about terms, except such as are strict predestinarians and such as believe in works of supererogation—that they can buy a place in heaven, and spare a little to a friend to help him in his purchase. In regard to this principle, that all are born free and equal, if there is an animal on earth to which it does not apply—that is not born free, it is man—he is born in a state of the most abject want, and a state of perfect helplessness and ignorance, which is the foundation of the connubial tie. I have heard it lamented elsewhere, that the complainant was born to infancy; but that is only the common lot of all men, except the first man; and I believe the schoolmen were as well employed in disputing, as Hudibras tells us they were in his day, whether any signs of the Umbilicus were found about Adam, as they have been in disputing this nice distinction, without a difference in practice, of faith without works. I have heard it lamented by the same person that he was born to indigence, but none of us bring any thing more into the world (not even the breath of our nostrils) than we carry out of it—and as to ignorance, Locke says that we bring no innate ideas with us into the world; it is true, but man is born with certain capacities—which assume the impression, that may be given by education and circumstances; but the mathematician and the astronomer, who of all men on earth are the most unsafe, in affairs of government and common life—who should say that all the soil in the world is equally rich, the first rate land in Kentucky and the Highlands of Scotland, because the superficial content of the acre is the same, would be just as right, as he who should maintain the absolute equality of man in virtue of his birth. The ricketty and scrofulous little wretch that first sees the light in a work-house, or in a brothel, and who feels the effects of alcohol before the effects of vital air, is not equal in any respect to the ruddy offspring of the honest yeoman; nay, I will go further, and say that a prince, provided he is no better born than blood royal will make him, is not equal to the healthy son of a peasant.

We know that this Constitution is a Constitution of compromise, of compact, between States. It is a com-

pact between States, which acknowledges the rights of the master over his negro slave, in terms to be sure, somewhat squeamish as to words. I may be told that the word is not in the Constitution. I care not a farthing whether the word is in the Constitution or not; not only the existence of negro slavery, but the slave trade itself, for a limited time, was secured under the panoply of the Constitution—and thousands were brought, under that guarantee, into the ports of Charleston and Savannah, and sold as slaves, and their progeny will be slaves *ad indefinitum*, unless the States of Georgia and South Carolina shall, in their sovereign capacities, choose to decree the contrary. Did South Carolina stickle for the trade in slaves, as she had a right to do, and with the aid of Connecticut especially, carry her point until 1808; and were the Southern men so ineffably stupid as to take no security for their slaves already here, or that might be brought in under the "first clause of the 9th section of the 1st article" of the Constitution, which was unalterable, even by the mode prescribed by the Constitution in other cases, until that time? And even if they had been so unguarded, what would the *casus omissus* prove but that, the Constitution being silent, Congress have no power over the subject? If these things are not recognized by the book, let me put a case, and it is a question for the court *below*. Nothing too hard for them—Supposing that an African should sue for his liberty—where? in the federal court—why—is he a citizen? No—Is he an alien? No—Is he of a different State from his master? No—Nothing of all this; but is it not "a case arising under the Constitution?" Will not the Supreme Court clutch it—can they refuse jurisdiction? Is there a man on that bench who for one instant—I am putting a suppositious case—a case being brought in the last resort to that tribunal—is there a judge there or any where else, who would, for one instant, listen to Counsel, who should rely upon the Declaration of Independence, or any other fanfaronade of abstractions, as paramount law—paramount to the Constitution itself. The language I have applied to it is strong, but who can be cold in such a cause?

If, said Mr. R. I make use, in the heat of debate, of any improper expression, I beg pardon of the Senate. I have long thought that I could discern, even in that paper [the Declaration of Independence] rather more of the professor of an university than the language of an old statesman; what I have discerned in other state papers I shall not now say. But I will now, with the liberty of the Senate, relieve them from my tedious talk, by reading an authority from this book [taking up a volume of Burke's works] which is pat to my purpose. It is on the subject of any man of sense suffering himself to be led away from the case before him, to travel out of the record of common sense, into the mazes of abstraction.

"I never govern myself—no rational man ever did govern himself by abstractions and universals. I do not put abstract ideas wholly out of any question, because I well know that, under that name, I should dismiss principles; and that, without the guide and light of sound, well-understood principles, all reasoning in politics, as in every thing else, would be only a confused jumble of particular facts and details, without the means of drawing out any sort of theoretical or practical conclusion. The statesman differs from the professor of an university—the latter has only the general view of society, the former, (the statesman,) has a number of circumstances to combine with those general ideas, and to take into his consideration. Circumstances are infinite, are infinitely combined—are variable and transient; he who does not take them into consideration, is not erroneous, but stark mad—dat operam ut cum ratione insaniat—he is metaphysically mad. A statesman, never losing sight of principles, is to be guided by circumstances; and, judging contrary to the exigencies of the moment, he may ruin his country forever." But, said Mr. R. how is it with the professor? In the next edition of his book, or in the refutation of his adversary, all the mischief that he has done may be undone and corrected. But when this same professor becomes a statesman? If you want to know the effect of his metaphysical madness, look to the history of the French Revolution, and the undoing of the country—look to the history of such men as Condorcet and Brissot, and Mirabeau—men of good intentions, of learning, and genius—not that I count Mirabeau among the good men of that Revolution: but Lafayette was one of them. What was the consequence of this not stopping to parley with the imprescriptible rights of man, in the abstract? It is that they have now full leisure to meditate on the imprescriptible rights of their king in the concrete; that is the result of devotedness to abstract politics—of their management—look at it in Hayti and every where—I would say, if I was not afraid of being considered as treating this subject too lightly, which lies heavy on my heart—look at the famous academy of Lagado, and you will have a pretty fair specimen of a country governed by Mathematicians and star-gazers, from light-houses in the sky. It is mournful while it is ludicrous. I have seen men who could not write a book, or even make a speech—men who could not even spell this famous word Congress—(they spelled it with a K) who had more practical sense and were more trust-worthy, as statesmen, or generals, than any mathematician, any naturalist, or any literati, under the sun.

Sir, as a natural death is preferable to a death superinduced by the lavish use of chemical and mineral poisons—so, in my humble judgment, at least, a natural fool is preferable to a fool *secundum artem*—he is the least dangerous animal of the two—at least, not having been deeply cultivated, like other shallow soils, what little mother-wit is in him is not turned up by some new patent plow, and buried beneath the sand, never to give birth to vegetation more; whereas, the over-educated fool never dreams that, with all his learning and acquirements, he is but a greater fool than ever. We, of the cotton country, sir, know that deep cultivation is fatal to shallow soils. Some of these wise men have discovered that a whale is not a fish, but we have not, therefore, altered the phraseology of the laws relating to the whale fishery, because one of our cognocenti has found out that a whale is no fish at all, and has not, as far as I know, told us what to call it; and the hardy seamen of Marblehead and Cape Ann, who have stood by us, and by whom I will stand, no wiser than the Congress, for all their schooling, will persist in talking of their good or bad fishing, and of their having taken so many *fish*.

Sir, we have a military school, and we are to have a naval school—I should not like to see the experiment tried—but, sir, it would be a good subject for a bet, (not that a bet is a proper subject to be named here,) but it would be a good thing—I would take some rough Massachusetts or Nantucket, or Maine and Sagadahock, or a New Hampshire seaman—such a man as Isaac Hull, and pit him against any man coming from a naval academy. If we had an army of cadets, if they came across such a man as Jackson, or Morgan, or such self-taught men, their diagrams at West Point would stand them in little stead in time of action. We must at last come down from our stilts—we must agree to be what the fathers of the Constitution, the *pater patriæ*, made us to be, the good old United States, courting the arts of peace, minding our own business, and not interfering with that of others, or with alliances, holy or unholy, Greek or Barbarian; above all, not departing, under the idea of a foreign mission, of sending to England or France, or to the Congress of Verona, ministers to change our whole policy, and perhaps our very form of government—departing, fundamentally, from the principles of the Constitution. The

manner in which any change is to be made in our articles of union and confederation, is already provided for in the Constitution itself—in article fifth. The Constitution has provided that, whenever these confederated States shall see cause to use them—means by which this instrument shall be changed, always saving, until 1808, the clause securing the slave trade and capitation tax from any alteration until that time. If we choose to go into common alliance with the South American States, or with the State of Hayti, or the States of Barbary—(Algiers, too, is a Republic)—we have a right to do it—the States, and the People of the States, are not in pupilage—they are *sui juris*—they have a right to become parties to the Holy Alliance to-morrow; but how? agreeably to the provisions of this little book, if they please—but they do not please; and, above all, they will not please—they will not please to have that change made, not according to the rules established by themselves, but by the *sic volo, sic jubeo*, the *stat pro ratione voluntas*, of any man, however high in office, by the instrumentality, and under the color of fitting out a foreign mission for any Congress or Confederacy on the face of the earth. There is a regular Constitutional mode in which these things are properly to be done; there is a regular Constitutional mode by which, if you please, every Negro in the United States may be set free; because the Southern States have, each for herself, the right if they please; but they dont please; and they as little please to do it by a law of their own making, as to have it done by measures that tend to a fundamental change in the original compact between them as States; by going into joint stock companies with any other States whatever, except such as we may choose to create out of our own Territory—out of that which was part of the good old United States, or out of the territory which the United States have acquired by treaty with foreign Powers.

Sir, said Mr. R. if, in the course of the very tedious and desultory remarks—more tedious even to me than they appear to have been to the Senate—which I have submitted, I may have let drop any unwary or unfounded expression in reference to any individual, particularly any trans-Atlantic individual, I hope to be permitted to take the full benefit of all the qualifications which a man of honor never fails voluntarily to give to any rash or harsh expression, dropped in heat of blood, however founded in fact, and which he is particularly anxious always to give to men who are emphatically men of peace. I must be permitted to say, that there exists, in the nature of man, *ab ovo, ab origine*, of degraded and fallen man—for the first-born was a murderer—a disposition to escape from our own proper duties, to undertake the duties of somebody or any body else. There exists a disposition, not to do as our good old Catechism teaches us to do—to fulfil our duty in that station to which it has pleased God to call us. No, sir; it is obsolete and worm-eaten—we must insist upon going to take upon ourselves the situation and office of some one else, to which it has not pleased God to call us—of the Hindoos and the Otaheitan; of any body or any thing but our own proper business and families; and these very amiable—for such they are—these very pious men—for such I believe them to be—I don't mean all of that connexion—but I mean the men whom I particularly have named or indicated—are led away by this self-delusion, aided by the influence of the moral atmosphere of London, which no man can breathe with impunity—men of abstraction and visionary character more especially. Let me be understood—the physical atmosphere of London is of such a nature—the physical excitement is so great—the wonders, the stir, the bustle, the objects continually changing before the eyes—the pulse of life is so habitually stimulated—that the best bred physicians have agreed that the diseases which imperiously require depletion in the country, will not bear that practice in town—that it cannot be safely followed in London. You might as well attempt to deplete an habitual sot, whose pulse, once got down, not even brandy will get up again; a man accustomed to the preternatural stimulus—I have stated, as to deplete a Londoner, who is accustomed to the stimulus of the excitement of the atmosphere. But there is a moral atmosphere too in London—there is not a place on the face of the earth, where there is so much public spirit—so much active benevolence—where there is so much munificence, and so much is given away in charity. I speak not of the gross amount, but in proportion to her wealth, over-grown and enormous as it is. I believe, with the author of this book, [Burke] that the spires of her charities avert from her the lightning of Heaven, which her depravity would otherwise call down. There is a moral atmosphere—there is hardly a man of note, who does not belong to some society—like our Colonization Society, and like that, it is a theatre for display, like other theatres. They go there to praise one another to their faces, in a manner that I had no conception of *then*. But the example has not been lost upon us. They are all of one opinion; a set of resolutions are drawn up which nobody is expected to oppose. It would be unheard of to do so, and reckoned indecent to do so. All is cut and dry—like what is called here a *caucus*, why, I could never tell.

No one thinks it worth while to oppose them, for it would be labor lost—speeches are made, cheerings follow, and clapping and thundering applause—such as is seen in our theatres, and might well shake the nerves of such as are not used to it—such overweening praises are given. And these men are in the habit of imbibing so much and such refined as well as gross adulation, that they cannot live out of the atmosphere of London. The fine ladies of course have the vapors upon the abstraction of this stimulus—this moral stimulus of the atmosphere of London is necessary to their existence. I can only suppose them—these good men—subject to the infirmities of our nature, and falling under the temptation to which they are peculiarly exposed. The theatre of their glory was the slave trade—now it is the abolition of slavery every where; at every risk of consequences, to which they are stone-blind. If they would only be content to let the man alone—if they would not insist upon plastering him an inch thick with mercurial ointment, and I know not what active poisons without, and filling him to the throat with calomel and jalap, within, he will, may be, get well; or at best, he can but die a natural death—probably an easy one. But, no sir, the politico-religious Quack, like the Quack in medicine, and in every thing else, will hear of nothing but his nostrum—all is to be forced—nothing can be trusted to time, or to nature. The disease will run its course—it has run its course in the Northern States; it is beginning to run its course in Maryland. The natural death of slavery is the unprofitableness of its most expensive labor—it is also beginning in the meadow and grain country of Virginia—among those people there—who have no staple that can pay for slave labor—especially amongst those who have none or very few slaves—these are the strenuous advocates of all these principles—in Virginia—most of them of the best intentions—all of them mistaken. The moment the labor of the slave ceases to be profitable to the master, or very soon after it has reached that stage—if the slave will not run away from the master, the master *will* run away from the slave; and this is the history of the passage from slavery to freedom of the villainage of England. The free-born Englishmen were once adscripti glebæ, like the serfs in Poland. Are not those of Russia and Poland going through this very operation at this very time, and from this very cause? And shall we be made to suffer shipwreck, we of the South I mean, in steering our bark through this *Euripus*, by the madness of our pilot and our own folly—steering between this Scylla and Charybdis (not

of the Bahama passage) but of the imprescriptible rights of Kings *(jure divino)* on the one hand, and the imprescriptible rights of Negro slaves on the other? Is there no medium? No medio tutissimus ibis? No parental injunction,

"Parce, Puer stimulis et fortiter utere loris?"

No—nothing of this. Thus fools rush in where angels fear to tread—whether ill meaning or well-meaning fools is of no importance to me, if my ruin is to be accomplished by their interference. What matters it whether the firebrands scattered were scattered by a fool, in sport, or by a mad-man, in earnest, if the city is reduced to ashes; or whether the firebrands were scattered by the hand of a Guy Faux, with religion in his mouth, a firebrand in his hand, and hell in his heart? Nothing at all. It is important to the agent, as it regards his guilt in the sight of God, but both of them would be apt to meet their doom from the hand of man.

I have said, sir, a great deal that I did not mean to say, and have left unsaid a great deal that I did intend to say—and have said nothing as I wished to say it: this is one of the inseparable and insuperable difficulties of a man who speaks without a note, as I have done, aggravated by circumstances that I shall not intrude upon the Senate. Sir, I never could speak or quarrel by the book—by the card, as Touchstone tells us, was the fashion in his day. I have no gift at this special pleading—at the retort courteous and the countercheck quarrelsome, till things get to the point, where nothing is left for it but to back out or fight. We are asked, sir, by this new Executive Government of ours—not in the very words, but it is a great deal like it—of the son of Climene—to give some token, some proof, that they possess legitimate claims to the confidence of the People—which they have modestly confessed they do not possess in the same degree as their predecessors. I will answer them in the *words* of the father of that son. Pignora certa petis—Do pignora certa timendo. But, sir, the Phæton is at the door, ambition burns to mount. Whether the Mississippi, like the Po, is to suffer a metamorphosis, not in its poplars—whether the blacks shall be turned into whites, or the whites into blacks, the slaves into masters, or the masters into slaves, or the murdered and their murderers to change their color, like the mulberry trees, belongs to men of greater sagacity than I am to foretell. I am content to act the part of Cassandra, to lift up my voice, whether it be heeded, or heard only to be disregarded, until too late—I will cry out obsta principiis—Yes, sir, in this case, as in so many others—c'est ne que le premier pas qui coute—the first step is all the difficulty—that taken, then they may take for their motto—vestigia nulla retrorsum—there is no retreat—I tell these gentlemen there is no retreat—it is cut off—there is no retreat, even as tedious and painful as that conducted by Xenophon—There is no Anabasis forus—and if there was, where is our Xenophon? I do not feel lightly on this occasion—far otherwise—but the heaviest heart often vents itself in light expressions. There is a mirth of sadness, as well as tears of joy. If I could talk lightly on this sad subject, I would remind gentlemen of the reply given by a wiseacre, who was sent to search the vaults of the Parliament House at the time of the gunpowder plot, and who had searched and reported that he had found fifty barrels of powder concealed under the faggots and other fuel—that he had removed twenty-five, and hoped that the other twenty-five would do no harm. The step you are about to take is the match of that powder—whether it be twenty-five or fifty barrels is quite immaterial—it is enough to blow—not the first of the Stuarts—but the last of *another dynasty*—sky high—sky high.

Mr. HAYNE again rose, in reply to Mr. RANDOLPH, and said, there certainly could be no difference of opinion between that gentleman and himself, on any question which should involve the peculiar interests of the Southern States. Should any crisis unhappily arise, in which the policy of that portion of the Union should be called in question, or their safety endangered, that gentleman well knows, not only that we, said Mr. H. will be found acting cordially and zealously together, but that the whole South will be *as one man*. On this subject, however, Mr. H. said, he was at all times most reluctant to touch, and he certainly would not enter upon it on the present occasion. Nor would he at this time say a word in respect to another question to which the gentleman from Virginia had alluded, the relations which ought to exist between the new Republics and ourselves. The question now before the Senate was, whether we should postpone, for a few days, a resolution calling on the Executive for information relative to the principles and practice of these Republics. The simple and only object of the postponement was to ascertain whether the application would probably add any thing to the information we already possess on this subject. If, on further reflection and inquiry, the gentleman from Virginia, or any other gentleman, should have good reason to believe that the Executive was in the possession of more information than the Senate possessed in this particular, he would not object to any call calculated to elicit that information. But in that case he would suggest the propriety of such a modification of the resolution as would point more specifically to its objects. The gentleman from Virginia had, in acknowledging the friendly relations which existed between them, asked to be "saved from his friends."—He would say to that gentleman, that while he was proud of the relation in which he stood towards him, he trusted that on this, as on all future occasions, he would prove himself a friend by the part he should act towards that gentleman.

Mr. H. concluded by moving that the resolution be laid upon the table, which (Mr. RANDOLPH assenting) was ordered accordingly.

And the Senate then proceeded to the consideration of Executive business.

FRIDAY, MARCH 3, 1826.

Mr. BELL, of New Hampshire, rose, and said, there were several very important subjects of an Executive character before the Senate, and his impression was, that the public interest required that these subjects should have preference over the ordinary business of legislation. He therefore moved that the Senate proceed to the consideration of Executive business; which motion prevailed—Ayes 13, Noes 12; and the Senate remained with closed doors till past three o'clock; and then adjourned to Monday.

MONDAY, MARCH 6, 1826.

On motion of Mr. SMITH, the Senate proceeded to consider the bill "making appropriations for the support of Government, for the year 1826."

The following amendments, proposed by the Committee of Finance, were agreed to, viz: seven thousand dollars for the contingent expenses of the Senate, in addition to the sum heretofore appropriated; six thousand dollars instead of twelve, for the discharge of miscellaneous claims against the United States, not otherwise provided for; and for compensation to Thomas H. Gillis, Chief Clerk in the Office of the Fourth Auditor, (for extra services, rendered between the demise of the late Auditor, and the appointment of his successor,) $950; and one or two slight amendments were added, on the motion of Mr. SMITH.

Mr. COBB, of Georgia, said there was an appropriation made in this bill which he should wish to strike out; it was for the salaries of the Commissioner and Arbitrators under the first article of the Treaty of Ghent. He should be very glad if the Chairman of the Committee on Finance was able to give some information how it was that the business of this commission was so much delayed; what is the commission doing, or how is it proceeding to act on the business for which it was instituted; or is it at a stand? What is the cause of this? At least, said Mr. C. let us have some

thing official on the subject. He began to be a little tired of seeing that and the next appropriation in the bill, (for carrying the 6th and 7th articles, respecting the boundary of the treaty, into effect,) year after year. Considering how long it was since this treaty was made, Mr. C. said it was a wonderful circumstance to him, that, year after year, appropriations on the subject should still have to be made. He hoped that, if the commission first alluded to could not proceed in the business, that their salary, at least, would be suspended until they could. He understood that the commission was totally at a stand. It was, he thought, high time for the Senate to have some information on the subject, and if they could not withhold the money, let them know the reason why; and whether there was any prospect of bringing the labors of this commission to an end.

Mr. HOLMES, of Maine, said the Committee of Finance did not deem it their duty to go into an inquiry, whether any of the officers provided for by law had done their duty or not; they had not inquired how far these gentlemen had proceeded; or whether they had proceeded at all. The committee had ascertained that they were the commission—that they were duly appointed—that their compensation was agreed on, and was established either by treaty or by law: till that commission was ended, it was a question with the Executive whether they were proceeding correctly or not. It was not a question with the Committee of Finance, whether they should withhold the salary from any officer for not having performed his duty.

Mr. HAYNE, of South Carolina, said, though the committee do not feel bound to make an inquiry of that nature, yet there were some facts which were notorious, connected with the commission. The American commissioner is constantly here, said Mr. H. and, though he occasionally returns home, there is not a fortnight passes but he is found at Washington, sacrificing his private business and concerns to the duty of that commission. There never was, Mr. H. said, in this or any other country, an individual of greater industry, more devoted to his duties, or who, in relation to this commission, had made greater exertions. There was a good deal of business connected with it; application had been made, he knew, to the British Government, in some shape or other; this commission is still needed; they are devoting their time and attention to the subject; their presence here is necessary; and beyond this, Mr. H. said, he was not permitted to speak: but the individual he alluded to never had, nor was he capable, of occasioning any delay in the transaction of public business.

Mr. COBB, of Georgia, said, from the character of the gentleman referred to, he believed there was no man who was more disposed to do his duty promptly. Yet, it seemed to him that some information ought to be laid before Congress on this subject, as to the progress made by the commission in the discharge of its trust, before they continued to make appropriations for it. What was the progress made? If their operations had been suspended, they ought, he said, to know why it was so; what were the difficulties thrown in the way; and, till they obtained information on this subject, Mr. C. was not disposed to vote a salary, year after year, for literally doing nothing. He said, if he knew how to get hold of this part of the bill, he should be willing to suspend the item, till he could get some information of the nature he had intimated. He believed a call had been made in the other branch of Congress, and when this was answered, they could then judge with more propriety whether it would be proper to continue the appropriation. There must, he thought, be some way by which Congress could get hold of this subject. He did not conceive they were bound down by any condition or bond to make appropriations, year after year, forever, for aught he knew, to maintain this commission; and he knew of no other way by which Congress could get hold of the subject than through the appropriation bill; and he repeated, if he knew how to get hold of this specific part of the bill, without suspending the whole in its passage, he would make the motion.

Mr. SMITH, of Maryland, said, it never had been the duty of any committee to examine further, on a subject of this kind, than to ascertain whether the law authorized the appropriation. Unless they received information from the President to the contrary, they supposed that the officers were doing their duty. It would be very injudicious to stop the appropriation bill at this time; injudicious, perhaps, in relation to the quarter of the country from which the gentleman from Georgia came. When this subject was under discussion in Russia, Mr. S. said, the British Minister proposed the proper course, which was not acceded to on the part of our Minister. The British Minister said, you will appoint a commission, and you do not know when it will be determined, and it will probably cost you more than the thing itself is worth; we will give you a specific sum of money, which you may divide among the claimants as you please, yourselves. That, Mr. S. said, would have been the better course, but it was not adopted. We have adopted another, and have employed our agents, and pay them the salary established by law. The committee did not inquire into their conduct.

Mr. BERRIEN, of Georgia, agreed with his colleague as to the necessity of some information on the subject; and had looked with no inconsiderable degree of solicitude for some results from this commission. But, in the consideration of the bill, before the Committee of Finance, the question of the propriety of making this appropriation did not occur, inasmuch as these were salaries provided by law, and that the committee had no right or authority to go beyond the ascertainment of that simple fact. In relation to the information his colleague was desirous to obtain, as it concerned them in that quarter of the country, he doubted the propriety of retarding the appropriation bill to await the answer to such a call. If this appropriation was not made, what was the consequence? If we withhold from the officer his compensation, we must withdraw his commission; and if we withdraw from the commissioner and arbitrator authorized by the American Government, their commissions, we deprive ourselves of the benefits we anticipated from their appointment. At this moment, perhaps, difficulties were interposed, but they were the subject of special negotiation with Great Britain; and prudence required, that, whilst we expedited these negotiations as much as possible, we should continue these appropriations; that we should continue these officers in commission till it was ascertained that no satisfactory result could be obtained.

Mr. COBB then inquired of the Chairman of the Committee of Finance, for information in regard to the next article, for carrying into effect the sixth and seventh articles of the Treaty of Ghent (for ascertaining the Northern boundary.) He recollected that, four years ago, there was some difficulty on this subject, and it was then thought that the Commissioner, and the other persons employed in that business, were slow about it; and he should like to know if there was any prospect of its ever terminating.

Mr. HOLMES replied, that this was not the course usually adopted for going into an inquiry. The course to be adopted was, to lay a resolution on the table, calling on the President for evidence on the subject, and what progress the business was in. There was so much feeling on this subject five years ago, Mr. H. said, that a bill was brought into the Senate, and passed both Houses of Congress, diminishing the compensation of the Commissioner; it was apprehended that the delay might, in some sort, be occasioned by the magnitude of the salary. Experience proved, he said, that business does not go along quite so quick with a heavy salary, as it does with a light one. That bill experienced great opposition. It was said the

salary was fixed by treaty, and we had no right to lower it. It was, however, reduced from a thousand pounds sterling, to twenty-five hundred dollars a year; and it seemed, Mr. H. said, that that was not low enough to hurry the Commissioners, so as to finish their business. It was probable that the gentleman from Georgia, and the rest of the Senate, knew as much as the Committee of Finance on the subject. A communication had formerly been received from the President on the subject, in which he told them that they were making progress, and would probably finish soon; but when that *soon* was, Mr. H. said he did not know. This business was begun in 1816, and it is now 1826, and we have been paying the Commissioner, &c. all this time. They had a long journey to perform, to be sure, but they had not finished it. These commissions under treaty, Mr. H. said, had not been very successful. Out of the four under the Treaty of Ghent, only one was finished, in which he himself was concerned; and, if he were engaged in such a one again, he doubted whether he should finish quite so quick; and whether he should not have learned from some other, the way to procrastinate. That commission was completed in eighteen months. The second, under the fifth article, still continues, and there it stands. Whether this one will end so or not, he could not say. We never ought again, Mr. H. said, to establish a commission under treaty, without limiting the time; and he doubted very much whether the Florida treaty commission would ever have been ended, to this day, had not the Commissioners been tied to three years.

The bill was then reported to the Senate, and the amendments made in Committee of the Whole having been concurred in, it was passed to a third reading.

The Senate then proceeded to the consideration of Executive business, and, at four o'clock, adjourned.

TUESDAY, MARCH 7, 1826.

The Senate, on motion of Mr. SMITH, of Md. took up the bill making appropriations for Fortifications.

Mr. SMITH, (a majority of the Committee of Finance having declined recommending the amendment,) moved to strike out the appropriation of $17,000 for the purchase of Throg's Point, on the East river, about ten or fifteen miles above the City of New-York—contending, in a speech of considerable length, that a fort at that point was, from the nature of the passage at Hurl Gate, entirely unnecessary for the defence of New York, and that, therfore, the money for this purchase, as well as for any works which might be constructed at the point in question, would be entirely thrown away, as the large sums expended at Fort Washington, and elsewhere, had now proved to be.

Mr. WOODBURY, (another member of the Committee of Finance,) opposed the motion of Mr. SMITH, and replied in detail to his arguments and statements—contending that the point, from all the information and knowledge before the Senate on the subject, was an important site, not only for a defensive work, but necessary for a Light House—referring to the reports of Engineers, &c. to sustain his opinions.

Mr. HARRISON, with the view of enabling himself to form a more decided opinion on the question, which was one of considerable importance, moved to lay the bill, for the present, on the table.

This motion was decided in the affirmative, by the casting vote of the President—and then,

On motion of Mr. EDWARDS, the Senate proceeded to the consideration of Executive business; and after some time spent therein, adjourned.

WEDNESDAY, MARCH 8, 1826.

Mr. EDWARDS moved to go into the consideration of Executive business.

Mr. KING suggested that there were several small measures of a Legislative character on the table, which ought to be acted on, that they might be sent to the House. The session could not continue much longer, and unless they were soon acted on, these bills could not, perhaps, be acted on at all.

Mr. LLOYD said, the single question for the Senate was this: which class of business was of most importance—that of an Executive nature, or these small bills. Whichever was most important, ought to have the priority. Mr. L. further stated, that his colleague (Mr. MILLS) had expsessed his wish that the discussion in secret session should not be delayed on account of his absence from his seat.

Mr. BERRIEN said there was nothing in the nature of this question to deprive the Senate of the right of expressing an opinion whether they should go into Executive business or not.

The CHAIR remarked, that the motion to go into Executive business was a proposition which did not admit of debate.

Mr. BERRIEN observed, he was about to say that the subject might be discussed to this extent—they might speak of the relative importance of the public and confidential business, without going into any of the details of these questions. In regard to the ordinary legislative business which is presented to the Senate, as soon as it is finished it is to be sent to the other House for them to act on it. In regard to the business of an Executive character, there was nothing between the Senate and the Executive in which the assistance of the other House would be necessary. Therefore, though the other business were less important in itself, it became more important that they should act on it at once, as it must, to be effective, receive the assent of the other branch of the Legislature. He hoped, therefore, the gentleman would allow them one day for the ordinary legislative business of the session.

Mr. NOBLE said it was perfectly unimportant to him, but a sense of duty required him to say, that, if there were subjects which required their going into Executive business, they might as well do it first as last, and act on them at once.

The CHAIR remarked, that the debate could not proceed. It must be obvious to the gentlemen of the Senate, that the question presented by the pending motion in strict justice could not be debated, particularly in public session.

Mr. HAYNE said, on a motion made to go into Executive business, it was a question which, in some instances, ought to be discussed; but he agreed with the Chair, that it could not with propriety be discussed with open doors. The rule required, in fact, that as soon as the motion was made, the galleries should be cleared.

The question was then taken on going into Executive business, and decided in the negative—ayes, 15, noes 18. The Senate then, on motion of Mr. SANFORD, (by a vote of 16 to 14) again took up the bill making appropriations for Fortifications—the question being on the motion made yesterday by Mr. SMITH, to strike out the appropriation of 17,000 dollars for the purchase of Throg's Point, and the right of way thereto, on Long Island Sound.

On this question the debate was resumed, and continued until a late hour in the afternoon—embracing not only the value of the particular site in question, as a position for the purposes of protection and defence, but the merits of the general system of Fortifications, recommended and prosecuted for several years past. The appropriation was advocated by Messrs. LLOYD, HARRISON, SANFORD, EDWARDS, BRANCH, and HAYNE, and the motion to strike it out was supported by Messrs. CHANDLER, DICKERSON, HOLMES, and SMITH.

[The Speech of Mr. DICKERSON, of N. J. having reference to the general subject of the policy of fortifications, was reported at large, and will be found at the close of the Senate debates in this volume.]

The question was taken on the motion of Mr. SMITH, and decided in the negative, as follows:

YEAS.—Messrs. Chandler, Clayton, Cobb, Dickerson, Findlay, Hendricks, Holmes, King, Macon, Marks, Rowan, Smith—12.

NAYS.—Messrs. Barton, Benton, Berrien, Bouligny, Branch, Chambers, Chase, Eaton, Edwards, Ellis, Harrison, Hayne, Johnson of Ken. Johnston of Lou. Kane, Knight, Lloyd, Noble, Robbins, Sanford, Seymour, Thomas, Van Buren, White, Willey, Woodbury—26.

The bill was then ordered to a third reading.

THURSDAY, MARCH 9, 1826.

Mr. CHAMBERS moved that the Senate now proceed to the consideration of Executive business.

The CHAIR stated that there were some bills from the other House not yet read the first time; and Mr. SMITH intimated a wish to make a report: but

Mr. CHAMBERS declined waiving his motion, stating that it was his wish to give the consideration of the confidential business before the Senate the preference, at present, over all other business, and he would not yield his motion, therefore, to any other subject. His motion prevailed; and

The Senate closed its doors, and so remained until the hour of adjournment.

FRIDAY, MARCH 10, 1826.

Mr. CHAMBERS moved that the Senate proceed to the consideration of Executive business.

Mr. KING hoped the gentleman would first permit reports from the committees to be made.

Mr. CHAMBERS said he had made his motion for the express purpose of precluding all other business, and therefore declined waiving it.

The Senate then, by a vote of 19 to 13, went into Executive business, and remained with closed doors for some time; and then adjourned.

SATURDAY, MARCH 11, 1826.

The Senate proceeded to the consideration of Executive business, and remained with closed doors till six o'clock.

MONDAY, MARCH 13, 1826.

SUSPENSION OF THE HABEAS CORPUS.

Mr. RANDOLPH, of Virginia, rose to make a motion, which, said he, I hope and believe no one member of this body will dissent from. It is, sir, for printing a most important document of old times, which is not on our files, and which, if not found on the files of the other House, is not in existence, officially, any where. The document I allude to is one, the history of which I gave the other day, in conclave—and which I certainly do not mean now to trouble the Senate with the repetition of—I believe the day, the 9th perhaps of last month, when I anticipated what has come to pass in Russia. Sir, I then said that I spoke from memory, but I have since done what I am not in the habit of doing—I *have* hunted the Journal; I have applied to the Secretary for a copy of the document, and he has it not. I at first thought it might have been burnt by the British: for they served us as the Irish insurgents did a Banker, against whom they had a special spite, when they burned all his notes in order to break him—in like manner they did some of us a very great service. Whenever any thing is wanted, we now can have the answer of old Caleb Balderstone, referring its absence to the fire at Wolf's Crag. I find, in the Journal of the Senate to which I have had recourse, this entry:

"*Friday, January* 23, 1807.

"On motion, by Mr. GILES,

"*Ordered*, That Messrs. GILES, ADAMS, and SMITH, of "Md. be a Committee to inquire whether it is expedient, "in the present state of public affairs, to suspend the "privilege of the writ of Habeas Corpus, and that they "have leave to report by bill or otherwise.

"On motion,

"*Ordered*, That the message of the President of the "United States, of the 22d instant, together with the "documents therein mentioned, be referred to the same "committee.

"Whereupon,

"Mr. GILES, from the committee, reported a bill to "suspend the privilege of the writ of Habeas Corpus for "a limited time, in certain cases; and the rule was, by "unanimous consent, dispensed with, and the bill had "three readings, and was amended.

"*Resolved*, That this bill pass as amended; that it be "engrossed, and that the title thereof be, 'An act to "suspend the privilege of the writ of Habeas Corpus for "a limited time, in certain cases'"—[*in certain cases*, said Mr. R.—not the cases which the Constitution has declared shall be the cases in which it shall be suspended—I said certain cases—I should have spoken more properly to say in *uncertain cases*—for the *certain* cases are the cases of the Constitution.]

"The committee also reported the following message "to the House of Representatives; which was read and "agreed to, to wit:

"*Gentlemen of the House of Representatives:*

"The Senate have passed a bill suspending, for three "months, the privilege of the writ of Habeas Corpus, in "certain cases, which they think expedient to communi-"cate to you in confidence, and to request your concur-"rence therein as speedily as the emergency of the case "shall, in your judgment, require.

"On motion,

"*Ordered*, That Mr. SMITH, of Maryland, be the Com-"mittee to deliver the message to the House of Repre-"sentatives."

"*Monday, January* 26, 1807.

"Mr. ADAMS, from the committee, reported that the "bill, entitled 'An act to suspend the privilege of the "writ of Habeas Corpus, for a limited time, in certain "cases,' was correctly engrossed.

"Mr. SMITH, of Maryland, reported, that he had car-"ried the bill last mentioned, to the House of Represen-"tives for concurrence."

And now, sir, let us turn to the House of Representatives—because the bill was never printed; there is not an office copy of it to be found here; it was carried to the House of Representatives——and, if not found there, there is no office copy of it in the world; though there are copies equally entitled to credit with any office copy whatever.

"*House of Representatives, Monday, January* 26, 1807.

"A message was received from the Senate, by Mr. "SAMUEL SMITH, as follows:

"Mr. Speaker: I am directed by the Senate of the "United States to deliver to this House, a confidential "message in writing. Whereupon,

"The House being cleared of all persons except the "members and Clerk, Mr. SMITH delivered to the Speaker "the following communication, in writing:

"*Gentlemen of the House of Representatives:*

"The Senate have passed a bill suspending, for three "months, the privilege of the writ of Habeas Corpus, in "certain cases, which they think expedient to communi-"cate to you in confidence, and to request your concur-"rence therein, as speedily as the emergency of the case "shall, in your judgment, require.

"Mr. SMITH also delivered in the bill referred to in the "said communication, and then withdrew.

"The bill sent from the Senate, entitled 'An act sus-"pending, for three months, the privilege of the writ of

"Habeas Corpus, in certain cases,' was read the first "time.

"A motion was made by Mr. PHILIP R. THOMPSON [an "old coadjutor of mine, said Mr. R. and I have no hesi- "tation in saying, at my instance] and seconded, that the "House do come to the following resolution:

"*Resolved*, That the message and bill communicated "to this House, from the Senate of the United States, "and the proceedings of the House thereon, ought not to "be kept secret, and that the doors of the House be now "opened.

"And on the question thereupon,

"It was resolved in the affirmative—yeas 123, nays 3."

The nays were Josiah Masters, David Thomas, and Nathan Williams, [two of them, I know, and all three of them, I believe, from New York.]

"The doors of the House were accordingly opened, "and the Speaker stated to the House, that the bill sent "from the Senate having been read the first time, the "question would be, shall the bill be read the second "time? Whereupon,

"Opposition being made by a gentleman from Virginia "to the said bill, and debate arising thereon, the question, "(in conformity to the rules of the House,) was stated by "Mr. Speaker, to wit:

"Shall this bill be rejected?

"And, on the question to reject,

"It was resolved in the affirmative—yeas 113, nays 19."

What is the most remarkable thing, said Mr. R. is, that of these nineteen nays, there is not one man from the Old Dominion—not one man. There were but four South of the River Ohio and South of the River Potomac—let me count them—Evan Alexander, of North Carolina, Elias Earle, of South Carolina, Thomas Sandford, of Kentucky, and Matthew Walton, of Georgia—I beg pardon, of Kentucky—the Yazoo led me into the error; I find, also, amongst the nays, on this occasion, the name of a certain Mr. Barnabas Bidwell, who commenced the lead in that House in that very session! I find, too, the names of Josiah Masters, Gurdon S. Mumford, Henry Southard. And then, sir, in turning back to the Senate Journal, there is not one trace, neither yea nor nay. The only entry to be found on the Senate Journal afterwards was the following:

"The following message was received from the House "of Representatives by Mr. BECKLEY, their Clerk: Mr. "President—the House of Representatives do not concur "in the bill, entitled 'An act to suspend, for three months, "the privilege of the writ of Habeas Corpus, in certain "cases;' and he withdrew."

But as the rule was unanimously dispensed with, and the bill had three readings in one day, unanimously, it is to be inferred from that fact—for reasons which I gave to the Senate when the doors were shut, and which I don't choose to give now that they are open—there was no opposition here. Now, sir, not being able to find any trace of this bill here, it never having been printed—it never having been on file—the question is, where is it to be found? In the other House, if any where—if any where, I say again—if any where!

That suspension of the writ of habeas corpus was the first oblation which the present Executive Magistrate made at the shrine of power, when he gave in his adhesion on the desertion of his federal friends! Up to that session, he had been as staunch an adherent of the federal opposition to Jefferson's administration as any man in this country! We know by a voice—not from St. Helena, but from the South side of James' river—who was the sponsor who introduced him into the political church, who promised and vowed certain things in his name, which he has not yet disclosed; we hear that voice proclaiming from the Wigwam, and loudly calling upon him to come forward—now that he is an adult, 16 years having passed since his baptism at the new political font—and receive confirmation, and exonerate his Godfather—he who stood for him at the baptismal font—from all further responsibility on his account for his political sins. He calls on him to come forward, to get another endorser, for that he must take his name off his paper—that is a phrase which now a days is much better understood!

Under these circumstances, said Mr. R. it has been to me a matter of wonder, that, during the late electioneering campaign—I have expressed myself to that effect to my good friend on my left, (Mr. MACON)—as I had but a shadow of preference amongst the contending parties, I did not mix myself with one side or the other in the election—I often expressed my wonder to him, for two years that preceded, that this fact had never been brought forward and used, as please God I would have used it, if I had had any interest in doing so; and I now discover the cause; it was not known—and permit me to say, it would never have been known to me by any industry of research or labor, if I had not been—whether fortunately or unfortunately—contemporary with this Government, first as a spectator in the lobby, from its origin—from the dissolution of the old Congress, which I saw expire, and a new butterfly come out of the chrysalis state—up to 1799, when I first took my seat in the Congress of the United States, with the gentleman who presides in the court *below*—(I do not speak as to jurisdiction—(the term is technical)—but in reference to the place where it holds its sittings,) with so much honor to himself and benefit to this country; from whom, though I may have differed in the course of a long political life, I have never withheld that respect, not even in conflict on the floor of the other branch of the Legislature, where he sat, during one session, in times when party spirit was at its height—I never, for a moment, lost sight of the immeasurable distance that separated me from that man, in every respect that could be mentioned, except age—and he was nearly old enough to be my father—for, where I meet with real worth—where I meet with a man of real talent—whether associated with him or not—whether placed in a situation where I was to appear only as a foil to his superior merits and ability, [pointing to the seat of Mr. Tazewell,] I can yield him that precedence which I shall never give to the assumption of superior merit, where I know and feel that it does not exist.

Sir, I consider that of all the stretches of power—*talk about Internal Improvements!*—of the *expediency* of suspending the privilege of the Habeas Corpus, in certain cases, in the teeth of the Constitution! What says the Constitution? That the privilege of the writ of Habeas Corpus shall not be suspended, except in two cases. What are they, sir, what are they? You would not have had that privilege, even if there had been no restriction, in your power; because you have no where had the grant of power to suspend the grant of power—the restriction is *ex abundanti cautela*—out of abundant caution, overweening care—like the restriction on the liberty of the press, in the teeth of which the sedition law was passed—like the restriction on an established church, in the teeth of which, for aught I know, an established church for the Catholics may be passed by this Congress, or by that of Panama.

These are in the amendments—take notice, there is no grant in the body of the Constitution. Article 1, section 9. "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it."

Well, sir, here was a bill to suspend it—not in a case of rebellion or invasion; because all that was necessary would have been for the President to have sent a message, that there was rebellion or invasion, and to call for the suspension. There was no message from the President to that effect. I have no hesitation in saying that it was well understood that the channel through which the communication

was made—not at all—I make no such allegation against Mr. Jefferson—but alleged to have been made by him—was the channel of that gentleman who reported the bill to have been duly engrossed—the middle member of this committee—(I speak without irreverence—I have my principles on that point)—the second person of this trinity in unity. It was well understood at that time—I never doubted it—I had my information from a member of this body, at that time, who was as honest a man as ever breathed—there is no message on the Journal recommending it—there is no official document—the bill is not now to be found—but it did pass this House—to suspend the habeas corpus, *in certain cases.*

Will the Senate pardon me for saying, that, to that suspension, was I indebted for my seat in the other House. At the preceding session of Congress, it was my misfortune not to see exactly with the eyes of people in power. I wanted some of that very laudable modesty which Chatham said that he admired whilst he despaired of imitating it—the modesty of the retainers of the Treasury bench—whose humility never allowed them to put their opinions in opposition to that of the minister for the time being. The next election came on in the April following this January, 1807. That bill—it was the panoply under which I sheltered myself—the text from which I preached; and, as on the issue of the first battle greatly depends the fate of the succeeding campaigns—no opposition dared to show itself; from that day, Sertorius like, or like Eumenes, I carried on the war upon my own resources, or as the King of Prussia carried on the war against the combined continent of Europe—for seven long years—relying on my own resources, and on them alone, against the General Government, the State Governments, and, I believe, every press in the United States, and maintained myself—not in the Peninsula, but in that district, where, in case of the worst that can happen, I look for refuge under any change of fortune, political or otherwise. My enemies never dared to face me and uphold this outrage upon the Constitution; and do you think if I had been engaged heart and hand in this late election, I would have let this thing sleep? No, it should have rung like a funeral knell in the ears of the incumbent and the expectant. Let that pass—I did not disturb its sleep—I did not meddle with it; it was not for me to wake the adder—the rattlesnake—the good old rattlesnake—the emblem of liberty. "Don't tread on me!" I did not care one button which of the contending parties he bit—not one farthing.

Sir, I must take leave to express myself here, as every where else, in my plain fire side, plantation way. The little advancement—and I cannot say that I feel it very highly, sir—from a majority to a colonelcy, has never altered my manners, and never shall, either in this Legislature or out of it; and I shall continue to be the same man, I trust, both at home and abroad, that I was before. I would, therefore, respectfully move, that a message be sent to the House of Representatives, requesting of that House an office copy of the bill sent to them by this House on Monday the 26th day of January, 1807, suspending for three months the privilege of the writ of habeas corpus in certain cases. If it does not come from that House—and I am rather afraid it will not—I do not believe it has been burnt either—for I have some very obscure recollection in my mind of its disappearing off the file of that House long before the war was declared, or there was any fire in the Capitol—I dont mean the library fire, but Ross's fire—John Bull, on that occasion, made himself an Irish Bull: he tried to break his enemy the Banker by burning all his notes that he could lay his hands on. I make you that motion, sir.

The PRESIDENT being about to put the question on agreeing to the motion—

Mr. BELL, of New Hampshire, rose, merely to suggest that this motion was somewhat of an extraordinary nature, and he should be glad to take a little time to consider it. He did not see the motive which had induced the gentleman to make the motion, and at present he must acknowledge he should be very unwilling to send a proposition of this sort to the House of Representatives.

Mr. SMITH, of Maryland, asked whether it was not required by the Rules of the Senate, for a resolution of this kind to lie one day.

The CHAIR declared such was the rule, unless its immediate consideration was asked for by the mover; and Mr. RANDOLPH not pressing its immediate consideration, it was laid on the table until to-morrow.

The Senate then again proceeded to the consideration of Executive business, and remained with closed doors until six o'clock.

TUESDAY, MARCH 14, 1826.

The Journal of yesterday having been read—

Mr. RANDOLPH rose, and addressed the Senate nearly four hours, on the subject of the resolution which he submitted yesterday, and on various topics connected with that and other political incidents in the history of the country, particularly on the report made (by Mr. JOHN QUINCY ADAMS) from the Select Committee of the Senate, in 1807, in the case of John Smith, a Senator from Ohio, charged with being an associate in Burr's conspiracy—which report Mr. R. concluded by moving to have printed for the use of the Senate, (and withdrawing the motion that he made yesterday, in regard to the bill suspending the privilege of the writ of habeas corpus, that bill having been since found.)

The motion to print the report was negatived, without a count, and then, about 4 o'clock,

The Senate, on motion of Mr. SEYMOUR, went into the consideration of Executive business.

[This day the final question on the celebrated Panama Mission was decided: and here is the place to insert the record of Confidential Proceedings thereon, ordered by the Senate, by a vote on this day, to be made public. Those Proceedings are as follows, viz:]

EXECUTIVE PROCEEDINGS.

WEDNESDAY, FEB. 15, 1826.

Mr. VAN BUREN, of New York, submitted the following resolutions:

Resolved, That, upon the question whether the United States shall be represented in the Congress of Panama, the Senate ought to act with open doors; unless it shall appear that the publication of documents, necessary to be referred to in debate, will be prejudicial to existing negotiations.

Resolved, That the President be respectfully requested to inform the Senate whether such objection exists to the publication of the documents communicated by the Executive, or any portion of them; and, if so, to specify the parts, the publication of which would, for that reason, be objectionable.

On the question to agree thereto—

It was determined in the affirmative—yeas 23, nays 20.

The yeas and nays being desired by one-fifth of the Senators present, those who voted in the affirmative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Ellis, Harrison, Hayne, Hendricks, Holmes, Johnson, of Ky. Kane, King, Macon, Randolph, Rowan, Ruggles, Van Buren, White, Williams, Woodbury.—23.

Those who voted in the negative, are,

Messrs. Barton, Bell, Bouligny, Chase, Clayton, Edwards, Findlay, Johnston, of Lou. Knight, Lloyd, McIlvaine, Marks, Mills, Noble, Robbins, Sanford, Seymour, Thomas, Van Dyke, Willey.—20.

WEDNESDAY, FEBRUARY 22, 1826.

The Senate resumed the consideration of the motion submitted by Mr. ROWAN on the 20th instant: and

the same having been modified at the instance of Mr. WOODBURY, as follows:

Resolved, That it is the unquestionable right of the Senate to call, in respectful terms, upon the President of the United States, for such information as may be in his possession, and which the Senate deem necessary to the faithful discharge of the duties imposed upon it by the Constitution: and, more especially, the duties resulting from matters which the Constitution makes it the duty of the President to submit to the Senate, for its advice and consent.

Resolved, That the two following resolutions, of the 15th instant, viz: "*Resolved*, That, upon the question whether the United States shall be represented in the Congress of Panama, the Senate ought to act with open doors; unless it shall appear that the publication of documents, necessary to be referred to in debate, will be prejudicial to existing negotiations. *Resolved*, That the President be respectfully requested to inform the Senate, whether such objection exists to the publication of the documents communicated by the Executive, or any portion of them; and, if so, to specify the parts, the publication of which would, for that reason, be objectionable:"—requested information in the possession of the Executive, and in his possession only, which the Senate deemed important to guide its decision on a subject within the scope of its advising powers, and deeply interesting to the States and to the People of this Union.

Resolved, That the message of the President, in the following words, viz: "In answer to the two resolutions of the Senate of the 15th instant, marked (Executive,) and which I have received, I state, respectfully, that all the communications from me to the Senate, relating to the Congress at Panama, have been made, like all other communications upon Executive business, in *confidence*, and most of them in compliance with a resolution of the Senate requesting them confidentially. Believing that the established usage of free confidential communications, between the Executive and the Senate, ought, for the public interest, to be preserved unimpaired, I deem it my indispensable duty to leave to the Senate itself the decision of a question, involving a departure, hitherto, so far as I am informed, without example, from that usage, and upon the motives for which, not being informed of them, I do not feel myself competent to decide"—does not give to the Senate the information requested, "whether the publication of the documents," or "any portion of them," communicated by the Executive, as to the mission to Panama, "would be prejudicial to existing negotiations."

Resolved, That the Senate has the sole right in all cases to determine what shall be the "rules of its proceedings;" and that the President cannot interfere with the same, without violating the Constitutional privileges of the Senate.

Resolved, That the Senate has the sole right to determine, what are its existing "rules of proceedings," whether founded on "usage" or positive written regulations—and that the President cannot officially decide what those rules are, or whether any proposed mode of acting, is a "departure" from them "without example," or whether it be essential to the "public interest," that some supposed "usage" of the Senate should "be preserved unimpaired."

Resolved, That it is not competent for the President, on a call from the Senate, to decline giving information, whether "the publication of documents necessary to be referred to in debate, will be prejudicial to existing negotiations," on the ground that he disapproves of the mode of proceeding, which the Senate proposes to follow on the subject to which those documents relate.

On motion of Mr. BARTON, of Mo. to postpone the same indefinitely, a division of the question was called for.

On the question to postpone indefinitely the *first* resolution—

It was decided in the affirmative—yeas 24, nays 20.

On motion by Mr. COBB, of Geo.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Holmes, Johnston, of Lou. Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—24.

Those who voted in the negative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Ellis, Findlay, Hayne, Johnson, of Ky. Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—20.

On the question to postpone indefinitely the *second* resolution, it was determined in the affirmative—yeas 24, nays 20.

The yeas and nays having been desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Holmes, Johnston, of Lou. Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey—24.

Those who voted in the negative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Ellis, Findlay, Hayne, Johnson of Ky. Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—20.

On the question to postpone, indefinitely, the *third* resolution,

It was determined in the affirmative, yeas 24, nays 20.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Holmes, Johnston, of Lou. Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—24.

Those who voted in the negative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Ellis, Findlay, Hayne, Johnson, of Ky. Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—20.

On the question to postpone, indefinitely, the *fourth* resolution,

It was determined in the affirmative—yeas 24, nays 20.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Holmes, Johnston, of Lou. Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey—24.

Those who voted in the negative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Ellis, Findlay, Hayne, Johnson, of Ky. Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—20.

On the question to postpone, indefinitely, the *fifth* resolution,

It was determined in the affirmative—yeas 24, nays 20.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Holmes, Johnston, of

Lou. Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey—24.

Those who voted in the negative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Ellis, Findlay, Hayne, Johnson, of Ky. Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—20.

On the question to postpone, indefinitely, the *sixth* resolution,

It was determined in the affirmative—yeas 24, nays 20.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Holmes, Johnston, of Lou. Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—24.

Those who voted in the negative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Ellis, Findlay, Hayne, Johnson, of Ky. Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—20.

Mr. HOLMES, of Maine, submitted the following motion:

Resolved, That the Senate having, on the 15th day of February, passed the following resolutions:

"*Resolved*, That, upon the question whether the United States shall be represented in the Congress of Panama, the Senate ought to act with open doors, unless it shall appear that the publication of documents, necessary to be referred to in debate, will be prejudicial to existing negotiations.

"*Resolved*, That the President be respectfully requested to inform the Senate whether such objection exists to the publication of the documents communicated by the Executive or any portion of them; and, if so, to specify the parts, the publication of which would, for that reason, be objectionable."

To which the President returned the following message in answer, viz:

"WASHINGTON, 16th FEBRUARY, 1826.

"*To the Senate of the United States:*

"In answer to the two resolutions of the Senate, of the 15th instant, marked (Executive,) and which I have received, I state, respectfully, that all the communications from me to the Senate, relating to the Congress at Panama, have been made, like all other communications upon Executive business, in *confidence*, and most of them in compliance with a resolution of the Senate requesting them confidentially. Believing that the established usage of free confidential communications, between the Executive and the Senate, ought, for the public interest, to be preserved unimpaired, I deem it my indispensable duty to leave to the Senate itself the decision of a question, involving a departure, hitherto, so far as I am informed, without example, from that usage, and upon the motives for which, not being informed of them, I do not feel myself competent to decide.

JOHN QUINCY ADAMS."

Resolved, That, as the Senate have not been informed by the President, whether the publication of the documents, in relation to the proposed mission to the Congress of Panama, would affect any pending negotiations, it is expedient to proceed to the discussion of the subject of that mission with closed doors.

On motion, by Mr. KING, the Senate adjourned.

THURSDAY, FEBRUARY, 23, 1826.

The Senate resumed the consideration of the motion submitted yesterday, by Mr. HOLMES, of Maine, in relation to the proposed mission to the Congress at Panama.

On motion, by Mr. DICKERSON, of N. J. to amend the same, by striking out all after the word "Resolved," where it first occurs, and inserting in lieu thereof the following:

Resolved, That, although the Senate cannot find, in the answer of the President of the United States to their resolutions of the 15th instant, relative to the proposed mission to Panama, any distinct information that the publication of the communications, alluded to in said resolutions, would or would not be prejudicial to existing negotiations, they find a strong objection on the part of the President, to the publication of those communications, inasmuch as they were made "in confidence, and most of them in compliance with a resolution of the Senate, requesting them confidentially." And although the Senate have the right to publish communications so made, and to discuss the same, with open doors, without the assent of the President, when, in their opinion, the public interest may require such publication and such discussion, they do not think that present circumstances require the exercise of this right, so far as respects a discussion of those confidential communications with open doors. Therefore,

Resolved, That the discussion upon the proposed mission to Panama, and the confidential communications upon the same, be held with closed doors.

A motion was made by Mr. LLOYD, of Mass. to postpone indefinitely the original motion; and

It was determined in the negative, yeas 15, nays 29.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Bouligny, Branch, Chambers, Chase, Edwards, Johnston of Lou. King, Knight, Lloyd, Mills, Sanford, Smith, Van Dyke, White, Willey—15.

Those who voted in the negative, are,

Messrs. Barton, Bell, Benton, Berrien, Chandler, Clayton, Cobb, Dickerson, Eaton, Ellis, Findlay, Harrison, Hayne, Hendricks, Holmes, Johnson, of Ken. Kane, Macon, Marks, Noble, Randolph, Robbins, Rowan, Ruggles, Seymour, Thomas, Van Buren, Williams, Woodbury—29.

On motion, by Mr. WHITE, of Tenn.

To amend the proposed amendment, by striking out the following words: "Resolved, That the discussion upon the proposed mission to Panama, and the confidential communications upon the same, be held with closed doors," and inserting "Resolved, That the Senate, cannot, consistently with the duty which it owes to the United States and to itself, proceed to consider the expediency of appointing Ministers to attend the Congress at Panama, until it can receive the information necessary to enable it to determine whether the consideration of that question ought to be with open or with closed doors:"

On the question, "Will the Senate agree to this amendment to the proposed amendment," a division of the question was called for; and it was taken on *striking out*, and determined in the affirmative—yeas 27, nays 17.

On motion by Mr. COBB, of Geo. the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Bell, Benton, Berrien, Branch, Chase, Cobb, Eaton, Edwards, Ellis, Findlay, Harrison, Hayne, Holmes, Johnson, of Ken. King, Macon, Mills, Randolph, Rowan, Ruggles, Sanford, Seymour, Thomas, Van Buren, White, Williams, Woodbury—27.

Those who voted in the negative, are,

Messrs. Barton, Bouligny, Chambers, Chandler, Clayton, Dickerson, Hendricks, Johnston, of Lou. Kane, Knight, Lloyd, Marks, Noble, Robbins, Smith, Van Dyke, Willey—17.

On the question to insert the amendment last proposed, it was determined in the negative—yeas 13, nays 31.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Berrien, Cobb, Eaton, Ellis, Hayne, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury—13.

Those who voted in the negative, are,

Messrs. Barton, Bell, Benton, Bouligny, Branch, Chambers, Chandler, Chase, Clayton, Dickerson, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnson, of Ken. Johnston, Lou. Kane, Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey—31.

The question recurring on the adoption of the amendment first proposed to the original motion, amended by striking out the last clause:

On the question, "Will the Senate agree to this amendment?" a division of the question was called for; and,

On the question to *strike out* all the original motion, after the word "Resolved," where it first occurs, it was determined in the affirmative—yeas 31, nays 13.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Benton, Berrien, Branch, Chambers, Chandler, Cobb, Dickerson, Eaton, Edwards, Ellis, Findlay, Hayne, Hendricks, Johnson, of Ken. Kane, King, Macon, Marks, Mills, Randolph, Robbins, Rowan, Ruggles, Sanford, Van Buren, Van Dyke, White, Willey, Williams, Woodbury—31.

Those who voted in the negative, are,

Messrs. Bell, Bouligny, Chase, Clayton, Harrison, Holmes, Johnston, of Lou. Knight, Lloyd, Noble, Seymour, Smith, Thomas—13.

On the question to insert the proposed amendment, it was determined in the affirmative—yeas 27, nays 16.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Benton, Berrien, Bouligny, Chandler, Clayton, Cobb, Dickerson, Findlay, Harrison, Hayne, Hendricks, Holmes, Johnson, of Ken. Kane, King, Marks, Randolph, Robbins, Rowan, Ruggles, Seymour, Smith, Van Buren, Willey, Williams, Woodbury—27.

Those who voted in the negative, are,

Messrs. Branch, Chambers, Chase, Eaton, Edwards, Ellis, Johnston, of Lou. Knight, Lloyd, Macon, Mills, Noble, Sanford, Thomas, Van Dyke, White—16.

So it was

Resolved, That, although the Senate cannot find, in the answer of the President of the United States to their resolutions of the 15th instant, relative to the proposed mission to Panama, any distinct information that the publication of the communications, alluded to in said resolutions, would or would not be prejudicial to existing negotiations, they find a strong objection, on the part of the President, to the publication of those communications, inasmuch as they were made "in confidence, and most of them in compliance with a resolution of the Senate requesting them confidentially." And, although the Senate have the right to publish communications so made, and to discuss the same with open doors, without the assent of the President, when, in their opinion, the public interest may require such publication and such discusion, they do not think that present circumstances require the exercise of this right, so far as respects a discussion of those confidential communications with open doors.

FRIDAY, FEBRUARY 24, 1826.

On motion, by Mr. LLOYD, of Mass. that the Senate proceed to consider the resolution reported by the Committee on Foreign Relations, in relation to the expediency of sending Ministers to the Congress of Panama; it was determined in the affirmative—yeas 32, nays 12.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Benton, Bouligny, Branch, Chambers, Chandler, Chase, Clayton, Dickerson, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnson, of Ken. Johnston, of Lou. Kane, King, Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey—32.

Thomas who voted in the negative, are,

Messrs. Berrien, Cobb, Eaton, Ellis, Hayne, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury—12.

On motion, by Mr. HAYNE, of S. C. it was ordered that the further consideration of the resolution be postponed to, and made the order of the day for, Monday next.

MONDAY, MARCH 13, 1826.

The Senate resumed the consideration of the resolution reported by the Committee on Foreign Relations, relative to the expediency of sending Ministers to the Congress at Panama.

A motion was made by Mr. BENTON, of Mo. to amend the said resolution, by striking out all after "*Resolved*," and inserting "That the Senate cannot advise that it is expedient for the Government of the United States to send Ministers to the Congress of American nations at Panama, before it shall have received satisfactory information upon the following points: First, the subjects to which the attention of that Congress will be directed; secondly, the substance and form of the powers to be given to the respective Representatives; thirdly, the mode of organizing the Congress; fourthly, the mode of action in deciding the questions which may be submitted to it."

The Senate then adjourned.

TUESDAY, MARCH 14, 1826.

The Senate resumed the consideration of the resolution reported by the Committee of Foreign Relations, relative to the expediency of sending Ministers to the Congress of Panama, together with the amendment proposed thereto by Mr. BENTON.

On motion, by Mr. BENTON, of Missouri, the said amendment was modified as follows: Strike out all after "*Resolved*," and insert, "That it is not expedient for the United States to send any Ministers to the Congress of American nations assembled at Panama, before it shall have received satisfactory information upon the following points: First, The subjects to which the attention of the Congress will be directed: 2ndly, The substance and form of the powers to be given to the respective Representatives: 3dly, The mode of organizing the Congress: 4thly, The mode of action in deciding the questions which may be submitted to it."

On motion, by Mr. HAYNE, of South Carolina, that the further consideration of the resolution, with the proposed amendment, be postponed to Friday next; it was determined in the negative—yeas 20, nays 25.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Findlay, Hayne, Johnson, of Ken., Kane, King, Macon, Randolph, Reed, Rowan, Van Buren, White, Williams, Woodbury.—20.

Those who voted in the negative, are,

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Holmes, Johnston, of Louisiana, Knight, Lloyd, McIlvaine, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—25.

On motion by Mr. REED, of Mississippi, that he be excused from voting on the proposed amendment, it was determined in the affirmative—yeas 32, nays 12.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Benton, Berrien, Bouligny, Branch, Chambers, Chase, Clayton, Dickerson, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnston, of Louisiana, Knight, Lloyd, McIlvaine, Macon, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey, and Williams.—32.

Those who voted in the negative, are,

Messrs. Chandler, Cobb, Eaton, Hayne, Johnston, of Kentucky, Kane, King, Randolph, Rowan, Van Buren, White, and Woodbury.—12.

On the question to agree to the proposed amendment to the resolution, it was determined in the *negative*—yeas 19, nays 24.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Findlay, Hayne, Holmes, Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, and Woodbury.—19.

Those who voted in the negative, are,

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Johnson, of Kentucky, Johnston, of Louisiana, Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, and Willey.—24.

A motion was made by Mr. VAN BUREN, of New York, to amend the resolution, by adding thereto the following:

Resolved, That the Constituton of the United States, in authorizing the President of the United States to nominate, and, by and with the advice and consent of the Senate, to appoint, "Ambassadors, and other public Ministers," authorizes the nomination and appointment to offices of a diplomatic character only, existing by virtue of international laws; and does not authorize the nomination and appointment, (under the name of Ministers,) of Representatives to an Assembly of Nations, like the proposed Congress of Panama, who, from the nature of their appointment, must be mere deputies, unknown to the law of Nations, and without diplomatic character or privilege.

Resolved, That the power of forming or entering, (in any manner whatever,) into new political associations, or confederacies, belongs to the People of the United States, in their sovereign character, being one of the powers which, not having been delegated to the Government, is reserved to the States or People; and that it is not within the Constitutional power of the Federal Government to appoint Deputies or Representatives of any description, to represent the United States in the Congress of Panama, or to participate in the deliberation, or discussion, or recommendation, of acts of that Congress.

Resolved, As the opinion of the Senate, that (waiving the question of Constitutional power,) the appointment of Deputies to the Congress of Panama, by the United States, according to the invitation given, and its conditional acceptance, would be a departure from that wise and settled policy by which the intercourse of the United States with foreign nations has hitherto been regulated, and may endanger the friendly relations which now happily exist between us and the Spanish American States, by creating expectations that engagements will be entered into by us, at that Congress, which the Senate could not ratify, and of which the People of the United States would not approve.

Resolved, That the advantages of the proposed mission to the Congress of Panama, (if attainable) would, in the opinion of the Senate, be better obtained, without such hazard, by the attendance of one of our present Ministers near either of the Spanish Governments, authorized to express the deep interest we feel in their prosperity, and instructed fully to explain, (when requested) the great principles of our policy, but without being a member of that Congress, and without power to commit the United States to any stipulated mode of enforcing those principles, in any supposed or possible state of the world.

And, on the question to agree thereto, it was determined in the negative—yeas 19, nays 24.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Findlay, Hayne, Holmes, Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—19.

Those who voted in the negative, are,

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Johnson, of Kentucky, Johnston, of Louisiana, Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—24.

On the question to agree to the resolution reported by the committee, in the following words:

Resolved, That it is not expedient, at this time, for the United States to send any Ministers to the Congress of American nations assembled at Panama,

It was determined in the *negative*—yeas 19, nays 24.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Findlay, Hayne, Holmes, Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—19.

Those who voted in the negative, are,

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Johnson, of Kentucky, Johnston, of Louisiana, Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—24.

On motion, by Mr. CHASE, of Vermont, that the Committee on Foreign Relations be discharged from the further consideration of the Message of the President of the United States of the 26th December, nominating Richard C. Anderson, John Sergeant, and William B. Rochester, to the appointments therein mentioned; it was determined in the affirmative—yeas 38, nays 6.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Benton, Berrien, Bouligny, Branch, Chambers, Chandler, Chase, Clayton, Cobb, Dickerson, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnson, of Kentucky, Johnston, of Louisiana, Kane, King, Knight, Lloyd, Macon, Marks, Mills, Noble, Reed, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Buren, Van Dyke, White, and Willey.—38.

Those who voted in the negative, are,

Messrs. Eaton, Hayne, Randolph, Rowan, Williams, and Woodbury.—6.

On motion, by Mr. CHANDLER, of Maine, that, it being ten minutes past 12 o'clock, the Senate do adjourn, it was determined in the negative, yeas 15, nays 29.

The yeas and nays being desired by one fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Benton, Branch, Chandler, Cobb, Dickerson, Findlay, Hayne, Holmes, Johnson, of Kentucky, King, Macon, Reed, Rowan, Williams, and Woodbury.—15.

Those who voted in the negative, are,

Messrs. Barton, Bell, Berrien, Bouligny, Chambers, Chase, Clayton, Eaton, Edwards, Harrison, Hendricks, Johnston, of Louisiana, Kane, Knight, Lloyd, Marks, Mills, Noble, Randolph, Robbins, Ruggles, Sanford, Sey-

mour, Smith, Thomas, Van Buren, Van Dyke, White, and Willey.—29.

On motion by Mr. MILLS, of Massachusetts, that the Senate proceed to consider the nominations of Richard C. Anderson, John Sergeant, and William B. Rochester, contained in the Message of the 26th December; it was determined in the affirmative—yeas 25, nays 19.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Johnson, of Kentucky, Johnston, of Louisiana, Knight, Lloyd, Marks, Mills, Noble, Reed, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—25.

Those who voted in the negative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Findlay, Hayne, Holmes, Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—19.

On the question, "Will the Senate advise and consent to the appointment of Richard C. Anderson?" It was determined in the affirmative—yeas 27, nays 17.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Benton, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Johnson, of Kentucky, Johnston, of Louisiana, Kane, Knight, Lloyd, Marks, Mills, Noble, Reed, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—27.

Those who voted in the negative, are,

Messrs. Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Findlay, Hayne, Holmes, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—17.

On the question, "Will the Senate advise and consent to the appointment of John Sergeant?" It was determined in the affirmative—yeas 26, nays 18.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Findlay, Harrison, Hendricks, Johnson, of Kentucky, Johnston, of Louisiana, Kane, Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—26.

Those who voted in the negative, are,

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Hayne, Holmes, King, Macon, Randolph, Reed, Rowan, Van Buren, White, Williams, Woodbury.—18.

On the question, "Will the Senate advise and consent to the appointment of William B. Rochester?" It was determined in the affirmative—yeas 28, nays 16.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Benton, Bouligny, Chambers, Chase, Clayton, Edwards, Findlay, Harrison, Hendricks, Johnson, of Kentucky, Johnston, of Louisiana, Kane, Knight, Lloyd, Marks, Mills, Noble, Reed, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—28.

Those who voted in the negative, are,

Messrs. Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Hayne, Holmes, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—16.

So it was

Resolved, That the Senate advise and consent to the appointments of Richard C. Anderson, John Sergeant, and William B. Rochester, agreeably to their nominations respectively.

Mr. BERRIEN, of Georgia, submitted the following resolution:

Resolved, That the injuction of secrecy be removed from the Journal of the Senate, on the subject of sending Ministers to the Assembly of American Nations at Panama, and that the Secretary of the Senate cause the same to be published, viz:

Resolutions of the Senate of the 15th of February, and proceedings thereon. Proceedings of the Senate of the 22d, 23d, and 24th February, and of the 13th and 14th of March.

The Senate proceeded to consider the resolution.

On motion by Mr. BELL, of New Hampshire, that the Senate adjourn, it was determined in the negative, yeas 13, nays 29.

On motion by Mr. VAN BUREN, the yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Bell, Chase, Clayton, Edwards, Knight, Macon, Marks, Noble, Reed, Robbins, Sanford. Seymour.—13.

Those who voted in the negative, are,

Messrs. Benton, Berrien, Bouligny, Branch, Chambers, Chandler, Cobb, Dickerson, Eaton, Findlay, Harrison, Hayne, Hendricks, Holmes, Johnson, of Kentucky, Johnston of Louisiana, Kane, King, Lloyd, Mills, Rowan, Ruggles, Smith, Thomas, Van Buren, White, Willey, Williams, Woodbury.—29.

On the question, "Will the Senate agree to the resolution?" It was determined in the affirmative—yeas 37.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Messrs. Barton, Benton, Berrien, Bouligny, Branch, Chambers, Chandler, Chase, Cobb, Dickerson, Eaton, Edwards, Findlay, Harrison, Hayne, Hendricks, Holmes, Johnson, of Kentucky, Johnston, of Louisiana, Kane, King, Lloyd, Macon, Marks, Mills, Noble, Reed, Rowan, Ruggles, Sanford, Seymour, Smith, Van Buren, White, Willey, Williams, Woodbury.—37.

So it was

Resolved, That the injunction of secrecy be removed from the Journal of the Senate, on the subject of sending Ministers to the Assembly of American Nations at Panama, and that the Secretary of the Senate cause the same to be published, viz:

Resolutions of the Senate of the 15th of February, and proceedings thereon. Proceedings of the Senate of the 22d, 23d, and 24th February, and of the 13th and 14th of March. True extracts from the Journal.

Attest, WALTER LOWRIE, Sec'y.

[These proceedings being published, here is the place to insert that part of the debate, in the secret session, above sketched out, which it is in our power to publish from authentic sources. It is therefore here introduced.]

The following resolution, submitted by the Committee of Foreign Relations, being under consideration—

"*Resolved*, That it is not expedient, at this time, for the United States to send any Ministers to the Congress of American Nations assembled at Panama:"—

Mr. HAYNE, of South Carolina, addressed the Senate, in substance, as follows:

If I could concur, Mr. President, with those gentlemen who believe that the question of sending Ministers to represent the United States at the Congress of Panama, was one of very little consequence, I should certainly not trouble the Senate with any remarks upon the subject: for, though I should consider this as a conclusive argument against the mission, yet if, in fact, we were now called upon to take a part in an empty pageant, or an idle cere-

mony—if (to borrow the language used *elsewhere*) our Ministers are merely to present "an imposing spectacle to the eyes of the world"—I should content myself with giving a silent, though decided vote against the measure. But the question presents itself to my mind, in an aspect extremely different. It does appear to me, that, whatever may be the result of this mission, it cannot possibly be indifferent; it is a measure of the most decisive character, and one that cannot fail to produce the most important results. It touches the neutral relations of the United States in a contest of a peculiar nature, towards which the attention of the whole civilized world is anxiously turned, and in which their feelings and interests are most deeply involved. It concerns the part we shall act towards the belligerents in the great contest which has so long desolated the South American hemisphere—a contest of which neither the nations of Europe, nor ourselves, have been unconcerned spectators, though they have so far escaped being drawn into the vortex. Happily for us, and most happily for the South Americans, this strict neutrality on the part of other nations, has left to the youthful vigor of the new Republics, a slow but certain triumph over their common enemy, and nothing is now wanting to the establishment of their Independence on an immutable basis, but that there should be no interference whatever in their concerns. Left to themselves, their liberties are secure. In seeking foreign assistance, they are committing a fatal error, and as grievously mistake their own best interests, as we will mistake our duties, should we comply with their wishes.

I regard this question, therefore, as one of the last importance, not only to the new States, but to ourselves; because I consider it as based on an entire change of the neutral position which we have hitherto so happily occupied in the contest between Spain and her colonies—a change that may not only involve us in the struggle, but may be fatal in its consequences to those whom we are most anxious to serve.

In order to decide on the expediency of the proposed mission to the Congress of Panama, and to ascertain how it may affect our neutrality, it is necessary to determine, in the first place, *the character of that Congress.* And here I shall take it for granted, that the character of the Congress will, in no degree, be affected by the instructions which may be given to our Ministers, but can only be ascertained from its declared and acknowledged objects. It is from the *documents*, published to the world, and from these alone, that the public can know the purposes for which this Congress is to be assembled. These must stamp its character as peaceful or belligerent, in the estimation of mankind. Now, on this branch of the subject, we are most fortunately furnished with information, authentic, full, and perfectly satisfactory—information, not possessed by us alone, but which has been published to all the world. The following are the sources from whence we derive our knowledge as to the character and objects of the Congress of Panama—sources equally open to every nation in Europe:

1st. A work on the necessity of a general federation of the South American States, published at Lima in 1825, by *Bernardo Monteagudo*, Minister of State and Foreign Affairs of Peru, &c.

2d. Bolivar's circular and proclamation.

3d. The conventions between five of the Spanish American Republics, *under which* the Congress is about to assemble.

4th. The communication in the official Gazette of Colombia, in February last, of some of the specific points which are to form the subjects of the deliberations of the Congress.

From these combined sources, we will be enabled to derive the most satisfactory and conclusive information, as to the true character of the Congress; and when that shall be ascertained, the task will be easy to show what effect must be produced on our relations towards Spain by our taking any part in the diliberations of that assembly.

From the work of *Monteagudo*, (an abstract of which will be found in the last number of the North American Review) it appears that the project of a Confederacy of the South American States was conceived as early as 1821; that, in 1823, Bolivar, as President of Colombia, invited Mexico, Peru, Chili, and Buenos Ayres, "to send delegates to Panama, with the express design of establishing A CONFEDERACY." In December, 1824, conceiving that the period had now arrived for carrying this great object into effect, he issued a circular, proposing to the new States that delegates should "immediately be sent to Panama by those Governments which had agreed TO JOIN IN THE CONFEDERACY;" and he there characterizes the meeting as one "which was to serve as a COUNSEL *to us in our distresses*," (which can only mean, to advise them how to carry on the war, so as to bring it to a successful issue,) "and to be a RALLYING POINT in our common dangers;" (in other words, to furnish the means of making a successful *stand* against the common enemy, old Spain, by equipping fleets and raising armies, and by furnishing respectively their contingent of men, arms, and money.) The author of this work was a man of uncommon talent and great influence, who not only filled the station of Minister of State in Peru, but, in behalf of that State, negotiated and signed the Convention with Colombia, in relation to this very business. His authority, therefore, is entitled to great weight, on a question with which he was so intimately acquainted. He sums up in two lines, the duties of the Congress, and informs us it is designed to give "INDEPENDENCE, PEACE, AND SECURITY, TO THE NEW STATES." *Independence* to colonies engaged in a contest with the mother country for its establishment—*Peace*, to nations actually involved in war—*Security*, to those who are exposed to all the casualties of invasion from abroad and convulsions within. And how are these objects to be attained? The answer is obvious, and is given by all the documents before us: By ALLIANCES, offensive and defensive; by which each State stipulates to make a common cause, and to furnish their respective quotas of men, of money, and of arms.

On this point, nothing shall be left to conjecture or inference. I will produce the highest possible evidence—evidence which must satisfy the most sceptical as to the true character of the Panama Congress. The States represented there have entered into formal TREATIES—and it is under these solemn Conventions that this Congress is assembled. Under the call made upon the President by the Senate on the 3d of January last, he has submitted to us Conventions between

The Republic of Colombia and that of Chili,
The Republic of Colombia and Peru,
The Republic of Colombia and the Federation of the Centre of America, and
The Republic of Colombia and the U. Mexican States.

On looking into these Conventions, (some of which were entered into as early as 1822, and one as late as September, 1825,) we discover that, in the execution of the plan of the Liberator, of uniting all the Spanish American States into "ONE GREAT CONFEDERACY," he has succeeded in forming among them treaties of alliance, offensive and defensive, in peace, and in war, and the Congress of Panama *grows out of*, and is the first fruit of, that alliance. It is, in fact, a Congress of confederated belligerent States, convened for the great purpose of bringing the war, by their combined efforts, to a speedy and successful termination, and, at the same time, of establishing a plan of general co operation, in all cases whatsoever.—These assertions I shall establish beyond the possibility of a doubt, by a brief reference to those Conventions.

In the Convention between Colombia and Chili, we find the following provisions:

By the first article, it is declared that "the Republic "of Colombia and the State of Chili, are united, bound, "and *confederated, in peace and war*, to maintain by their "influence and forces, by sea and land—as far as circum- "stances permit—*their Independence of the Spanish na- "tion*, and of any other foreign domination whatsoever."

By the second article, these two States "contract a "*league* of close *alliance for the common defence*—for the "security of their independence and liberty, for their re- "ciprocal and general good, and for their internal tran- "quillity, obliging themselves to *succor each other*, and to "repel in common *every attack* or invasion, which may in "any manner threaten their political existence."

By the third article it is declared, "the Republic of Co- "lombia binds itself to assist, with the *disposable sea and "land forces;* of which the number, or its equivalent, "shall be fixed *at a meeting of Plenipotentiaries.*"

Then follow the thirteenth and fourteenth articles, under which the Congress at Panama is about to assemble. Thirteenth, "Both parties oblige themselves to interpose their "good offices with the Governments of the other States "of America, formerly Spanish, to enter into this COMPACT "OF UNION, LEAGUE, and CONFEDERATION;" and, fourteenth, "As soon as this great and important object has "been attained, a GENERAL ASSEMBLY OF AMERICAN STATES "shall be convened [at *Panama* as subsequently stated] "composed of their Plenipotentiaries, with the charge of "cementing, in the most solid and stable manner, the in- "timate relations which ought to exist between all and "every one of them, and which may serve AS A COUNCIL "IN THE GREAT CONFLICT, AS A RALLYING POINT in the "COMMON DANGERS, as a faithful interpreter of the public "treaties, when difficulties occur, and as an umpire and "conciliator in their disputes and differences."

Now, sir, in all the other Conventions, similar, and, in some of them, even stronger, language is held. They all provide for *alliances*, offensive and defensive, for the purpose of bringing the present war against Spain to a conclusion, by furnishing their quotas of men, money, and ships; and they all stipulate that, as soon as the ALLIANCE shall become general, *this Panama Congress is to be convened*, as the first step to be taken under it. It is the "GREAT COUNCIL" of these belligerent States, and will of course be *perpetual*, or, at all events, will have a duration equal to that of the Confederacy itself. [Mr. H. here referred minutely to all the Conventions, and argued from them in support of his position.] The last document to which I shall refer, is the Official Gazette of Colombia, of February last, in which the objects of the Congress are thus stated:

"1. *To form a solemn compact*, or league, by *which the "States, whose Representatives are present*, will be bound "to unite in *prosecuting the war against* their common "enemy, old Spain, or against any other Power, which "shall assist Spain in her hostile designs, or any otherwise "assume the attitude of an enemy.

"2. To draw up and publish a manifesto, setting forth "to the world the justice of their cause, and the relations "they desire to hold with other Christian Powers.

"3. To form a Convention of Navigation and Commerce, "applicable both to the Confederated States, and to their "allies.

"4. To consider the expediency of combining *the "forces of the Republics, to free the Islands of Puerto Rico "and Cuba from the yoke of Spain, and, in such case, "what contingent each ought to contribute for this end.*

"5. To take measures for joining in a prosecution of "the war at sea, and on the coasts of Spain.

"6. To determine whether these measures shall also be "extended to the Canary and Philippine islands.

"7. To take into consideration the means of making ef- "fectual the declaration of the President of the United "States, respecting any ulterior design of a Foreign Pow- "er to colonize any portion of this continent, and, also, "the means of resisting all interference from abroad with "the domestic concerns of the American Governments.

"8. To settle, by common consent, the principles of "those rights of nations, which are in their nature con- "trovertible.

"9. To determine on what footing shall be placed the "political and commercial relations of those portions of "our hemisphere, which have obtained, or shall obtain, "their independence, but whose independence has not "been recognized by any American or European Power, "as was for many years the case with Hayti."

From these documents no man can deny that the Congress of Panama is to be composed of deputies from *belligerent States*, and that its *objects are essentially belligerent*. These objects are not concealed, but are publicly avowed, and known to the world. It is to be an assembly of Confederates, differing very little from the old Congress under our Articles of Confederation, to which, indeed, it bears a striking resemblance.

The question now arises, whether a neutral State can join in such a council without violating its neutrality? Can the United States lawfully send Deputies to a Congress of the confederated Spanish American States?—a Congress which not only has objects confessedly connected with the prosecution of the war, but when it is notorious that these belligerent objects create the very occasion of its assembling? Can we do so without departing from our neutral relations towards Spain? Is it possible, Mr. President, that this can be seriously questioned? It will not bear an argument. There can be no difference under the Law of Nations—for there is none in reason or justice—between aiding a belligerent in *council* or in *action*—between consulting with him in respect to belligerent measures, or furnishing the men and money to accomplish them. To afford to such a Congress as I have shown this at Panama to be, even the lights of our wisdom and experience—to enter into consultations with them as to the means of bringing the contest to a speedy and successful issue—to advise with them how to proceed, and when to proceed—(and it appears from the documents that we are quite ready with our advice in these respects,) unquestionably must be a total departure from our neutrality. It is no answer to this argument to say, that our Ministers, when they take their seats, and become members of the Congress, will not interfere in the discussion of belligerent questions, and will confine themselves exclusively to those which are in their nature peaceful. If the character of the Congress is belligerent—no neutral can lawfully be there. If, for any purpose whatever, questions connected with the further prosecution of the war, are to be there discussed and decided, our Ministers cannot take their seats in the Assembly without involving us, by that very act, in the contest. A strict and honorable neutrality must keep us out of any meeting not having peaceful objects *exclusively*. The Law of Nations, in this respect, cannot differ from those rules of municipal law, founded in the common sense of mankind—which involve, in a common guilt, all who associate with those engaged in any unlawful enterprise. It is not permitted to individuals, nor can it be permitted to nations, to excuse themselves for acting with those engaged in belligerent enterprises, by alleging that their own purposes are peaceful. Sir, I hold that if you go into council at all with such powers, you become answerable for all their acts. At this moment a case occurs to me that took place many years ago, in England, and which affords an apt illustration of this principle. Lord Dacres, a young nobleman of wild and irregular habits, associated himself with a party who were engaged in robbing a Park—one of that party, without the knowledge or consent of Lord Dacres, killed the Game Keeper. His

Lordship was taken up, and tried for the murder; and though probably as innocent of that offence as either of us, he was, according to the laws of England, found guilty. No rank or influence could save him—he perished on the gallows—a victim to the strict, though necessary rule, which involves in a common fate all who associate and act with others engaged in any unlawful pursuit.

But an attempt is made to remove all our apprehensions on this subject, (and it comes from a high quarter too,) by the *assurance* that Spain is just about to acknowledge the independence of her former Colonies, *under our mediation*. The Secretary of State, in his report which accompanies the President's Message of the 9th January, in answer to our call for information, transmits a mass of documents to show that our Government has invoked the aid of Russia; that the Emperor has interfered at our request; and that there is a flattering prospect of speedy and entire success. So says Mr. Middleton—so says Mr. Clay. But, Mr. President, it fortunately happens that the Senate, on the 30th January, made *another call* for information on this point, and the answer of the President, of the 1st of February, dispels the illusion entirely. The three letters of Mr. Everett, there disclosed, demonstrate that there is no hope, whatever, of a peace. The Minister of the Spanish Government, (Mr. Zea,) declares that the determination of the King, on that subject, is *unalterable*—he will stand upon his naked right, and look to Providence, should all other means fail. But this is not all. The Russian Minister concurs in the views of Mr. Zea, and the British Minister will not interfere. In short, it is proved by these documents that all hope of a peace is entirely at an end. The hopes raised by the message of the 9th of January are thus totally crushed by that of the 1st of February. This no gentleman will *now* question.*

It has been well remarked by the Committee, in their Report, that no nation (unless restrained by their weakness) ever permitted such an interference, as we are about to attempt, without redressing the wrong by war. And surely, Sir, we are not to be called upon to violate our neutral obligations towards Spain—because Spain is weak. If a sense of justice, and a due regard to our own character and our interests, should not restrain us from a measure of that kind, perhaps we may be influenced by the consideration, that a violation of neutrality on our part may lead to similar violations on the part of the Powers of Europe, and that we may thus be the means of destroying those whom we mean to serve and hope to save.

But there is another question arising out of this, and almost of equal importance. What is to be the mode of the *organization* and *action* of this Congress? What is to be the nature of the *powers* to be given to our Ministers? And what are the subjects to be discussed? Surely all of these are questions of the most vital importance; and whether the character of the Congress be belligerent or peaceful, they must be satisfactorily answered before any man who has a due regard for the welfare of his country, should consent to take a single step in a business of this delicate nature. This was the view of the subject originally taken by the President himself, as appears from the documents on our tables. In Mr. Clay's letter to Mr. Obregon, dated 30th November, 1825, he says: "When at "your instance, during the last Spring, I had the honor, "&c. of conferring with you verbally, in regard to the "proposed Congress, &c. I stated to you, by direction of "the President, that *it appeared* to him to be *necessary*, "before the assembling of such a Congress, to settle between the different Powers to be represented, several "preliminary points, such as the subjects to which the "attention of the Congress should be directed, the sub-"stance and form of the powers to be given to the respec-"tive REPRESENTATIVES, and the mode of organizing the "Congress, and that, if these points should be satisfacto-"rily arranged, the President would be disposed to ac-"cept, in behalf of the United States, the invitation with "which you were provisionally charged." The ground here assumed by the Administration has my most unqualified approbation. I yield my hearty assent to the position, that information on all these points was necessary—yes, absolutely and indispensably necessary—before we could prudently take a single step in the business. But, Sir, this ground has been altogether abandoned, and for reasons with which we have not been favored. The President has determined *at once* to send Commissioners to the Congress at Panama—without having obtained ALL information whatever on three of the points before deemed necessary, and on the other having received only partial, imperfect, and contradictory statements. As to "the substance" and "the form" of the *powers* to be given to the "Representatives," and the mode of the "organization of the Congress," we are without a particle of information—and in respect to "the *subjects* to be discussed," a few of them are specified, (and *important enough they certainly are!*) while, as to the rest, we are left to search for them in the regions of conjecture. If the President was right in the first instance, he must be wrong now. To my mind it is clear that he then took the true Constitutional ground—and having abandoned it without any reason, I cannot consent to go with him. Gentlemen whose faith in Executive infallibility is greater than mine, may be satisfied that the President must always be right; but for my own part, I require either facts or argument before I can yield my assent to any measure whatsoever, and especially to such as are novel in their character and important in their consequences. I stand here to advise the President independently, and according to my convictions of the policy or impolicy of the measures he may recommend; and I cannot conscientiously advise this mission, until full and satisfactory information is obtained on these points, which the Executive formerly deemed necessary, and which I still so consider.

It is true, Mr. President, that, although we have not been furnished with this necessary information, yet, in relation to the organization and action of the Congress, we are enabled to glean a few facts from the correspondence before us, which shed some light upon the subject, and exhibit the Congress in no very favorable point of view.

It is to be A CONGRESS, a deliberative Assembly, composed of DEPUTIES, with undefined powers; it is called in the conventions "a great Council;" and though the members in some places are called "Plenipotentiaries," yet, in others, they receive different appellations; and Mr. Clay himself, in one place, considers them as "REPRESENTATIVES," and elsewhere describes them as "*Commissioners.*" They cannot be "Ambassadors:" for they are not to go accredited to any sovereign State. They will not be Ministers to Colombia, within whose territory the Congress is to be convened; they must present their *credentials* to the *Congress* itself, by whom their validity must be decided on, and the members admitted to their seats. It is only by the special provisions of the "Conventions," that the Deputies could claim the privileges and immunities of Ambassadors, and as no such stipulations have been

* The important letter of the 15th—27th July, 1825, from Mr. Middleton to Mr. Clay, and of 26th December, 1825, from Mr. Clay to Mr. Middleton, *are not communicated to the House of Representatives.* Mr. Everett's three very important letters are also *not communicated*—while some of his subsequent letters *were* communicated—which last the Senate did not receive until after their final decision on the question before them. The documents before the Senate proved, beyond a doubt, that there was no prospect of peace, and though this fact does not appear from the documents transmitted to the House of Representatives, yet it is not contradicted by them.—*Note, by Mr. H.*

made in our favor, it follows, that our Deputies will be indebted even for protection to the Congress of which they are to be members. In what form the deliberations are to be conducted, we know not, but we are expressly told that their deliberations may be "confidential;" and I infer from a provision which authorizes a change in the place of meeting "with the consent of a *majority* of the *States*," that they will vote *by States*, and that a *majority* will govern. Mr. Salazar tells us expressly, that "*we* may form an EVENTUAL ALLIANCE, for certain purposes, to *remain secret*"—and adds, "that the *conferences* held on this subject, being *confidential*, would increase mutual friendship and promote the respective interests of the parties."

The powers which the Ministers are to bear, are, both in respect to form and substance, altogether undefined; but we *are* told by Mr. Obregon, that the Ministers of Mexico will carry with them "*full powers*"—and it is expected "that the Ministers of other States will do the same." A few of the subjects to be discussed are stated; but with respect to the others, we are told by Mr. Salazar, that those "specified, being given *by way of example*, it is left to the wisdom of the Governments and the judgment of the Representatives, to propose whatever may be for the common good." And again he says, that "the points will arise out of the deliberations." Judging, therefore, from the information afforded us, it appears that our Ministers are to go as "Representatives," accredited, not to sovereign States, but to "a Congress" of Deputies—that they are to have seats in "a great Council"—that they are to bear "full powers"—that the subjects* to be discussed are "to grow out of the deliberations," and are to be "suggested by the judgments of the Representatives:" that the deliberations are to be, in some instances, secret and "confidential"—and that "eventual alliances, to remain secret," are in contemplation; but beyond this, we are left entirely in the dark. The question then recurs, Shall we consent to go into secret council, (supposing all the objects of that council, as far as we are acquainted with them, to be *peaceful*,) while these important points remain unsettled? If we are kept in ignorance, the fault is not in the Senate. We have diligently sought for light, and it has been denied us. Sir, it is too manifest to be doubted or questioned, that the course we are now called upon to pursue, does involve a departure from the settled, the fundamental policy of these United States, and is an entire abandonment of the neutral position taken by our Government in the contest between Spain and her colonies—a position from which we have derived much honor; and which has been fruitful of such happy consequences to the South American States.

But we are told that we ought to have confidence in the President. We are assured that his *instructions* to our Ministers, will save us from all danger. Sir, I care not what instructions the President shall think proper to give to our Ministers. The character of the Congress being belligerent, our neutrality is forfeited by the very act of joining in their deliberations. Instructions being from their nature, as well as from diplomatic usage, secret, can have no influence in determining a question of neutrality—that must be decided by acts, not by professions. However gentlemen may be enamoured of this new doctrine of implicit confidence in rulers, it is not the ground, I apprehend, on which the Senate ought to act in fulfilling their constitutional duty of giving advice to the President. If we are to act by faith, and not by knowledge, we have no business to be here. Besides, sir, I am free to confess, and will presently show, that some of the views of the administration itself, in respect to the mission, and the part we are expected to take in the deliberations of the Congress, are dangerous to the peace and safety of this country. But, after all, is it sound constitutional doctrine that we are, by our *previous sanction* to the President's measures (by the vote of a bare majority, and not of two-thirds, as required by the Constitution,) to put it in *his power* to commit irretrievably the neutrality of the United States? Sanction this mission, and the peace of this country is, in the most favorable view of the subject, in the hands of the President. Suppose his instructions on the very points which he tells you are to be discussed, should direct our Ministers to join in all the belligerent counsels of the Congress, to advise and arrange with them the plan of carrying on the war, and wresting Cuba and Porto Rico from the hands of the common enemy—where will be your neutrality then? It is idle to talk of the control that we may exercise, by rejecting treaties, which, by our own previous consent, we may be morally bound to sanction, or when measures shall have been taken and acts consummated beyond recall. But the apprehensions of some gentlemen are quieted by the assurance, that the Ministers of the States which have invited us, have themselves expressly declared that we are not "expected to violate our neutrality." Words, sir; words, merely! This assurance furnishes us with a memorable example of how little reliance is to be placed on professions—the professions, too, of diplomatists! They very well understand how to say one thing while they mean another. Every one of these Spanish-American Ministers—Obregon, Salazar, and Canas—*profess* that we are not expected to depart from our neutrality, while each of them *specifies objects* in which we *are* expected to take part, and which *do* involve a distinct and unequivocal departure from our neutrality. For the sake of example, (for all the invitations speak the same language,) I will refer to the letter of Mr. Canas to Mr. Clay, dated 14th November, 1825. After stating, that the Government he represents (Central America) "was sensible of the importance to the independent nations of "*this continent*, of a General Congress of their Representatives, at some central point, which might consider and "adopt the best plan of defending the States of the New "World from foreign aggression," and stating that his Government also acknowledged "that, as *Europe* had formed *a continental system*, and held a Congress whenever "questions affecting its interests were to be discussed, "AMERICA should *form a system to itself*, and assemble in "Cortes whenever circumstances of necessity and great "importance should demand it," he goes on to state, that his Government had "formed a convention" on the subject, and appointed "*its Deputies*;" and he then says to us, "I am anxious, therefore, to know if this Republic, "(the United States) which has ever shown itself the generous friend of the new American States, is disposed "*to send its Envoys* to the General Congress, *the object of* "*which is*, to preserve and *confirm the absolute independence of these Republics, and to promote the general good*, "and *which* will not require that the Representatives of "the United States should, in the least, *compromit their* "*present neutrality*, harmony, and good intelligence, with "other nations." Mr. Clay accepts the invitation thus given, without any limitation whatever. Can any man read this letter, and pretend that we can comply with the wishes of the writer, and save our neutrality?

Having, I trust, proved that, from the character of the

* The President, in his message to the House of Representatives, says: "I can scarcely deem it otherwise than superfluous to observe, that the Assembly will be in its nature diplomatic, and not legislative;" and then goes on to explain the mode of its organization and action. *No such information was before the Senate.* The documents before them proved that the President had insisted on obtaining information on those very points as preliminary to his acceptance, and had failed to obtain it. Certainly the Senate had no such information—and the documents before them went to show that the Congress *was* legislative, and not diplomatic.—*Note, by Mr. H.*

Congress at Panama, we cannot send Deputies there without departing from our neutrality; and that, if this point could be considered as doubtful, still the ignorance in which we are left of the mode of the organization of the Congress, its manner of proceeding, and the form and substance of the powers of the Representatives, should constitute a decisive inducement to abstain from involving ourselves in such a measure, I proceed next to consider THE SUBJECTS TO BE DISCUSSED by that Congress, and in which it is avowed that we are expected to take a part.

And here, Mr. President, I will insist, that, if this mission were liable to none of these objections, there is not a single object specified in the invitations and answers, or in the message of the President, which would justify the measure proposed. They are all either dangerous, or inexpedient, or unnecessary; and this I will attempt to prove, by a brief examination of each of them.

The first great subject to which our attention at this Congress is to be called, arises out of the pledge* which Mr. Monroe is supposed to have given, "not to permit "any foreign power to interfere in the war between Spain "and her colonies;" and it appears, from the correspondence, to be the special object of the new States to get us to enter into treaties to redeem that pledge, according to the construction they have chosen to put upon it, and in which, I am sorry to add, the Executive seems to have acquiesced. Mr. Obregon tells us, that the United States are only expected to take part in those matters which the "*late administration pointed out* as being of general in- "terest, for which reason," says he, "one of the subjects "which will occupy the attention of the Congress will *be* "*the resistance or opposition to the interference of any neu-* "*tral nation in the question and war of independence* be- "tween the new Powers of the continent and Spain;" and "that, as the POWERS OF AMERICA ARE OF ACCORD as "to *resistance*, it behooves them to *discuss the means* of "giving to that resistance all possible force, that the evil "may be met, if it cannot be avoided; and the only means "of accomplishing this object is, by *a previous concert* as "to *the mode* in which each of them shall lend its co-ope- "ration: for, otherwise, resistance would operate partially, "and in a manner much less certain and effective.

"The opposition to *Colonization in America*, by the Eu- "ropean Powers, will be another of the questions which "may be discussed, and which is in like predicament with "the foregoing."

Mr. Salazar holds language on this subject still more explicit.

Now I do positively deny that Mr. Monroe ever pledged this nation to go to war or make treaties to prevent the interference of any European nation in the present contest. I deny that he had a right to make any such pledge; and most of all do I deny that any sanction has been given to such an idea by the Senate, the House of Representatives, by the States, or by the People of the United States. The language of Mr. Monroe is extremely vague and indefinite. That great and good man well knew that he had no power to use any but a moral force on that question; and beyond this moral influence over the councils of the nations of Europe, he neither attempted nor desired to go. He well knew—every intelligent man in the United States knows—that this nation is not now, and never has been, prepared to go to war for the independence of South America. The new States have always carried with them our warmest wishes for their success—but beyond the indulgence of a sincere and friendly sympathy, we have never been willing to proceed. Mr. Monroe's declaration, I repeat, was intended to produce a moral effect abroad; he designed it for the atmosphere of Europe, and therefore it was couched in such terms that, while it did not commit us to any overt acts, it left foreign nations under a vague impression of what we might do, if the event alluded to should ever happen. The substance of Mr. Monroe's statement was, "that he should consider any attempt on "their part (the Powers of Europe,) to extend their sys- "tem to any portion of this hemisphere, as dangerous to "our peace and safety," and as "the manifestation of an "unfriendly disposition towards the United States." It is obvious that we are left by this pledge altogether free to act in any emergency according to circumstances and a sense of our own interests. We have incurred no obligations to others by the declaration; and it is our policy to incur none. But it now appears that the new States have conceived themselves *entitled to our aid* whenever foreign interference shall be threatened, and (what is truly unfortunate) it further appears, that the new Administration have acknowledged their claims, and admitted our obligations; they have acted, and are now about to act, on the presumption that the Spanish American States may rightfully claim, and that we are bound to grant, our assistance against all nations who may "hereafter interfere in any "way whatever in the question and war of Independence." Nay, so far have our Government gone in this respect, that they have actually claimed commercial privileges from these States on the ground that we are to be considered as "one of the American Nations," and "within the pale "of the great AMERICAN SYSTEM;" that we are "pre- "pared to bear the brunt of the contest which will arise "should any foreign Power attempt to interfere." To show how far our Government have proceeded in this course, I must be permitted to read a few pages from the documents before us. In the letter of our Minister to Mexico to the Secretary of State, dated 28th September, 1825, after giving an account of the difficulties which had arisen in making a treaty with Mexico, in consequence of the desire of that Government to introduce an article putting it in their power to grant special commercial privileges to the other Spanish American States, he informs us that he insisted that we should be entitled to similar privileges, because "we were bound to them by similar fra- "ternal ties." To some objections urged against our claims on the ground that we had not yet taken part in the war, our Minister replied in the following words, viz: "To "these observations I replied, that, against the power of "Spain, they had given sufficient proof that they required "no assistance, and the United States had *pledged them-* "*selves not to permit any other Power to interfere* either "with their Independence or form of Government; and "that, as in the event of such an attempt being made by "the Powers of Europe, we would be compelled to take "the most active and efficient part, and to *bear the brunt* "*of the contest*, it was not just that we should be placed "on a less favorable footing than the other Republics of "America, whose existence we were *ready to support at* "*such hazards.*" The Minister then goes on to state, that, after explaining what we had already done, he declared "*what further we were ready to do*, in order to de- "fend their rights and liberties; but that this could only "expected from us, and could only be accomplished, by "a strict union of all the American Republics, on terms "of perfect equality and reciprocity; and repeated, that "it was the obvious policy of Europe to divide us into "small Confederacies, with separate and distinct interests, "and as manifestly ours to form A SINGLE GREAT CONFE-

* In relation to the SUPPOSED PLEDGE made by the United States to prevent colonization in America, and also to prevent the interference of any European nation in the present contest, there are two important documents before the House of Representatives which were not before the Senate, viz. 1. The letter from Mr. Adams to Mr. Anderson, dated 27th May, 1823, in which the policy of this Government is fully explained on that subject. 2. The message of the President to the House of Representatives, in which he goes into an explanation of his present views.—*Note by Mr. H.*

"DERACY, which might oppose one united front to the at-
"tacks of our enemies."

With the instructions to Mr. Poinsett we have not been favored; but his character is too well known to admit of a doubt, that, in holding this language, he faithfully reflected the sentiments "of the Cabinet at Washington." Mr. Clay, in his letter of 9th November, 1825, takes the same grounds; and our Government, by not disclaiming the principles avowed by Mr. Poinsett, (and we have no disclaimer,) have sanctioned his views and confirmed his proceedings. In Mr. Clay's letter, he objects, especially, to any distinction being made between the United States and the other States—*because* "it would place the United "States, in some degree, *out of the pale* of that AMERICAN "SYSTEM, of which they form no unessential part." From the conventions between the South American States, it appears that the Congress of Panama was designed for the Confederated States only, which, in those documents, received the appellation of "*The American Nations.*" To this Mr. Clay adverts, and says, "the Mexican Govern-"ment has invited that of the United States to be repre-"sented at the Congress of Panama, and the President "has determined to accept the invitation. Such an invi-"tation has been given to no European Power, and it "ought not to have been given to this if it is not to be "considered as one of the *American Nations.*" In the same despatch, Mr. Clay alludes to a most interesting transaction, to wit: a *claim* interposed, on the part of the Mexican Government, for our interference, when it was expected that France was about to take a part in the contest. We are not furnished, either with the application to our Government, or the answer made to it; but Mr Clay mentions the proceeding, in the following terms: "No longer than about three months ago, when an inva-"sion by France, of the Island of Cuba, was believed at "Mexico, the United Mexican Government promptly "called upon the Government of the United States, "through you, *to fulfil the memorable pledge* of the Pre-"sident of the United States, in his message to Congress, "of December, 1823. What we would have done, *had* "*the contingency happened*, may be *inferred*, from a de-"spatch to the American Minister at Paris," &c. Now, when we refer to that despatch, in order to find out *what we are to do*, under "the memorable pledge," when the "contingency," contemplated by that pledge, "shall happen," (that is to say, when any European nation shall interfere in the question of Spanish American Independence,) we discover that this is to be "*inferred*" from our declaration to the French Government, as to what we would have done in relation to Cuba and Porto Rico, viz: "that we would not consent to the occupation of those "Islands, by any other European power than Spain, *under* "*any circumstances whatever.*" Thus, then, it appears what is the line of conduct which this administration has determined to pursue under the aforesaid memorable pledge. We find that our Minister in Mexico has been directed to assure that Government, *in substance*, that we will not permit any European nation to interfere with their independence in any contingency whatever. Such was the course we had determined to pursue, with regard to Cuba and Porto Rico, and we have assured the Spanish American States that we will pursue a similar course, (under the *pledge* not to permit any European nation to interfere in the contest,) whenever "the *contingency* shall happen"—that is to say, whenever such interference shall be attempted. Now, be it remembered, that it is for the avowed purpose of making this pledge, thus understood, effectual, and to put it, if I may so speak, into legal form, that we have been invited to attend this Congress. And to this we are now called upon to give our assent. The official Gazette of Colombia specifies this to be a leading object of the Congress. Canas, Obregon, and Salazar, all repeat it, and the latter declares that this object is altogether consistent with "THE REPEATED DECLARATIONS AND PROTESTS OF THE CABINET AT WASHINGTON." His words are so remarkable, that I must be suffered to quote them:

"The manner in which all colonization of European "Powers on the American continent shall be resisted, and "their interference in the present contest between Spain "and her former colonies prevented, are other points of "great interest. Were it proper, *an eventual alliance*, in "case these events should occur, which is within the range "of possibilities, and the treaty, of which no use should be "made until the *casus fœderis* should happen, *to remain* "*secret*; or, if this should seem premature, a Convention "so anticipated would be different means to secure the "same end, of preventing foreign influence. This is a "matter of immediate utility to the American States that "are at war with Spain, and *is in accordance with the* "*repeated declarations and protests of the Cabinet at Wash-*"*ington. The conferences held on this subject being confi-*"*dential, would increase mutual friendship,*" &c.

And now, sir, I must put the question, directly and seriously to the Senate, whether they are prepared to send Ministers to the Congress of Panama, for the purpose of making effectual this pledge of the President of the United States, as construed by the present administration, and understood by the Spanish American States? Whatever may be the opinion of others, I, for one, have no hesitation in declaring that I am not prepared for any such proceeding; I am not ready *now* to declare that I will involve my country in all the horrors of war for the establishment of South American Independence; and, even if I were prepared to say, that, rather than permit the interference of any foreign nation in the contest, "we must fight," still I should think it wise and prudent not to commit ourselves by treaties or compacts, but to reserve the right to act when the contingency shall happen, as our feelings or interests may then dictate. It is of the last importance that we should reserve this privilege to ourselves; that we should enter into no stipulations whatever with other nations on such a subject. But, should we send Ministers to Panama for these objects, we will not be free to pursue this course. If our Ministers go there with our sanction, committed as we know the President to be, we must either sanction the compacts which may be entered into, or disppoint the just expectations which we will have raised. In the one case, our interests will be sacrificed, and, in the other, our friendly relations with the new States will be interrupted. Let us, then, avoid this dilemma, by not placing ourselves voluntarily in a situation which will leave us only a choice of difficulties, and impose upon us the hard necessity of offending our friends or injuring ourselves.

Connected with this object, is another, bearing a close resemblance to it: "the opposition to COLONIZATION in America" by any European power. If, by this, it is to be understood that we are to interfere to obstruct the settlement of the territories in America owned by Russia or England, it must speedily involve us in an unjust and unnecessary war. But, if the design is to enter into compacts with the South American States, not to permit any colonization within our respective limits, or, if we are to make common cause in resisting all such attempts, then I must boldly declare that the scheme is, in the one case, derogatory to our honor, and, in the other, dangerous to our safety. What! is it come to this, that the United States of America are to come under obligations to others; to bind themselves to nations of yesterday, to preserve their own territories from invasion, and their homes and their altars from pollution? Nay, are we, at this period of our history, to enter into solemn vows, that we will neither permit ourselves to be conquered, nor to be sold? Sir, the idea of treaty stipulations against colonization is degrading and unmeaning, unless it is intended that we shall guaranty to the new States the possession of their territo-

ries; and, if that is the plan, it is as unwise as it is dangerous.

The next subjects to be considered by the Congress of Panama, are the suppression of the AFRICAN SLAVE TRADE and the INDEPENDENCE OF HAYTI; and I admit that these involve questions of deep interest to us all. The United States were the first to set its face against the Slave Trade, and the first to suppress it among their own citizens. We are entitled to the honor of having effectually accomplished this great object, not more by the force of our laws than by the omnipotent power of public opinion—a power, in this country, paramount to the laws themselves. In all measures of this character, every portion of our fellow-citizens have cordially co-operated; and, even in those States where slavery still exists, the People have gone heart and hand with their Government in every measure calculated to cut up this nefarious trade by the roots. In the State which I have the honor to represent, any man concerned, directly or indirectly, in this traffic, would be indignantly driven out of society. Having done so much, we may well call upon other nations "to go and do likewise," before they can be permitted to taunt us on this subject; as one of these South American Ministers has done.

The question of slavery is one, in all its bearings, of extreme delicacy, and concerning which I know of but a single wise and safe rule, either for the States in which it exists, or for the Union. It must be considered and treated entirely as a DOMESTIC QUESTION. With respect to foreign Nations, the language of the United States ought to be, that it concerns the peace of our own political family, and therefore we cannot permit it to be touched; and in respect to the slave-holding States, the only safe and constitutional ground on which they can stand, is, that they will not permit it to be brought into question either by their sister States, or by the Federal Government. It is a matter, Mr. President, for ourselves. To touch it at all, is to violate our most sacred rights—to put in jeopardy our dearest interests—the peace of our country—the safety of our families, our altars, and our firesides. Sir! on the question of our slave institutions, so often incidentally mentioned, I will take *this opportunity*, once for all, to declare, in a few words, my own feelings and opinions. It is a subject to which I always advert with extreme reluctance, and never, except when it is forced upon me. On the present occasion the subject has been forced upon our consideration, and when called upon to give my sanction to the discussion by our Ministers, (in connexion with a foreign Congress,) of questions so intimately connected with the welfare of those whom I represent, I cannot consent to be silent. On the slave question, my opinion is this: I consider our rights in that species of property as not even open to discussion, either here or elsewhere; and in respect to our duties, (imposed by our situation,) we are not to be taught them by fanatics, religious or political. To call into question our rights, is grossly to violate them—to attempt to instruct us on this subject, is to insult us—to dare to assail our institutions, is wantonly to invade our peace. Let me solemnly declare, once for all, that the Southern States never will permit, and never can permit, any interference, whatever, in their domestic concerns, and that the very day on which the unhallowed attempt shall be made by the authorities of the Federal Government, we will consider ourselves as driven from the Union. Let the consequences be what they may, they never can be worse than such as must inevitably result from suffering a rash and ignorant interference with our domestic peace and tranquillity. But, while I make these declarations, I must be permitted to add, that I apprehend no such violation of our constitutional rights. I believe that this House is not disposed, and that the great body of our intelligent and patriotic fellow-citizens in the other States have no inclination, whatever, to interfere with us. There are *parties*, indeed, composed, some of them, of fanatics, and others of political aspirants, who are attempting, vainly I hope, to turn the current of popular opinion against us. These men have done us much harm already, and seem still fatally bent upon mischief. But, if we are true to ourselves, we will have nothing to fear. Now, sir, if it is the policy of the States not to suffer this great question to be touched by the Federal Government, surely it must be the policy of this Government, exercising a paternal care over every member of the political family, not to suffer foreign nations to interfere with it. It is their imperative duty to shun discussion with them—and to avoid all treaty stipulations, whatever, on any point connected directly or remotely with this great question. It is a subject of too delicate a nature—too vitally interesting to us, to be discussed abroad. On this subject we committed an error when we entered into treaties with Great Britain and Colombia for the suppression of the *slave trade*. That error has been happily corrected. The first treaty has failed, and the second was nearly unanimously rejected by this body. Our policy, then, is now firmly fixed—our course is marked out. With nothing connected with slavery can we consent to treat with other nations, and, least of all, ought we to touch the question of the independence of Hayti in conjunction with Revolutionary Governments, whose own history affords an example scarcely less fatal to our repose. Those Governments have proclaimed the principles of "liberty and equality," and have marched to victory under the banner of "universal emancipation." You find men of color at the head of their armies, in their Legislative Halls, and in their Executive Departments. They are looking to Hayti, even now, with feelings of the strongest confraternity, and show, by the very documents before us, that they acknowledge her to be independent, at the very moment when it is manifest to all the world beside, that she has resumed her colonial subjection to France. Sir, it is altogether hopeless that we could, if we would, prevent the acknowledgment of Haytien independence by the Spanish American States; and I am constrained to add that I must doubt, from the instruments to be employed by our Government, whether they mean to attempt to do so. We are to send, it seems, an honest and respectable man, but a distinguished advocate of the *Missouri restriction*—an acknowledged abolitionist—to plead the cause of the South, at the Congress of Panama. Our policy, with regard to Hayti, is plain. We never can acknowledge her independence. Other States will do as they please—but let us take the high ground, that these questions belong to a class, which the peace and safety of a large portion of our Union forbids us even to discuss. Let our Government direct all our Ministers in South America and Mexico to *protest* against the Independence of Hayti.* But let us not go into council on the slave trade and Hayti. These are subjects not to be discussed any where. There is not a nation on the globe with whom I would consult on that subject, and, least of all, the new Republics.

I proceed next to consider the great object (which seems to lie so near to the hearts of some of our statesmen,) of building up what they are pleased to call "AN AMERICAN SYSTEM"—terms which, when applied to our domestic policy, mean *restriction* and *monopoly*, and when applied to our foreign policy, mean "entangling alliances;"

*The President, in his message to the Senate, mentions neither the SLAVE TRADE nor *Hayti*, but they are mentioned in *the documents* which accompany that message, as questions which were *to form subjects of deliberation at the Congress of Panama*. This was all the light the Senate possessed on the subject. In the message to the House, the matter is presented in a light somewhat different.—*Note by Mr. H.*

both of them the fruit of that prurient spirit which will not suffer the nation to advance gradually in the development of its great resources, and the fulfilment of its high destinies, but would accellerate its march by the most unnatural and destructive stimulants. "As Europe "(says Mr. Canas,) has formed a *continental system*, A- "merica should form *a system for herself.*" "The mere "assembling (says Mr. Salazar,) of the Congress, by "shewing the ease with which America can combine, "will increase our political importance." In plain terms, Mr. President, we are called upon to form a HOLY ALLIANCE *on this side of the water*, as a counterpoise to the Holly Allion the other side of it. Are the People of this country prepared for that? What is there in the history or character of the Holly Alliance that makes it a fit subject for our imitation? This combination of nations at peace, to maintain certain principles and institutions, contains the most atrocious violation of the natural and social rights of man that the world has ever seen. It is wrong—most fatally wrong—and it makes no difference, in reason or justice, what the principles to be maintained are. It is of the essence of National Independence, that every country should be left free to adopt and to change its principles and its policy according to its own views of its own iterests; and from the very bottom of my soul I abhor the idea of combinations among sovereign States, for any purpose whatever. Great Britain, the only nation in Europe that possesses the shadow of freedom, has refused to join the Holy Alliance. I hope we shall follow her example in having nothing to do with this "great American Confederacy"—Mr. Canning declared that such an alliance was unconstitutional—and surely, if it was so in Great Britain, it must be so *here*.

I come now, Mr. President, to the last subject specified by the South American Ministers, in which we are expected to take a part, and which is strongly relied upon here as constituting in itself a decisive inducement for our sending Ministers to the Congress of Panama—I mean the fate of CUBA. Now, Sir, I have on this point the authority of the President himself, that neither he nor his Cabinet considered this question as furnishing any reason in favor of this mission. If the President or his Cabinet had supposed it material, he would have stated it to us as one of the reasons which rendered the mission desirable. But neither in his message, nor in the documents which accompanied it, did he say one word about Cuba; and all our information on the subject has been extracted by the call for information made by the Senate on the 3d January last. And yet no man can deny that this *is* one of the most interesting and important topics connected with the subject. But, sir, the fact is, that the Executive is unfortunately so committed, in relation to Cuba, as to leave themselves bound hand and foot, deprived of the power of taking a single step that could be productive of any beneficial results; and therefore, no doubt, it was, that the President did not deem it important to mention the subject to us at all. On examining the documents now before us, it will appear, that while our Government has taken the bold ground in relation to Russia, France, and Great Britain, that "*they will not permit* any nation except Spain, to take Cuba, under any circumstances whatever," they have, in relation to the South American States, declared expressly that we *cannot interfere*. Though the interests of the United States would be much more deeply affected by the possession of Cuba, by any of the new States than by France, or even by Russia, yet, while, in relation to the latter, we throw ourselves fearlessly into the breach, and have declared "we will not permit them to act"—with respect to the former, "we can see no ground "on which we can forcibly interfere." Mr. Clay, in his letter to Mr. Middleton, 26th December, 1825, says—"On this subject it is proper we should be perfectly un- "derstood by Russia. For ourselves, we desire no change "in the possession of Cuba, as has been heretofore stated. *We cannot allow a transfer of the island to any Eu- "ropean power.* But if Spain should refuse to conclude a "peace, and obstinately resolve on continuing the war, "although we do not desire that *either Colombia or Mexi- "co should acquire the island of Cuba, the President can- "not see any justifiable ground on which we can forcibly "interfere.* Upon the hypothesis of an unnecessary pro- "traction of the war, imputable to Spain, it is evident "that Cuba will be her only point d'appui, in this hemis- "phere. HOW CAN WE INTERPOSE on that supposition, "against the party clearly having right on his side, in "order to restrain or DEFEAT A LAWFUL OPPERATION OF "WAR? If the war against the islands should be conducted "by those Republics in a desolating manner; if, contrary "to all expectation, they should put arms into the hands "of one race of the inhabitants to destroy the lives of "another; if, in short, they should countenance and en- "courage excesses and examples, the contagion of which, "from our neighborhood, would be dangerous to our "quiet and safety; the Government of the United States "*might* feel itself called upon to interpose its power. "But it is not apprehended that any of those contingen- "cies will arise, and, consequently, it is most probable "that the United States, should the war continue, will "remain hereafter, as they have been heretofore, neutral "observers of the progress of its events.

"You will be pleased to communicate the contents of "this despatch to the Russian Government. And as, "from the very nature of the object which has induc- "ed the President to recommend to the Governments of "Colombia and Mexico, *a suspension* of their expeditions "against the Spanish islands, *no definite time* could be "suggested for *the duration of that suspension*, if it should "be acceded to, it must be allowed, on all hands, that it "ought *not to be unnecessarily protracted.*"*

In accordance with these views, Mr. Clay writes to Mr. Salazar, 20th December, 1825—"The President believes "that a *suspension for a limited time* of the sailing of the "expedition which is understood to be fitting out at Car- "thagena, or of any other expedition which may be con- "templated against either of those Islands, (Cuba and "Porto Rico) by Colombia or Mexico, would have a sal- "utary influence on the great work of peace." And again—"he expresses the hope that the Republic of Co- "lombia will see the expediency in the actual posture of "affairs of forbearing to attack those islands, *until a suffi- "cient time has elapsed* to ascertain the result of the pa- "cific efforts which the great powers are believed to be

* In relation to *Cuba and Porto Rico*, the President's Message to the Senate, and the documents which accompanied it, did not mention them at all. In answer to the call for information, made by the Senate on the 3d January, the President communicated a number of documents, some of which touched this subject. Among them, a letter from Mr. Clay to Mr. Middleton, dated 26th December, 1825, and which *has not been communicated to the House of Representatives.* That letter, among other important matters, contains the very remarkable passage above quoted, shewing that our Government had taken the ground that *we could not interfere* to prevent the invasion of these Islands by the Spanish American States, while on the other hand we had determined "not to permit any European Nation, except Spain, to take them, under any circumstances whatever."

This passage, connected with the two others above quoted, from Mr. Clay's letter to Mr. Salazar, dated 20th December, 1825, was the foundation of the argument in the Senate, on this point.—*Note by Mr. H.*

"now making on Spain." Well, that time has elapsed—the result is ascertained. The mediation has failed—and the Executive stands fatally pledged—not to "interpose" to defeat "a lawful operation of war" on the part of those "who have right on their side," unless indeed the "*manner*" of conducting that operation should induce us to change our position; and this, says the Secretary, "is not apprehended."

Thus, then, it manifestly appears that our faith is plighted, and that we have acknowledged the high obligations of duty not to interfere, unless, indeed, the slaves should be excited to murder their masters; and then, says Mr. Clay, perhaps we *might;* and as to the invasion, all we have felt ourselves authorized to ask is, a small delay in the sailing of the expedition, only until the effect of our interposition with Russia shall be ascertained—of the total failure of which we are now officially informed. I repeat, therefore, our Executive has forever closed the lips of their Ministers on this subject, and there is no pretence for supposing that we can now interfere to prevent the invasion of Cuba and Porto Rico.

Nothing remains for us now, if, indeed, any thing can be done, but for *Congress* to interpose their authority in preventing the Executive from carrying *their views* into effect, and that interposition will not take place by confirming this mission. The true Constitutional ground is, that the President has no right to pledge this nation, either as to our not permitting any foreign nation to take Cuba, or as to there being no ground to interfere to prevent its capture by the new Republics. I would change our position, at least so far as to declare, that the South American States should not be permitted to take it, or to revolutionize it. But, as the question now presents itself as connected with this mission, we can accomplish no good, and may involve ourselves in difficulties, by counselling with those who are merely to settle the *mode* of co-operation in the invasion of Cuba and Porto Rico—a measure already decided on, and against which our Government have bound themselves not to interfere. It is in vain to say that the Executive has only disclaimed forcible interference. No other could he effectual. For a nation to disclaim the *ultima ratio,* is to surrender the point in dispute. There is no such disclaimer as to Europe. There, "we will not *permit;*" here, "we cannot forcibly interfere." But we have gone further. We have stated expressly to the new States, that we only ask *delay,* and nothing but delay; and that to "a day certain," and now past.

As to the other objects of this Congress, specified in the invitations, there is one answer to them all—they belong to *ordinary diplomacy,* and will be better and more speedily accomplished by our Ministers to these new States, than by going into a Congress of their Deputies, whose attention must be chiefly engrossed by belligerent operations and local objects.

It only remains for me to notice the additional subjects specified by the President. He considers this mission necessary to prevent the new States from granting *special favors to Spain* and to *each other.* The treaties now submitted to us show, that these States have determined not to grant any privileges to Spain; and with respect to each other, we have already formed treaties with some of them in terms of the most perfect reciprocity, and with the only State with which we have had the least difficulty (Mexico) our latest accounts leave no doubt of their being speedily removed.

The President next tells us that it is important to establish the principles and *restrictions of reason on the extent of blockade*—but surely, sir, these and similar objects are to be attained by treaties negotiated in the ordinary way. They require no such extraordinary and questionable proceeding as a mission to this Congress.

We are next informed by the President that it will be one of our objects to inculcate on the new States the *principles of religious liberty;** and some hints are thrown out of an indirect influence that may be exerted over their councils. If, Mr. President, it is against the spirit of our Constitution to interfere in any way with the religion of our own People, I should conclude it must be altogether foreign to our policy to interfere with the religion of other nations. We both believe ourselves to be right, and I know of no power but that of the Almighty which can decide between us. Besides, sir, is it not obvious that any attempt to acquire influence over the councils, or to regulate the religious policy of the new States, must have a tendency to interrupt the friendly relations now existing between us, in the cultivation of which, the President assures us, he found the last and decisive inducement for accepting the invitation. Nothing to my mind can be clearer than that this mission must either terminate in an

* On the subject of RELIGION, the President was understood, in the Senate, to recommend an attempt to alter the Constitution of the new States on that point; but in his message to the House of Representatives, he limits the object to the obtaining for our citizens the right of worshipping according to their own consciences—a right which is secured to them in all the treaties already made with those States, and which it is presumed can, in the ordinary course of negotiations, be obtained from all of them. The following are the passages in the messages of the President to the two Houses, on this subject:

To the Senate, the President said:

"There is yet another subject upon which, *without entering into any treaty,* the moral influence of the United States may, perhaps, be exerted with beneficial consequences at such a meeting—*the advancement of religious liberty.* Some of the Southern nations are, even yet, so far under the dominion of prejudice, that they have *incorporated,* with their political *constitutions,* an exclusive church, without toleration of any other than the dominant sect. The *abandonment of this last badge of religious bigotry* and oppression, *may be pressed* more effectually by the united exertions of those who concur in the principles of freedom of conscience, upon those who are yet to be convinced of their justice and wisdom, than by the solitary efforts of a Minister to any one of the separate Governments."

To the House of Representatives, he says:

"And lastly, the Congress of Panama is believed to present a fair occasion for urging upon all the new nations of the South, the just and liberal principles of religious liberty. Not by any interference whatever in their internal concerns, but by *claiming for our citizens, whose occupations* or interests may call them to occasional residence in their territories, the inestimable *privilege of worshipping* their Creator according to the dictates of their own consciences. This privilege, sanctioned by the customary law of nations, and secured by treaty stipulations in numerous national compacts—secured even to our own citizens in the treaties with Colombia, and with the Federation of Central America—is yet to be obtained in the other South American States and Mexico. Existing prejudices are still struggling against it, which may, perhaps, be more successfully combatted at this general meeting, than at the separate seats of Government of each Republic."—*Note by Mr. H.*

idle ceremony, or our Ministers will deeply wound the sensibilities of the new States; unless, indeed, they shall be authorized to enter into stipulations inconsistent with our neutrality and fatal to our interests. Look at the questions to be submitted to their consideration. On every one of them our Deputies must refuse to act, or, by acting, commit the country.

I have given to this subject, Mr. President, the most dispassionate consideration, and I am free to confess, that, whether I consider the measure itself, the form of the invitation, or the course which has been pursued in relation to it, my mind is filled with the most unqualified astonishment. That the President should have committed himself, committed us, and committed the nation; and that the question should have been brought before us, under the circumstances to which I shall now briefly advert; will form, it appears to me, a curious page in the history of this country, which will, hereafter, be referred to with peculiar interest.

The first, and only intimation, it appears from the statement of the Secretary of State, made to our Government on the subject of this mission, was verbally made some time "during the last Spring." It is true that the Minister of Colombia speaks of "some verbal *conferences*," and the Minister of Mexico mentions, "*conversations*;" but Mr. Clay assures us there was but one conference. A verbal answer was given by the President, in which he intimates a disposition to accept the invitation, provided the *subjects to be discussed*—the *powers* of the *Ministers*, and "the mode of the organization and action of the Congress," shall be previously adjusted.

On the 2d and 3d of November following, the answers were received to this demand, and, although they did not contain any compliance with the President's reasonable wishes, he held the subject under advisement until the 30th of November, (*six days* only before the meeting of Congress,) when he notified the Ministers of Mexico and Colombia that he had determined AT ONCE to accept of the invitation. The Minister of Guatemala gave no invitation before the 14th of November, and the answer to him bears date the 30th of the same month, and accepts without any qualification. Thus far several material circumstances suggest themselves to our consideration: the first is, that the invitation should have been given originally by *but two* of the Republics to be represented at the Congress, and that to this day we have not heard a word from three of these Powers. The next is, that all the other powers to be represented had formed solemn conventions among themselves, under which the Congress is to be convened, and that no such stipulation has been made with us. But the most important circumstance of all is, the determination of the President to commit himself to the acceptance of this invitation, six days only before the meeting of Congress. I will not believe, Sir, that the President could have desired to influence the decision of the Senate by such a proceeding. Yet we do know, that the idea of the embarrassment to which he will be subjected, should the Senate refuse to ratify his proceedings, constitutes the leading reason with many gentlemen here, and the only efficient one with several, for confirming the nominations. Six days after giving his answer to the South American Ministers, Congress met, and the President, in his opening message, stated, "that the invitation had been accepted, and Ministers *will* be commissioned." The claim thus set up to send these Ministers by his own authority, is the only plausible reason that can be given for its premature acceptance; and I am compelled to conclude, that at this time the President did not intend to ask the consent of the Senate, except to the appropriation. From the 6th to the 26th December, though the measure had been resolved on, we heard no more upon the subject, and yet we have since been told that the Congress was actually in session on the 3d of November last,* and our delays have been complained of—how justly we shall presently see. During this interval, the right of the President to commission ministers of his own free will, and without consulting the Senate, was boldly and publicly asserted, and the ingenious writers in the public journals (under whose high displeasure we have fallen) contended "that the Senate would take new ground, if they undertook to question it."

Though there is not a line or a principle in any part of the Constitution which authorizes the President, either expressly or by implication, to appoint foreign Ministers, without the advice and consent of the Senate, and though the distinction between the *accredited agents* of the Government bearing *commissions*, and the mere private and personal agents of the President, is too obvious to escape the most superficial observation, yet the argument urged, was, that as Mr. Monroe had appointed private agents to visit South America, Mr. Adams had a right to commission Ministers to attend a Congress. At length, however, on the 26th of December, the President sent us his message, asking for our advice and consent; he accompanied it by a clear and unequivocal assertion of *his right* to act without our consent. His words are—"Although this measure "was deemed to be within the constitutional competency "of the Executive, I have not thought proper to take "any step in it before ascertaining that my opinion of its "expediency will concur with that of both branches of "the Legislature: first, by the decision of the Senate upon "the nominations to be laid before them; and, secondly, "by the sanction of both Houses to the appropriations."

Now, as it was the intention of the President to obtain the opinion of both Houses on "the expediency of the mission," his requiring this of the Senate by a vote on *the nominations*, and of the House of Representatives by a subsequent vote on the *appropriation*, was a measure singularly unfortunate for obtaining an unbiassed opinion on those subjects. The form in which the question was submitted, hardly presented an alternative to either House. The vote on *the nominations* does not necessarily involve the expediency of the mission. Suppose we should reject these gentlemen—may not the Executive construe it into an objection personal to the individuals, and send us other names to-morrow? And should we confirm the nominations, do we not know that many members of the other House will then consider themselves bound by a constitutional duty to make the appropriation? I feel that the course which has been pursued precludes the possibility of now obtaining an unbiassed expression of the opinion of either House, while, if the President, without accepting the invitation, had submitted the question of expediency to the two Houses of Congress, by calling for an appropriation, such an opinion would have been secured. In his message to the Senate of the 26th December, the President gave us nothing but the bare invitations and acceptance, with a few remarks of his own, and left us altogether in the dark on every other important particular.

This message having been referred to the Committee

* In Mr. Obregon's letter to Mr. Clay, of the 3d November, 1825, he states "that the Congress is to be assembled at Panama, at which city the Representatives from Colombia, Peru, Gautemala, and Mexico, will have already arrived at the date of this"—3d November. The President, however, did not make his nominations till 26th December, near two months after. The Conventions show that the Congress is, from its nature, as well as its duties, permanent. It is to serve as the great council during the war, and an interpreter of treaties, &c.—*Note by Mr. H.*

of Foreign Relations, that committee, on the 3d of January, presented a resolution calling on the President for *further information* on the subject.

On the 13th of January, an answer was given to this call, covering the conventions between the Spanish American States, and an extensive and highly interesting correspondence, between Mr. Clay and Messrs. Salazar and Obregon, and our Ministers at St Petersburg, Paris, and Mexico. These documents, which cover forty printed pages, shed so much light on the subject, that, until we received them, the Senate may be truly said to have been groping in worse than Egyptian darkness. The belligerent character of the Congress was here so fully developed and clearly established, that, unless from the hope of peace, presented by the correspondence with Mr. Middleton, I presume no question would have been then made that the acceptance of the invitation would give to Spain just cause of war. On this point, however, we were lulled into security by the fact disclosed in that correspondence, that our Government had invoked the mediation of Russia to bring about the recognition by Spain of the independence of her colonies, and the confident opinion expressed by Mr. Clay, that this mediation would be successful. It was obvious that if peace was about to take place, there would no longer be any force in the objection that the contemplated mission would violate our neutrality. Sir, did any member of the Senate believe, that at the very moment these cheering prospects of peace were held out to us, there existed in the Bureau of the Secretary of State, in Washington, conclusive evidence that these prospects were illusory—that at the very moment Mr. Clay was despatching to us the assurance that the mediation of Russia would, in all human probability, be effectual with Spain, he had in his own hands the despatches of Mr. Everett, our Minister at Madrid, which demonstrated that there was no hope of such a result? Such, sir, was the fact, and it was disclosed to us under the call of the gentleman from New York, (Mr. VAN BUREN) who, considering it as somewhat strange that, while we are speculating on the probability of a peace, we should not have communicated directly with the Spanish Government on the subject, resolved to ask for specific information. The call was made on the 30th of January, and on the 1st of February the correspondence of Mr. Everett being laid before us, all hopes of peace vanished, and the charm was instantly dissolved.

There was not a gentleman, I assert confidently, on this floor, who did not at once perceive and acknowledge, that all hope of the success of our mediation was entirely gone. Count Nesselrode had expressly stated to Mr. Middleton, that every thing would depend on the determination of the Spanish Government—so that it was obvious that all our hopes rested on their temper on this subject. Well, sir, Mr. Everett tells us that he made the Spanish Minister acquainted with our wishes and our mediation, and that, so far from his receiving an answer to justify hope, the reply shut it out forever. The Minister declares emphatically, that *the King never will, under any circumstances, acknowledge the Independence of his revolted colonies;* that, he would stand upon his right; that if reduced to as low a state as Louis the 18th, during the height of Napoleon's power, like him he would wait until Providence in good season should restore him to his own. He repeats, again and again, and in every form, the fixed determination of the King *never to surrender his rights* to the colonies, under any circumstances whatever. Nor is this all: Mr. Everett informs us further, that the Russian Minister acquiesced in the justice of these views, and that England, satisfied with the commercial advantages of her position, had ceased to interest herself in the question. Thus was all hope shut out at the very time we were flattered by *the second set of documents*, with the delusive expectation that peace was near at hand. Sir, let it be recollected that it was at the moment when we had called for and not yet received these most important documents, that we were chided for *delay*, and that a movement was made in the other House, by the confidential friends of the Executive—that the administration presses opened their batteries on this body collectively and individually; that State Legislatures were roused into action; and no means of coercion left untried to bring the Senate to an instant decision of the question. I thank my God, sir, that these efforts have signally failed, and that the Senate stood unmoved; and, though slander and misrepresentation have been busy with our names, it is now demonstrated that *the delay* which has occurred in the proceedings of this body, has arisen chiefly from the necessity imposed upon us of making repeated calls for important information, which was not communicated to us in the first instance, and without which we should have been left in profound ignorance of the true character of the proposed mission. The next important step in our proceedings on this subject, was the resolution passed by the Senate on the 15th February, that the question "ought to be discussed with *open doors*," unless the publication of the documents would be "prejudicial to pending *negotiations;*" and on this point information was respectfully requested of the Executive, the officer charged with all our negotiations. To this resolution, the President replied in the following message:

"WASHINGTON, *Feb.* 16, 1826.

To the Senate of the United States:

In answer to the two resolutions of the Senate, of the 15th instant, marked (Executive,) and which I have received, I state, respectfully, that all the communications from me to the Senate, relating to the Congress at Panama, have been made, like all other communications upon Executive business, in *confidence*, and most of them in compliance with a resolution of the Senate, requesting them confidentially. Believing that the *established usage* of free confidential communications between the Executive and the Senate, *ought*, for the public interest, *to be preserved unimpaired*, I deem it my indispensable duty to leave to the Senate itself the decision of a question *involving a departure* hitherto, so far as I am informed, without example, *from that usage*, and upon *the motives* for which, not being informed of them, I do not feel myself competent to decide. JOHN QUINCY ADAMS."

The plain and obvious import of this message, divested of the diplomatic garb in which it is invested, is, that we were bound by the *confidence* which had been imposed upon us by the Executive, (who kindly reminds us of what our usages *are*, what they *ought to be*—and that they ought not to be changed,) and while he leaves us free to act as we think proper, refuses to furnish us with the information on which alone we could act, and for which we had respectfully called. The message closes with an allusion to our *motives*, on which the President is restrained from commenting, because they were unknown. Sir, I was one of those who believed that we could not, with a due regard to our own rights and the public interests, proceed to act upon the subject at all, until the information was furnished, which the Executive alone possessed: for which we had respectfully called, and which was necessary to enable us to decide on our own "rules of proceeding"—a privilege expressly reserved to us by the Constitution. In this I have been overruled, and I must submit. I am, sir, further of opinion, that we ought never to proceed until an answer is given by the President to the call made in the other House by his friends, (and it is to be presumed with the knowledge and consent of the Executive,) *because*, should the President give to that House *publicly*, all the information we now possess, there would no longer be any reason for our proceeding with *closed doors;* and if he should give *more*, we ought to possess that additional information before we come to a decision; and if less, we may consider what it would then

become our duty to do. In these views we have also been overruled, and are constrained to submit.

But, I beg pardon, sir; I am wandering from the question, and have trespassed too long on the patience of the Senate. The whole question may be resolved into this: are we prepared now to depart from the fundamental policy of this country, never to interfere in the concerns of other nations? Are we ready to embark our fate with that of the Spanish American Republics? To become parties to an "American Confederacy," against the "European Confederacy?" Sir, it will not, it cannot be denied, that the proposed measure is entirely out of the course of ordinary diplomatic relations; it has no precedent but in that "great Alliance," profanely called "Holy," and equally offensive to God and to man.

We are about to violate the maxim of the Father of his Country, which enjoins upon us, as the most sacred of duties, "to cultivate peace and honest friendship with all nations, entangling alliances with none"—to equally violate the wise and prudent policy of the late President, of the benefits of which we have a glowing picture from the pen of the Secretary of State, in the documents now on your table. "The United States, (says he,) have not, indeed, taken up arms in support of the independence of "the new States; but the neutrality which they have "maintained has enabled them more efficaciously to serve "the cause of independence than they could have done "by taking part in the war. Had they become a belligerent, they would, probably, have drawn into the "war, on the other side, parties whose force would have "neutralized, if it had not overbalanced, their exertions. "By maintaining neutral ground, they have entitled themselves to speak out, with effect, and they have constantly so spoken, to the Powers of Europe. They disconcerted the designs of the European alliance upon "the new States, by the uncalculating declarations which "they made, in the face of the world. They were the "first to hasten to acknowledge the independence of the "United Mexican States, and, by their example, drew after them Great Britain."

Shall we abandon this high and honorable ground to engage in a crusade, the end of which no human being can foresee? Let it be remembered, that when, a short time prior to the meeting of Congress, it was rumored that this invitation had been given, and the determination of the President was as yet unknown, *not one press in all America, not one enlightened man of any party*, as far as I know, raised a voice in its favor. All, all, declared that the invitation would, of course, be respectfully declined. What, sir, has occurred since, to produce any change in public opinion? Nothing—absolutely nothing. Sir, my opinions on this subject have undergone no change, and, if this extraordinary mission must be sanctioned, I will wash my hands of it.

Mr. ROBBINS, of Rhode Island, said, the honorable gentleman from Tennessee (Mr. WHITE) called upon us (by us, I mean those who have not adopted the reasoning of the report) to show wherein the reasoning of the report was not conclusive; implying that we were either to do this, or to adopt the resolution; as the resolution was the necessary result of the reasoning, if that was conclusive. I do not agree that this is the necessary alternative: for, an argument may fail of convincing the mind, may be felt as very fallacious, and yet the mind be unable to detect its fallacy, and unable to expose that fallacy, either to itself or to others. Berkley's argument against the existence of matter, is a memorable instance of the kind; it convinced nobody, yet it puzzled every body. It confounded all the philosophers and metaphysicians of the early part of the last century; many of them labored hard at its refutation, but labored in vain. Reed, at last, hit upon the clue that unravelled the subtle web; at least, he conceived that he had—and, for a while, it was admitted that he had—but now, it seems again to be doubted whether his refutation is not itself refutable, and is not more seeming than solid. Suppose Berkley here now, to put to the honorable gentleman from Tennessee the same dilemma which he would put to us, and say to him—Now, refute my argument, or adopt my conclusion; admit that there is no material world, or refute the reasoning by which I demonstrate that there is none; admit the chamber in which we sit, that the columns which adorn it, are not material objects, external to us, but merely ideas in the mind. My honorable friend would say, I believe, "Mr. Berkley, your alternative is a hard one, and as unreasonable as hard. I feel that your conclusion is false, though I find myself unable to detect the fallacy of your reasoning. You will give me leave, therefore, to believe in the information of my senses, and to let your subtleties alone."

Besides, an argument may be true, and unanswerable because it is true, yet not be satisfactory: for it may be outweighed by other arguments equally true and unanswerable, and more satisfactory, because of more weight. This is the case as to all questions depending on a balance of probabilities; as questions of political expediency do, of which this is one. But if we were reduced to the alternative, to which the gentleman from Tennessee would reduce us, still, I think we should not be compelled to adopt the resolution: for that reasoning, subtle and ingenious as it is, almost *Berkleyan*, and imposing as it is at first blush, will be found, upon closer examination and reflection, to be far from conclusive.

It is altogether hypothetical, and the hypothesis is no where supported—it is not even attempted to be supported—in the report. In this way, you may prove any thing: for, "*supposito quo libet sequitur quid libet.*" If you are at liberty to make your premises what you please, you may make your conclusions what you please, and make them necessary. It is hypothetical altogether, as to the nature and character of that body—the Congress at Panama. It supposes that body to be, or is to become, a confederate organized sovereignty, possessing the prerogatives of sovereignty, possessing powers supreme and final on all subjects within the sphere of its action, but that sphere to be undefined, at least as far as we know. This is implied throughout the report. Many passages might be cited in proof. I will select only one, as a sample:

In page 4th, are these words: "It was, therefore, much to be desired, and certainly to have been expected, that, before the *destinies* of the United States should be committed to the deliberation and decision of a Congress, composed, not of our own citizens, but of the representatives of many different nations, that the objects of such deliberations should be most accurately stated and defined, and clearly and distinctly marked out:"—Clearly implying, that our destinies would be committed to the decisions of that body, in case we were represented there. If so, that body must have supreme and final powers on the subjects of their deliberations, and these subjects must involve the destinies of this country. It must be, as I said before, a confederate, organized, and absolute sovereignty, within the sphere of its action, whatever that sphere might be. This is the supposition of the report, the assumption on which its reasonings are bottomed, the principle from which all its alarming dangers are deduced, and neither the reasonings nor the consequences can be supported on any other supposition. Now, if this was the fact—if this Congress was, or was to be, an organized sovereignty, as it is assumed to be, the present question would not be a question of expediency, but a question of constitutional power. Could we send delegates to become constituent members of a foreign sovereignty? I take it to be very clear that we could not: for that would be to transfer a portion of the sovereignty of this nation to a foreign power. Can we alienate the sovereignty of this nation, or any portion of it? Not only alienate, but subject

the sovereignty of this nation to the sovereignty so alienated? Such an idea is too absurd for refutation, and needs only to be mentioned to be rejected. If it was a fact that this Congress was to be an organized sovereignty, the committee should have stopped there—should have reported the simple fact, and have spared themselves the labor of all their subtle reasonings, of all their detail of probable dangers: for, surely, we wanted no reasonings to convince us of the inexpediency of transferring a portion of the national sovereignty to a foreign power, and of subjecting the residue to the control of that power; and no exaggerated pictures of national dangers to deter us from committing such an act of national suicide. If it be a fact that this Congress is to be this organized sovereignty, possessing those sovereign prerogatives, and to exercise this supremacy over us, let the same gentleman who drew this report, or any other gentleman, now show it, and the Senate must reject the proposed mission with one voice.

But this supposition, made by the report, is entirely gratuitous, and has not any warrant whatever from any of the documents on which it was founded; it is not only without evidence, but contrary to all the evidence. It appears from these documents, that this Congress is to be a mere Diplomatic Council, with no power whatever but as such. It is to possess no one attribute of sovereignty—no Legislative power, no Executive power, no Judicial power; no power whatever but that of an advisory council. This Council is not to form the Confederation of the South American nations, as the honorable gentleman from South Carolina (Mr. HAYNE) supposes. That Confederation is already formed, and this Council is appointed by it—each nation appointing two Plenipotentiaries to be of it. That Confederation is formed by their treaties, made between themselves; but still it leaves each nation an independent sovereignty—independent in all its foreign relations, independent in all its internal regulations, and only united in a common league, offensive and defensive, as to common dangers. It was absurd, therefore, to suppose, as the report supposes, that, when they had provided with such a jealous care for their separate and absolute sovereignties, they have subjected those sovereignties to the sovereignty of a Congress, and that each sovereignty had thus become a felo de se. Nothing can be further from the fact: see article 16th, in the treaty of Colombia and Chili; article 6th, in the treaty of Colombia and Peru; article 18th, in the treaty of Colombia and Guatemala; and article 17th, in the treaty of Colombia and Mexico. The provision is precisely the same in substance, and nearly the same in words, in all the treaties. It is as follows—I recite it from the treaty last mentioned: "This compact of perpetual union, league, and Confederation, shall not, in any wise, affect the exercise of the national sovereignty of either contracting party, in regard to its laws and form of government, or its foreign relations." This Council is to be composed of Plenipotentiaries, two from each nation. They are called Plenipotentiaries in every instance in which they are mentioned or referred to at all, without one single exception.

In article 14th, Treaty of Colombia and Chili, they are so called—The Congress is to be an Assembly of the States, "composed of their *Plenipotentiaries*." In article 3d, Treaty of Colombia and Peru, they are so called—The Congress is to be an Assembly of the States, "composed of their *Plenipotentiaries*." In article 17th, Treaty of Colombia and Guatemala, they are so called—The Congress is to be an Assembly of the States, "composed of their *Plenipotentiaries*." In article 14th, Treaty of Colombia and Mexico, they are so called—The Congress is to be an Assembly of the States, "composed of their *Plenipotentiaries*." So, wherever they are incidentally mentioned, they are called *Plenipotentiaries;* as in the 3d article of the Treaty of Colombia and Chili. It provides that the contingents therein mentioned, shall be adjusted at the meeting of the Plenipotentiaries. Are Plenipotentiaries invested with the powers of government and sovereignty? The idea is preposterous. Will it be said, they may be? No, they cannot be as such. Besides, it is expressly provided, in every one of these treaties, how they are to be commissioned. They are to be commissioned as Plenipotentiaries, and not otherwise. In article 12th, of the Treaty of Colombia and Mexico, it is provided in these words: "A Congress shall be formed, to which each party shall send two Plenipotentiaries, commissioned in the same form and manner as are observed towards Ministers of equal grade to foreign nations;" and this is, *mutatis mutandis*, the provision of all the treaties. And so far are these Plenipotentiaries from being invested with the powers of government, that they are not even invested with the power to protect themselves; but are to owe that protection to the State in which they assemble; and this is expressly stipulated for in all the treaties. And what is that protection to be? It is the protection due to the sacred and inviolable character of Plenipotentiaries. This is what is stipulated. See article 15, of the Treaty of Colombia and Mexico: It provides that "the Isthmus of Panama, being an integral part of Colombia, and the most suitable point for the meeting of Congress, this Republic promises to furnish to the *Plenipotentiaries* of the Congress all the facilities demanded by hospitality among a kindred People, and by the sacred characters of *Ambassadors*." The same stipulation is exacted by all the other nations from Colombia, and by her from them, if the Congress should be compelled to remove its seat. Each nation exacts a guarantee for the protection of its Plenipotentiaries—clearly proving that they are to be merely Plenipotentiaries; merely a diplomatic Congress or Council, and incapable of protecting themselves.

Besides, all the treaties, in the stipulations for the formation of this Congress, and in defining its duties, and its office, limit the Congress to the power of council merely. Article 14th, in the Treaty of Colombia and Mexico, which is but a transcript of the same provision in the other treaties, defines the office of the Congress to be, "To serve as a *Council* on great occasions; a point of union in common danger; a faithful interpreter of public treaties in cases of misunderstanding; and an arbitrator and conciliator of disputes and differences."

This is all the grant of powers which the Congress have made to them; this is the whole of its constitution: for, though it is said in the 3d article of the Treaty of Columbia and Chili, they are to adjust the contingents therein mentioned; and, in the 14th article of the same treaty, that they are to cement the intimacy of the union between the States; these offices are virtually included in the above definition of their duties. Now, how is it possible to say, that here is a grant of any powers, except those of council? The Congress is expressly made to serve as a council on great occasions; not as a government on great occasions, or on any occasion—but as a council. Will it be said that these occasions may embrace military and naval operations? Be it so; still it is only council as to them; not power to order, not power to direct them. The question is, whether they can do any thing more than advise? They are "to serve as a point of union in time of danger." This makes them the central point of communication, and the vehicle of intelligence to the allied sovereignties. Surely this is nothing more than the power of advising. They are "to be a faithful interpreter of treaties in cases of misunderstanding." By this they are to give opinion and advice; nothing more. Will it be pretended that they have not only the power to interpret treaties, but enforce the interpretation? Nothing can be more groundless. There is not a syllable that implies any power whatever to enforce their interpretation, "as an arbitrator and conciliator of disputes and differences."

Their treaties were the only source out of which could arise any disputes and differences to be arbitrated; they being independent sovereignties, and meaning to remain such. And surely arbitration in such a case implies nothing more than opinion and recommendation; and what proves it is, that they are to be the conciliators as well as arbitrators. At any rate, arbitration is not judiciary power, strictly speaking; which implies execution as well as adjudication. As to adjusting contingents, what is that but an agreement of the parties by their agents, what the contribution of each shall be? Is that a power to enforce the contribution? No one will pretend it. As to cementing the intimacy of their relations, that, surely, is the office of friendship, not of force. Will it be said the body will be permanent? What has that to do with the question of its powers?—a council may be permanent; a power may be temporary. The Dictatorship of Rome was a temporary power. Will it still be contended that this Congress is a confederated sovereignty? What one prerogative of sovereignty has it? Can it raise armies? No, they cannot. Can they equip fleets? No, they cannot. Can they command either the one or the other? No, they cannot. Can they levy and collect taxes? No, they cannot; not a cent can they levy, not even for their own subsistence; that they must owe to their appointments; and had they no means of living but by their own powers, they must starve to death. Can they declare war, or conclude peace? They can do neither. Can they regulate the relations of those nations with foreign powers? No, they cannot. Can they regulate any subject whatever of their internal policy? Not any. They cannot even advise on these subjects. Can they coin money, and regulate the currency? No; were they to attempt to do this, they make themselves criminal, and expose themselves to punishment. Can they pass any law, or execute any? They cannot. Have they the power of protecting the society around them? They have not even the power of protecting themselves. They can do none of these things: for the simple reason, that they are not a Government, nor intended to be a Government, but merely a Congress of diplomatic agents, for consultation and advice.

Can any one suppose that, in investigating the nature and character of this Congress, we are to look to any thing but the treaties by which it is constituted and defined? or that it can be other than what those constitutional acts make it? Newspaper speculations about it, reviews upon it, whether North American, or South American, proclamations that allude to it incidentally—are these to be taken as lights in this inquiry? In every point of view, they are useless; if they agree with those constitutional acts, they are not wanted: if they differ from them, they are not entitled to the least weight. It is equally unimportant to this inquiry, what this or that Minister from those nations may presume may be the subjects of discussion by that Congress. Whatever those subjects may be, the constitution of that Congress cannot be other than those constitutional acts make it. Taking, then, these treaties as our guide, and only guide, nothing can be more clear to us than that the report is entirely mistaken in supposing that this Congress is to be a confederate sovereignty.

Now, had the report attempted to predicate the dangers with which it would alarm us, on the existence of a mere Diplomatic Council, a mere Congress of Ambassadors, the attempt must have entirely failed: it would have been hardly possible to prevent its appearing even ridiculous: for, pray how can such a Congress be pregnant with such dangers? How, in the first place, would it make out that the destinies of this country were committed to its keeping; to be controlled, to be regulated by it, to be dependent upon it? How? I ask. Certainly not by logic; logic would be of no use here, wonderful as that weapon is, when wielded by the hand that is said to have drawn up this report: here it must have failed him entirely. No, nothing short of magic could give even the semblance of connection between such a council and such results. He must have been a magician, and have thrown before our eyes all the illusions of enchantment, before we could see, or seem to see, such results; seem to see a few men, not over a dozen, without being clothed with any power whatever, except that of council, sitting in conclave on the dividing line of the two hemispheres, and controlling the destinies of both. Why, the phrenzies of Don Quixote would be sober reason, compared to the extravagance of such a delusion.

Then, pray, how could such a Council compromit our neutral relations? To show this, would involve the report in the difficult task of proving that the exercise of a right is itself a wrong: for no one will say, that we have not a right to send a Minister to an independent nation; and it amounts to nothing more. If we may send to one independent nation, we may send to several independent nations; and it makes no difference as to the right, whether they are confederated, or not confederated. A Minister, of course, is to meet Minister; this is the mode, and the only mode, of communication between nations; and surely it makes no difference as to the right, whether he meets the Minister separately in his own nation, or meets him conjointly with others in another place; still it is the same diplomatic intercourse, and the exercise of the same right. And are not these South American nations independent nations? Why, even Spain herself is obliged to consider them as independent nations, as to all the world, except as to herself; the law of nations obliges her so to consider them. If these States commit violations upon the rights of neutral nations, is Spain responsible for these violations? No—she herself disclaims the responsibility, and leaves the injured neutral to look to these States for his indemnity. These nations being independent in point of fact, are independent as to all intents and purposes, as to us, and as to all the world, except as to Spain herself; and we have precisely the same right to send a Minister there, that we have to send a Minister to Great Britain or to France; the same to send one to Panama, as to send one to Mexico. The mission, then, is a matter of plain unquestionable right. But, though Spain has not a right to complain of it as a violation of our neutral relations with her, she may consider it as unfriendly to her. She may so. When we recognized the independence of these nations, she considered it as unfriendly towards her; so also when we sent Ministers to those nations; so also when we made treaties with them. But still we adopted these measures, and why? Because, in so doing, we violated no right of Spain; and because, in so doing, we pursued the true policy of our own country. Even England, connected as she is with Spain, who alone sustained that monarchy against the mighty efforts of Bonaparte, whose relations with her are of the most intimate character, even England has done the same thing; and why? Because she had the right, and found it her interest to do so, disregarding all the complaints of Spain of unfriendliness in these proceedings. The question of this mission (the mission itself being an unquestionable right) is to be determined by considerations of policy; not by its possible or probable effects on the feelings of Spain, which we have uniformly disregarded, when right and policy united in recommending measures of national interest.

But the instructions of the Minister may be such as to enable him to concur in and promote plans that may compromit our neutral relations. They may; so may the instructions to every foreign Minister we have to every foreign Power in the world. But what is our security against this? It is the Executive discretion, and the Executive responsibility. In the nature of things, we can have no other. In this instance, we have, moreover, the Executive pledge, that our neutral relations shall not be

compromitted. He says, his Ministers shall not engage us to any alliance, nor to any project importing hostility to any nation. Then, if our neutral relations should be violated, the Executive must violate his pledge, or his Ministers must violate their instructions; and surely no one will presume either—at least no one will act upon that presumption.

The report would persuade us that the destinies of Cuba and Porto Rico are somehow connected with this mission, or with this Congress: that their conquest is to be attempted by force: or their independence produced by their blacks being excited to revolt. This supposes—first, that these plans of conquest or revolution are contingent—depending upon the event of a Congress: if no Congress—then, not to be undertaken: if a Congress—then, to be undertaken. And stranger still is the further contingent depending on the event of *a* mission, or *no* mission; that the Congress, without this mission, will not undertake them: but, with this mission, will undertake them. It supposes these strange things: for if those plans —Congress or no Congress—mission or no mission—are resolved on, it is idle to urge that as an objection, which has no connection with either fact. Whether these plans of conquest or revolution are resolved on, or will be resolved on, or resolved against, we know not: but this we know—it is a question with which that Congress can have nothing to do. It is not within their commission: nor has their commission any reference to it. The powers of war and peace, and all other prerogatives of sovereignty, are expressly retained by the States. This Congress has no participation in them whatever. All their military—all their naval operations, whether for offence or defence, whether separate or confederate, are concerted and directed by the States themselves, independently of this Congress. This Congress has not the least particle of authority with regard to them. But if this body had delegated to it the military and naval concerns of the Confederacy, and the direction of their military and naval operations, as the report erroneously supposes, would not our remonstrances, made upon the spot, in that body and to that body, be likely to have some effect? Would not that be the very place where to exert our influence to prevent those attempts? And would it be prudent to forego the chances, and them the only favorable chances, of effecting so important an object to our country, as would be afforded by this mission? I think not. The honorable gentleman from South Carolina supposes, even then, our Minister, by going to the Congress, would compromit our neutrality with Spain. What, if he went there, among other things, for the express purpose of preventing an attempt against the possessions of Spain? Would an office of friendship to her be a breach of neutrality towards her? Would an effort to protect her Islands from invasion, be an act of hostility towards her? Will the learned gentleman say, that such is the doctrine of the law of nations on the subject of neutrality? Upon re-examination and reflection, I am confident he will not.

It is evident, that our Government has labored with much anxiety to prevent these or any enterprises against the Islands of Cuba and Porto Rico; has still that object much at heart, and is bent on preventing them, if possible. Yet the very measure which the Executive has proposed, among other things, to augment his influence with those nations, to be exerted if occasion should require, the report represents as a measure that may become the means of promoting the very evil he is striving to prevent. How can it be, unless the Executive shall change his views? Or, unless his Ministers counteract his views, and favor those enterprises? The honorable gentleman from Virginia, who pourtrayed to us the calamities which might follow on in the train of these events, to affect our fellow-citizens in the South—who exhibited those calamities in a manner so affecting to every heart—who transported us to that scene of horrors which he described, and made us even seem to hear the cries of death from the cradle of reposing infancy; even he is not more anxious than our Executive to prevent these enterprises against Cuba and Porto Rico. It is strange, that, agreeing with the Executive in object, you should so differ in your opinion of the means! It is strange, that you should judge the means, which he deems useful, not only not useful, but detrimental to your common object! The President proposes means. How can that gentleman think them useless? Were he himself in that Congress, and that Congress were to agitate the project of exciting the blacks of Cuba to revolt; and that gentleman were to represent the calamities of the measure to arise to his friends and their friends in North America; to renew the picture of those calamities, as he had represented them to us, would it have no effect? My life upon it, I was going to say, the project would be abandoned. I do not know the gentlemen proposed for this mission; but this I know, that if they possess his powers of statement, and his energy of description, or powers any way resembling them, that their mission cannot be useless to the true interests of this country.

The gentleman has represented us of the North as coldly insensible to the possible perils of those of the South; as looking with stoical indifference to those perils: and as not unfavorable to the projects that would increase them. I should be sorry to believe that there was any foundation for this opinion. They mistake, I think, a spirit which is very partial and limited, for the general spirit of the North. I know that there is a wild spirit of fanaticism existing in that country, but not peculiar to it; the offspring of a virtuous sensibility, but unenlightened and unregulated by reason: bigoted to its abstractions, and disposed to push them universally, regardless of those considerations which ought to modify and to limit them; that sees nothing in circumstances that ought to check or control them, circumstances that control every thing; and are not to be controlled; that, to realize these abstractions, would risk the overthrow of the order, together with the happiness of a whole society—including that of those who are the objects of its visionary benevolence. I know that this spirit is formidable, and to be feared; but this is not the spirit of the North; all reasonable and reflecting men there, (as the gentleman from South Carolina did us the justice to admit) abjure this spirit. They are not to learn, that even the virtues themselves, when pushed to their ultimate extremes, cease to be virtues, and operate as vices; that every society must conform to its circumstances; that this is its law; and not the abstract rights of humanity in any imaginary state of nature. They know, that if two distinct People exist in the same society, equally numerous, or nearly so, that one must be subordinate to the other; that not only the well-being, but the very being of that society depends upon it; that, if they forcibly and suddenly were put into a state of equality, a struggle would instantly ensue to re-establish the former condition; that it must be re-established, or that the one or the other People must be extinguished. The supremacy of the one People and the subjection of the other, is the necessary condition of such a society; and any attempt forcibly and suddenly to change it, is to attempt to change the nature of things; and however benevolent in intention, is criminal in fact. The gentleman, then, is mistaken, if he supposes that we see with indifference any events that would threaten them with this danger; such, for instance, as those revolutions in the Islands of Cuba and Porto Rico, which he has imagined, and which he deprecates so much and so justly. And if we do not sympathize in his fears, it is because we are persuaded that this measure, instead of leading to those revolutions, will have a contrary tendency; and is the best of all possible precautionary measures in our power to prevent them.

So much for this report. Let the honorable gentleman

from Tennessee still say, if he will, that its reasoning is conclusive. The report says, that this mission will link our destinies with those of the Spanish American nations, and that the Congress at Panama will control both; I ask, is this proved? Is not the contrary made evident? The report says, that the mission will or may compromit our neutral relations; I ask, is this proved? Is not the contrary made evident? The report says, the mission may be unfavorable to our policy, of preventing the conquest or the revolutions of the Islands of Cuba and Porto Rico—I ask, is this proved? Is not the contrary made evident?

If now I am asked, in my turn, if any certain advantage is to arise from this mission, I answer, that the good of any mission whatever is, and must be, in a great measure, contingent; depending upon those conjunctures of human affairs to be disclosed in the progress of human events; and which are beyond the reach of human foresight; the conjunctures may be such, that the mission may be the means of doing great good, or of averting great evil. The probability of such results may be a sufficient warrant for the mission.

The friendship of those nations, let gentlemen abuse them as they will, is very important to us; and it is our interest to strengthen its bands by all the proper means in our power. It is evident that this mission will be highly acceptable to them; and will have the effect of strengthening those bands, beyond any other expedient we could employ, so little onerous to ourselves. Is not that friendship important to us? Look, for a moment, at the situation of things. Nature seems to have formed the two hemispheres for mutual commerce; and to us, our commerce with them is immensely valuable, especially when the present is taken in connection with the future. It is only since the era of their independence, now but a few years, that our commerce there had a beginning; and it already constitutes no inconsiderable portion of all our foreign commerce, immense as that commerce is: and the day is coming, and is not distant, when it may constitute by far the most valuable portion of that commerce; the most valuable in itself; and especially the most valuable for its effects on every branch of the national industry, and on every interest in every part of our widely extended empire. The causes of these results are planted in the nature of things, as might be shown, were this the proper occasion. We all recollect the report of the Committee on Commerce, on the subject of discriminating duties; and the general views of our foreign commerce exhibited by their chairman; his very able comments upon that report; his very interesting illustrations; but especially his animating development of our commercial psospects: but nothing, on that occasion, so much excited my admiration as his view of this portion of our commerce, particularly in the rapidity of its increase. It must be so. These nations now are nations of freemen, and left to their own energies; and the energies of regulated freedom never fails to carry forward a nation with astonishing rapidity in the career of national prosperity. Their population is great at present—upwards of thirty millions, if I mistake not—with an unbounded scope for its increase; and possessed of all the means which have been found to accelerate its progress. For this great and growing commerce we have the world for competitors, but none can contend with us on equal ground, if we are attentive to all the means of securing all the advantages of our situation.

England is our great rival for this commerce. She is exerting all the arts of her policy to gain the advantage, to pre-occupy the ground, to establish her connections, and to secure the command of their markets. Had she received the invitation which we have, I believe she would not have debated so much, nor hesitated so long, as to her interest in acceding to it. No. She is too quick-sighted in seeing, too prompt in seizing every advantage, to have delayed her acceptance a moment. All the merchants of our country, so far as I am informed—intelligent of their interests, and of the means that favor them—attracted by this opening and promising field for their enterprises, are warmly and eagerly desirous of the adoption of this measure. The sentiments of the country at large, in the Eastern quarter of the Union at least, appear to have taken the same direction: not perhaps from the most enlightened views of all the considerations connected with the subject, but impelled by that feeling which carries freemen so naturally and so forcibly to fraternize with freemen, in whatever part of the world. As the mission will be without harm, or the danger of harm, I think the consideration of the public sentiment ought to weigh something with us in determining this question.

The theory of our constitution charges the Executive with the care of our foreign relations, and of the public interest connected therewith; it supposes him intimately acquainted with all those interests, and therefore possessed of the means of forming a correct opinion of the measures conducive to their advancement. This opinion, though not binding as authority, is yet, I think, entitled to much weight, as well as to much respect, in our deliberations. We have the Executive opinion in this case, under circumstances that entitle it to peculiar consideration. The credit of the Government, in the estimation of all those nations, is in a degree connected with the adoption of this measure; and that estimation ought not, in my opinion, lightly to be forfeited, nor unnecessarily impaired I hope, therefore, that the resolution reported by the committee will not be adopted.

Mr. WOODBURY, of New Hampshire, in addressing the Senate, observed, that he owed some apology for the violation of an injunction of silence, which circumstances had imposed upon him, in respect to the merits of the proposed mission to Panama. He had, on the first perusal of the documents, entertained but one opinion concerning its probable danger and impolicy. The able report of the Committee on Foreign Affairs, against its expediency, remained unanswered. An early decision of the question seemed a favorite object with almost every member; and, therefore, he had supposed that little benefit would result from debate, until some gentleman of a different opinion about the mission should attempt to shake the premises or conclusions of that report. Nobody had made this attempt, till the worthy member from Rhode Island, yesterday, entered the field of argument. Such a version of the documents was then given, and some such principles of action avowed, as tended to alarm my mind (said Mr. W.) about the accuracy of its previous convictions. Last evening, therefore, I devoted a few hours to the re-perusal of the President's confidential communications, under a fixed determination to renounce, as far as possible, every prepossession, and follow, in my vote, whithersoever their facts and principles should direct. For, I must confess, that I never could acquiesce in the doctrine avowed by the ingenious gentleman beforementioned, that he was not obliged to vote for the resolution on your table, although unable to designate any error in the statements or reasonings of the report on which the resolution rests. Will he inform us why we are endowed with reason, unless it is to be our guide in action? I must know him too well to believe, for a moment, he could intend to countenance the slavish position, that we, of course, should vote against any resolution not conformable to Executive recommendation. But his mistake, probably, consisted in this: Conclusions which affirm facts contrary to all our experience, as that no external matter exists, though we are hourly striking our feet and hands against external substances, may well be doubted, however ingenious the reasoning; because the facts themselves being contradicted by indubitable testimony, there must be some error in the data or inferences leading to such conclusions. But the resolution

that it is not now expedient to send Ministers to Panama, is not pretended to affirm any fact thus contradicted. So, conclusions which prostrate all distinctions between virtue and vice, may well justify us in doubting some of the statements or reasoning which produce them; because they embody what is palpably contrary to the moral law written on the hearts of all. But no one pretends that the resolution now under consideration possesses such a character; and, consequently, like most propositions in legislation and politics, it must be assented to, unless some one can discover and describe a fallacy in the grounds upon which it has been vindicated.

The gentleman from Rhode Island seemed to possess a presentiment, that no real discovery of that kind could be made, else no apology would exist for his resort to a doctrine so novel in a deliberative assembly, so abhorrent to every feeling of rational and independent beings. But I concede that he afterwards undertook to maintain that this Congress at Panama was merely for the purpose of negotiating treaties; that it was to be a transient, unorganized assembly; that it would be destitute of any sovereign powers; and that its objects were altogether peaceful. If this had been successfully maintained, many of the positions in the report would still remain unanswered. But others would, surely, be shaken; and, hence, it becomes important to ascertain, as accurately as may be, the real character of the Panama Congress. It is manifest that this must be done without any regard to its name as a "Congress," or to the title of its members, as "Plenipotentiaries"—on both of which so great stress has been laid: for the word "Congress" is so equivocal as to be applicable either to a body in point of power, like our old "Congress" of A. D. 1775, or like our present "Congress" now in session, or like the "Congress" of Verona. And the word "Plenipotentiaries"—meaning only persons with full power to do what is *assigned to them*—is elastic enough to include delegates for any objects whatever. Indeed, our own Cabinet seem to have considered it as mere India-rubber; or else to have entertained no definite notions whatever on the subject; since, in the documents before us, they have called the persons to be sent to this Congress by no less than six distinct titles. In one place, "Envoys Extraordinary;" in another, "Ministers Plenipotentiary;" another, "Diplomatic Agents;" another, "Commissioners;" another, "Deputies," and in another, "Representatives."—(See President's nomination, Dec. 26, 1825, Clay to Obregon, Nov. 30, 1825, page 8 and 9, documents; Clay's report, Dec. 20, 1825, page 4.)*

But the origin, object, actual power, and essential character, of the Assembly at Panama—called by whatever name, or its members by whatever title—appear, in some degree, in the documents before us; and, far as may be, I admit, must be settled by the treaties which created it, by the correspondence of the States interested, and by the official declarations of our own Cabinet. And when my friend from South Carolina adverted to pamphlets, manifestoes, and reviews, upon this point, it was only to exhibit more in detail what is essentially disclosed in the confidential communications now before us.

In a consideration of this question, I have not been surprised to find, that different gentlemen should fall into the ancient mistake of the two Dervises, about the true color of a column painted, and seen differently on different sides of the column. Because an inquiry into the papers will show that, probably, this Congress will possess some powers only temporary, and some perpetual—some peaceful and some belligerent—some limited and some sovereign—and, viewed in this double capacity, amphibious, hermaphrodite, and not designed for either of the above purposes exclusively, many discrepancies of opinion may be reconciled, and the nature and consequences of the mission may be better understood.

Thus the permanency and the present belligerent character of the Congress at Panama can hardly admit of a doubt, when we advert to the treaties before us. By them it was not to be a sudden and transient assembly; because it was provided for as early as July 6th, 1822, by a treaty between Colombia and Peru; and without the slightest intimation that it was ever to be dissolved. (See that treaty in document, page 27.) Again—to rebut any such inference, it is to be assembled under what is there called "a compact of *perpetual* union, league, and confederation;" (Article 2d,) and of this "perpetual union," the Congress of Panama is to be the great focus and organ. Its main objects not only demonstrate this, but characterize its duration to be "perpetual," "both in peace and in war;" because it is to be "a council in the great conflicts, as a rallying point in the common dangers, as a faithful interpreter of their public treaties when difficulties occur, and as an umpire and conciliator in their disputes and differences." (3d Article.)

How can gentlemen, then, talk of this as a mere collection or Congress of Plenipotentiaries, to negotiate a treaty of peace, of partition, or commerce, like the Congress of Utrecht or Verona, and then to dissolve forever? No, their duties are to interpret, rather than make treaties; to adjudge upon their internal disputes, and not to form new codifications on national law; to be "a council" and "rallying point" in their present common "dangers" and common war for "independence," and not a meeting of mere diplomatic agents to adjust imposts on tonnage, or disputed questions of the "extent of blockades."

Such duties give to the Assembly, formed under such a "perpetual" league, as lasting a character as belongs to any judicial or political tribunal on earth; because such duties cannot cease to find it employment till the passions and opinions of mankind cease to differ under some new millenium, or till, by some new compact, the league, and its representative assembly, are expressly altered or dissolved. Of a similar character, in many respects, have been the origin, progress, and power, of other associations—such as our Confederation of A. D. 1774, the union of the Swiss Cantons, the Hanseatic League, and the Amphictyonic Council of Greece.

The progress of this "perpetual Confederation," and of the Congress under it, since July, 1822, confirms these conclusions, concerning the duration of the latter; because, Oct. 21, A. D. 1822, it was extended, by a similar treaty, to Chili, (doc. p. 28.)—March 15, A. D. 1825, to Guatemala—and, Sept. 20, A. D. 1825, to Mexico, (doc. pp. 28, 35, 39.) In each of them is the Confederation expressed to be "perpetual," and in each of them is the Congress provided for, under similar language, as to its powers and duties. In some, it is expressed that the Confederation and Congress are to be enlarged, till they embrace "all the States of America, formerly Spanish;" and, in others, they seem intended to embrace all the "American States." The former limitation, as to the States to be included, was probably the original and true one, on account of the common origin, common language, common sufferings, and common war, for the same objects, of the cidevant Spanish Provinces. Hence, we, as Anglo-American, and of a different origin, language, and condition, were never invited or consulted till last Spring, more than four years after the project was started; (Canas' letter, Nov. 14, 1825, page 10,) and about three years after the first treaty for the organization of the Congress was signed. Even then, the invitation came not till about the time of the sailing of a French fleet, feared to be destined to the occupation of Cuba; (Clay to Brown, Oct.

* The documents referred to, and the pages, are those as printed originally and confidentially by the Senate.

25, 1825, page 58; and Clay to Poinsett, Nov. 9, 1825,) and even then, was it doubted, "whether it would, or would not, be agreeable to the United States to receive such an invitation;" (Mr. Clay, Dec. 20, 1825, page 3;) and, even to the present day, the invitation has not been extended to us by all the parties to the league.

Still the Senate are vilified for not joining to despatch, post haste, our Plenipotentiaries to form a part of this "perpetual" Congress—a Congress, also, of such novel, and, we shall soon see, of such dangerous powers; and where, among other States, solely Spanish, we come into the fold, if at all, not by the door, or till after the eleventh hour, or by request of all the parties concerned. Under circumstances, also, when most of the delay has been to obtain information, not yet full as is desirable, an official attempt seems to be made to lash us into greater speed; and the dangers, the faction, and impropriety of the delay, are reiterated in every form and region—when, since these very nominations were laid on our table, and as late as January, 1826, the President of Mexico has publicly and officially announced to the world, that, though a Spanish State, and a solemn party to this perpetual league and Congress by treaty, their Plenipotentiaries had not yet started, but might be expected to be "at sea on *their way, in the course of the present month.*"

But, to return to the character of the Congress at Panama, it will appear from these documents, not only that most of its duties, and, consequently, its duration, are permanent or "perpetual," but many of its objects are clearly belligerent. This position leads to consequences entirely independent of its character in other particulars; because, whether its members be mere common Envoys, or not—whether its continuance be long or short—still, if its leading objects are belligerent, and must impart an inseparable belligerent character to the Assembly, no neutral nation, however well disposed, is able to form a component part of that Assembly, without endangering its neutral condition.

I have been utterly astonished, that any gentleman could read these documents, and still contend that this was not a belligerent Congress. What! a Congress, originating with those engaged in war; confined for years, in its incipient stages, to those only who are engaged in war; to be convened within the territories of those engaged in war; and having for its main objects, as again and again repeated, the triumphant prosecution of that very war; and yet a Congress, in no degree belligerent, and perfectly safe for neutrals to unite in? To remove all question on this point, I will furnish gentlemen with evidence, till the most sceptical ought, I think, to be satisfied. Thus, in the treaty with Chili, (Art. 394, p. 23,) it is stipulated, that this Congress of Panama shall fix their respective contingents or quotas of "sea and land forces" during the present war with Spain; and shall form "a rallying point in common dangers." By the treaty with Peru, (Preamble and third Article, page 38,) the cardinal object of the league is said to be to "maintain in common the cause of their independence," and this Congress is agreed to be, as before, "a rallying point in their common dangers." The treaty with Mexico is similar, they being "confederate forever in peace and war," and this Congress their "point of union in common danger." By the treaty with Guatemala, their design is avowed to be "to identify their principles and interests in peace and war," (preamble, page 30,) "to repel any attack or invasion from the enemies of either," (2d Art.) and, further, "that the objects contemplated by the preceding articles may be carried into effect, the Republic of Colombia engages to aid the United Provinces of Central America with that amount of its disposable naval and land forces, which shall be determined by the Congress of Plenipotentiaries to be mentioned hereafter," &c. (Art. 3 and 4,) and which is afterwards mentioned as the Congress "at the Isthmus of Panama," (Art. 19.) I would respectfully inquire, if gentlemen can point me to a parallel in the records of history of a neutral joining with "confederate belligerents," in a Congress like this? As this point has been principally combatted, I may be indulged in a little farther examination of the opinion which the parties themselves—who best understand their own affairs—have expressed in other documents, concerning the paramount belligerent object and character of this Congress.

The Government of Colombia was the prime mover in this "perpetual league," and in its "common council" in the great conflict; and since our present session commenced, her Vice President has officially announced, that "in Panama the Plenipotentiaries of the new States of America are assembling to ratify, in the most solemn manner, our common determination to *maintain and defend* our national liberty and independence against the attempts of *its enemies.*" Is it, then, a mere occasional Congress of Ambassadors, with no belligerent views? When our old Congress convened for similar purposes, would any European neutral, if invited, have deemed it safe to form a component part of such a Congress?

Again: Mr. Salazar, at the head of the Legation from that Government, (Letter Nov. 2, 1825, p. 6,) formally classes the subjects for discussion there into those "belligerent," and those "neutral"—and Mr. Obregon, of the Mexican Legation, (Letter Nov. 3, 1825, p. 4,) admits, that "other matters" than what concern us as neutrals, are there to be canvassed, and that they grow out "of the actual position of the new Powers," or, in language without any diplomatic starch, that they grow out of a state of war.

Mr. Canas, from the Government of Central America, is, if possible, still more explicit, and describes it as "a general Congress of their Representatives at some central point, which might consider upon and adopt the best plan for *defending the new States of the new world from foreign aggression:*"—(Letter Nov. 11, 1825, p. 11.) And again: "a General Congress, *to be formed for the purposes* of preserving the territorial integrity, and firmly establishing the *absolute independence* of each of the American Republics." If these are not belligerent objects, I am unable to comprehend the force of language. The President and the Secretary of State have both entertained similar opinions; or where was the necessity to enter so many caveats and protestations against our wish to compromit our neutrality by joining the Congress? How could our neutrality come in question, if there were to be no belligerent deliberations in it? If there were to be no belligerent deliberations there, how could the former person say, in his message, Dec. 26, 1825, (page 1) that we are "not expected to take part in any deliberations of a belligerent character?" How could Mr. Clay, Dec. 20, 1825, (page 3) observe, that we were not desired "to take part in *such* of the deliberations of the proposed Congress as might relate to the prosecution of the present war," if no such deliberations were to be held in the proposed Congress?

A Congress, then, springing from a state of war, to be composed, as is said by the President of Colombia, of "confederate belligerents," "confederate forever in peace and war," according to their league, and convened chiefly to fix their contingents of troops, and, among some permanent peaceful objects, to impart greater effect to their common resistance to a common enemy, and so concentrate, by a great common "council," all their energies and sacrifices, so as best to advance the cause of their common independence—I ask, if we, however desirous of neutrality, can form a component, and, it is said, prominent part in such an "august assembly," without extreme hazard to the happy peace and flourishing commerce we now enjoy? Are there precedents for this course on our part? And is it safe, judicious, discreet? Is the prospect of benefit more than commensurate with the danger?

Would it not be a little more prudent, *flagrante bello*, and while these new Spanish States probably have on hand sufficient business of their own for employment—would it not be wiser to defer, till peace, the manufacture of new national law, new codes of commerce, and new changes in Roman Catholic faith and practice? I repose the most entire confidence in the assertions of our own Cabinet, concerning their wishes not to break our present neutrality.

But the inquiry again recurs, Can those wishes be carried into effect, if we become a component part of such an assembly? As a mere Congress of Plenipotentiaries, it is an unit, and not divisible. It is not two Congresses, but one Congress; and if but one Congress, and the objects and origin of that chiefly belligerent, then what becomes of the professed neutrality of one of its voluntary members? If the minority wear a white rose, and the majority a red one, does the Congress become any the less a war Congress? Can any kind of assembly, where all the parties are previously apprized that the majority will engage in belligerent objects, be exempt in any of its component parts from joint political accountability? Gentlemen may call it what they please—a Congress, Convention, Confederacy, or Caucus; and can it assume, both at one and the same time, a belligerent and neutral form towards a single third Power? Can it be treated abroad as a belligerent every forenoon sitting, and as a neutral every afternoon? A Congress, subject to the laws of war, with closed doors, but exempt from them with open doors? How, too, are its officers—*quasi* combatants or non-combatants? How are its printers? How are its incidental expenses divided into belligerent and neutral columns? Are there two modes of protecting the safety of its members, and the independence of its deliberations, according as they may be differently engaged in belligerent or neutral duties?

But I will not tax your indulgence by pursuing these inquiries further, or I could ask, in another view, whether our mere presence at such an Assembly, knowing, before hand, its hostile objects, and uniting with them on a hostile soil, though disclaiming to join beyond certain of their deliberations, and dividing those as you may, would not alone be likely to give a "political importance," (as Mr. Salazar calls it, page 8,) to those Spanish States, in their belligerent attitude, which might be construed into aid and comfort; and which, if given by a subject to an enemy, whether amounting to treason or not, would subject him to troublesome scrutinies; and which, when given by one State to another, cannot be very far from a violation of the spirit of neutrality? But I hasten to other considerations. All my remarks, thus far, have proceeded on the hypothesis, that our actual intentions, in joining this Congress, were, in every respect, commendable—were entirely pacific, and in no degree connected with "the prosecution of the present war;" or, as Mr. Clay again expresses it, (28th December, 1825, page 3,) "with councils for deliberating on the means of its further prosecution." Are all our intentions so, in point of fact? I trust we are not to be deceived by any chaff scattered over this subject by the wiles of foreign diplomacy, or to deceive ourselves by any general professions, and loose protestations, not warranted by our acts. Foreign Powers cannot be thus blinded; nor can the American People long be hoodwinked in this way into any "pledges" or "secret" alliances of "co-operation" with other nations, in support of any new-born theories, or any experimental principles, not conformable to our ancient policy and our true interests.

I aver, then, that, by the documents before us, whatever may be the verbiage on either side as to neutrality, the real objects, as disclosed on the side of Spanish America, in alluring us to this Congress at Panama, is to involve us, in the end, in the prosecution of the present war. I will attempt to show, that she either believes, or pretends, that we have already given a pledge to join her in its prosecution in a certain contingency; that she never invited us to unite in the Congress till about the time when she professed to believe that contingency would soon happen; and that, in all her correspondence as to the objects of our attendance, she thrusts forward into the first rank the discussions as to the mode of redeeming that pledge, and of rendering effectual our "co-operation" with her upon that ground. I will attempt to show, also, that a part of our Cabinet must thus understand her, and that, if we now confirm this mission for such an object, we do, by the very mission itself, bind ourselves in a certain contingency to future hostilities, unless we are willing to be branded as mere boasters and brawlers, who do not intend, in the end, to redeem our plighted faith.

In support of these positions, Mr. Obregon, in his letter of November 3d, 1825, (page 4,) states, as the reason for inviting us to the Congress of Panama, that, "in the meeting of it, it was thought proper, by the Government of the subscriber, that the United States of America, by means of their commissioners, should constitute and take part, as being so much interested in the first and principal object upon which the Congress would be engaged." What is that object? Let the same gentleman answer: "The resistance or opposition to the interference of any neutral nation in the question and war of independence between the new powers of the continent and Spain." He adds, that this subject, "the late administration pointed out and characterized as being of general interest to the continent." He proceeds upon this point in language too explicit for misunderstanding: "The Government of the undersigned apprehends that, as the Powers of America are of *accord as to resistance*, it behooves them to *discuss* the means of giving to that resistance *all possible force*, that the evil may be met, if it cannot be avoided: and the only means of accomplishing this object, is by *a previous concert* as to *the mode in which each of them shall lend its co-operation*," &c. The opposition to colonization in America by the European Powers, will be another of the questions which may be discussed, and which is in a like predicament with the foregoing. The two principal objects, therefore, which we are invited to discuss there, is the *peaceful* question of "resistance" to the interference of any other neutral nation in their present war; and of "resistance" "to colonization in America" by any European Power; and there to settle "the means of giving to that resistance *all possible force*"—or, in other words, there to agree, by "a previous concert, as to the mode in which each of them shall lend its co-operation." Co-operation! how, or when? Of course, by money, troops, or vessels of war, whenever Naples, for example, may choose to aid Spain in her present contest; or whenever Sweden, for instance, may choose to purchase from her Cuba or Porto Rico.

There is no mistake on this point, as to the gist or essence of the mission. I care not for any formal flourishes concerning neutrality. Nations look to deeds, not words. What are the deeds to be done there, and in pursuance of what is done there? Mr. Salazar, like Mr. Obregon, November 2, 1825, (page 7,) says, "the manner in which all colonization of European Powers on the American continent shall be *resisted*, and their interference in the present contest between Spain and her former colonies prevented, are other points of great interest" to be discussed by us at Panama. "Were it proper, an *eventual atliance*, in case these events should occur, which is within the range of possibilities, and the treaty, of which no use should be made until the *casus fœderis* should happen, to *remain secret*," &c. would be different means "to secure the same ends," &c. "The conferences held on this subject being *confidential*," &c. Are we then so readily to slide into the snares of artful diplomacy? And are we,

by this mission, to form an "eventual alliance" to maintain principles which have never yet been avowed but by one department of our Government, and which alliance is to be kept "secret" from the People and States whom we represent? Is it to be locked up here as "confidential," till the *casus fœderis* happens, and then our Government branded as perfidious, unless they join in the war? What is a mere adoption of the mission, but an assent to this dangerous doctrine, that we are now pledged, and are willing to remain pledged, in certain events, to take part in this foreign war—a war on the despotic principle of maintaining countries more remote from us than Europe itself, in a balance of power; a war on the reprobate principle—the principle contradicted by all the practice and professions of our early administrations—of interference in the internal concerns, transfers, colonizations, and controversies, of other nations.

Nor is this view of the nature and tendency of these principles confined to the Spanish States. The Executive Department of this Government must entertain similar notions, and are now virtually calling upon the other Departments to oppose or reject them. The President himself merely speaks of "an agreement between all the parties represented at the meeting" at Panama on these points, (message, December 26, 1825.) But the Secretary of State to Mr. Poinsett, October 25, 1825, (page 57,) says, "no longer than about three months ago, when an invasion by France, of the Island of Cuba, was believed at Mexico, the United Mexican Government promptly called on the Government of the United States, through you, to *fulfil* the memorable pledge of the President of the United States, in his message to Congress, of December, A. D. 1823; what they would have done, had the *contingency* happened, may be inferred from a despatch to the American Minister at Paris," &c. Then follows that despatch, dated October 25, 1825, in which he deliberately avows, that "we could *not consent* to the occupation of those Islands by any other European Power than Spain, *under any contingency whatever.*" The same sentiment is repeated to Mr. Middleton, December 26, 1825, (page 47,) "we cannot allow a transfer of the Island (of Cuba) to any European Power." Has it indeed come to this? that we are to tell the Autocrat of fifty millions he has not the same right to take a transfer of Porto Rico, as we had to take a transfer of Florida? Is this republicanism, equal rights, and received national law; or is it some marvellous discovery of the present age? And are we prepared, by this mission, to back up, by a war, the menace to France, that, in no contingency whatever, shall she be allowed to occupy Cuba, although she buy it of Spain by as fair and as honest a treaty as that by which we purchased Louisiana of France herself?

Are these the doctrines of the American Congress, or of the American People? or do they savor of the Holy Alliance? Permit me again to repeat, that there is no mistake on these points. We act with our eyes open, and with the naked principle, exhibited in so many different postures, and in such bold relief, that, if the mission is once sent to enter into measures to enforce it, the die is cast forever, unless we prove perfidious and treasonable when the contingency occurs. Mr. Poinsett, 28th September, 1825, (page 54,) removes all doubt on the other point also; because, he says, "the United States had pledged themselves *not to permit* any other Power to interfere either with their (Spanish American) *independence, or form of Government;* and that, as, in the event of such an attempt being made by the Powers of Europe, we should be compelled to take the most active and efficient part, and to *bear the brunt of the contest*, it was not just that we should be placed on a less favorable footing than the other Republics of America, whose existence we were ready to support at such hazards."

But the United States, as a Government, have not yet pledged themselves to any such entangling and despotic principle, in respect to any other Nation whatever. They have not yet agreed to "bear the brunt of the contest" in any foreign war; nor support, "at such hazards," "the independence or form of government" of any Nation or State, except our own Nation and those of the States composing our own Confederacy. Any such "agreement" would violate the Constitution, and plunge us into a vortex of new coalitions and confederacies, abhorrent to every feeling and maxim of our most venerated fathers. Avowals of such principles, whether made by Mr. Monroe or others, are very justly, on one occasion, styled by the Secretary, "*uncalculating* declarations."—(Letter to Mr. Poinsett, page 56.) But, after time to calculate and consider, let me ask, in the name of all which is sacred and holy, will gentlemen still pronounce a mission pacific, and safe, and expedient, whose confessed and leading object is to discuss "the means of giving" "all possible force" to our "co-operation" in such principles? and to settle the mode of that "co-operation" when we are called on "to bear the brunt of the contest"—to settle how many of our gallant sons are to find ignoble graves under the tropical sun of Guatemala, if some petty Hessian Prince should hire a regiment of infantry to Spain? or how many of our fearless seamen are to be sacrificed to prevent other nations from taking possession of Cuba or Porto Rico in the same manner we ourselves took possession of Louisiana and Florida?

Where, also, is the crisis—where the emergency to justify such an extraordinary measure? "Why quit our own, to stand on foreign ground?" Why join our fortunes in any case, much less in an useless war with Powers of another origin—another tongue—another faith? Have we become incompetent to our self-defence? Are we in need of foreign "councils," and foreign "deliberations" to manage our own concerns? Or are we so moon-struck, or so little employed at home, as, in the eloquent language of our President, on another occasion—when the sentiments expressed found a response in every patriot heart—as to wander abroad in search of foreign monsters to destroy? Speaking of America, and her foreign policy, he observed, "She has abstained from interference in the concerns of others, even when the conflict has been for principles to which she clings as to the last vital drop which visits the heart." "Whenever the standard of freedom and independence has been, or shall be unfurled, there will her heart, her benedictions, and her prayers be. But she goes not abroad in search of monsters to destroy. She is the well-wisher to the freedom and independence of all. She is the champion and vindicator only of her own."—(Adams' Oration, 4th July, 1821.) This is the first time that the Legislative Department of our Government has ever been distinctly appealed to for its sanction to the new notions thus ably denounced by him; and if we now approve the Panama Congress, whose chief object is to enforce them, we at once adopt and approve the principle, that Spain has not, by such alliances as national law warrants, and as were formed on both sides in our own Revolution, any right to attempt to reconquer and recolonize South America; and further, that she has not, by such sales as national law warrants, and as we ourselves have partaken, any right to transfer Cuba or Porto Rico to any European Power with whom she can agree upon the purchase money; and that these unprecedented and unjust positions we are willing to maintain at any sacrifice of blood and treasure.

These questions have no concern with our foreign recognition of the independence of South America, any more than with our recognition of the Government of Spain under her Cortes. That recognition was doubtless proper and friendly, but every sciolist in jurisprudence must know, that it has imposed no obligation on us to fight with her for that independence, any more than our recog-

nition of Napoleon bound us to fight with him for the throne of the Bourbons.

A mission, therefore, for these avowed objects on our part, and with such avowed expectations on their part, seems not only adverse to all the theory and practice of this Government, but it is a mission, which, in all human probability, must, ere long, terminate in open hostilities. These hostilities are made to depend on only one of two contingencies, which are monthly expected to occur. Negotiations for mediations, &c. have postponed more active measures. But the great pacificator of the Eastern continent, even when living, gave us no just expectation of peace, except in their submission—and now, when dead, the shadows, and darkness, and storms, that seem to rest over the succession, exclude, at least, all better hopes. Spain, too, by the correspondence before us, has signified her most fixed and unalterable resolve, never to remit exertions, in any reverses, however desperate, to subdue her provinces—(See Mr. Everett's Letters, 27th April, 1825, and 25th September, 1825, and October 20, 1825.) In this crisis, new efforts and new arrangements are highly probable, and are to be daily expected. And the moment a Russian frigate may enter the harbor of Havana, to take possession of her Forts, under such a contract as that by which we once entered New Orleans, that moment we are to say, by the principles of this misssion, that the United States have become obliged to embark in the existing war. Or the moment a German soldier is landed in Paraguay or Peru, to aid Spain in the subjugation of any of her provinces, we are to say, by the principle of this mission, that the United States, unless false to every tie of honor, and recreant to redeem their plighted faith, will march her sons over equinoctial sands and frozen cliffs, more distant than Europe itself, to perish in this American crusade for holy allianees.

But, to dwell no longer on these points, by which, already, I fear, the patience of the House has been too severely taxed, it is said that other objects exist in the mission, which are highly desirable, and perhaps a full counterpoise to all danger. It is urged, that we shall increase the friendly regard between sister Republics. What, sir! is there, in such a regard, any counterpoise to war? to the destruction of our commerce, and the sacrifice of our seamen and soldiery? Or, if we blink the contest, and, when the crisis comes in one of the contingencies before named, if we skulk behind protestations, and proclamations, and diplomacy, will that increase fraternal amity? or rather, will it not, after the present deliberate recognition of the supposed pledge, excite hate the most unquenchable? Will it be "a token of respect to them," to seek to delay longer their threatened invasion of Cuba, which our Cabinet can see no "justifiable ground" to oppose by force; though they can see such ground thus to oppose any peaceable transfer of it to any European power? or to protest and rail against their supposed principles of arming, in that invasion, a vast slave population against their masters, and of re-acting all the bloody scenes of St. Domingo so near our Southern border?—(Clay to Middleton, December 26, 1825.)

Will they consider it among our "good offices" if we lecture them, in the language of the President, about their "religious bigotry and oppression?" (Message, December 25, 1825:—"Some of the Southern Nations are, even yet, so far under the dominion of prejudice, that they have incorporated with their political Constitutions, an exclusive church, without toleration of any other than the dominant sect. The abandonment of this last badge of religious bigotry and oppression may be pressed," &c. As I understand it, the very faith of those nations is exclusive: and are we about to undertake missions to alter the religious faith of other nations, about "an exclusive church," and particularly of a nation, a large portion of whose officers are priests of this very faith?

How many missions and missionaries must we despatch to effect this object, even if we limit our benevolence to those nations, whether American, European, Asiatic, or African, with whom we enjoy commercial intercourse, and who retain the "prejudice, bigotry, and oppression," of an "exclusive church?" On this principle, my own native State, for aught I know, will next be blessed with a mission, either from us, to reform "its bigotry and oppression," or in return from the Panama Congress: for, by express prohibitions in her Constitution, not a single *Catholic*, much less Jew, Mahometan, or Deist, is eligible to either her House of Representatives, her Senate, or her Executive chair—indeed, no person, unless he be of the "Protestant religion." But it is no more a practical oppression there, than their "exclusive church" is in South America: the Catholics with us, and the Protestants with them, being almost unknown, and never molested, with us, in their worship or political rights.

Again: it is said, that our interests can be promoted at the Congress of Panama, by commercial discussions. But, with the most important of the States there represented, we now enjoy treaties, placing us on the most friendly footing. And, if the other deputies should come there empowered to negotiate on these points, of which I see no evidence in these documents, we are not so likely to succeed when so greatly outnumbered, and in the midst of so much other more urgent business, as at the separate court of each Power.

Much alarm has been professed, lest England would join the Congress, and forestall us in some advantages in trade. But the spirit of her constitution, and the disciplined judgment of her statesmen, have kept her out of the Holy Alliance, and would equally restrain her, I trust, from uniting in this, had she been invited. Further, we have the authority of Mr. Clay himself for saying, (letter to Mr. Poinsett, page 57,) "that such an invitation has been given to no European Power, and it ought not to have been given to this, if it is not to be considered as one of the American nations." Every treaty and document before us expressly limit the Congress either to the nations ci-devant Spanish, or, at the furthest, to the nations of the American continent.

As far as the Congress goes, not embracing every nation here any more than the Holy Alliance embraces every nation in Europe, it is to be deemed the "Continental System of America," (Canas' letter, Nov. 11, 1826,) and I trust the freest nations here, like the freest nations there, (such as England and Sweden,) will not be beguiled into it, under any fallacious notions, that intermeddling and force, as to the concerns of other States, are any more holy on one continent, than on the other.

No less questionable is the expectation, that such a mission will terminate in any improvement in the codes of national or maritime law.

In the midst of an inveterate and bloody war, and while devising measures to consolidate their independence, and impart greater vigor to their arms, the chance is a sorry one, and the leisure scanty, for adjusting these complicated objects of peace.

We, also, should be a humble minority in number, in the discussion of every principle of this kind, and should not be very likely to persuade persons educated in the bigotry and despotism of Spanish principles, to think like the descendants of the "sea-girt isle," who, for ages, have breathed so different an atmosphere, in law, politics, and commerce.

If there can be named a single controverted question on these points, where the interests of those States would not induce them at once to join us by an ordinary negotiation at their own courts, I frankly avow that, with all my prejudices against England, as the oppressor of our fathers, and the recent enemy of ourselves, I would prefer to abide by the enlightened opinions of her jurists

in the discussion and adjustment of it—men who have grown up under a free press, jury trial, representative legislation—a habeas corpus and an independent judiciary—than to abide by the decision of Spain, or any limb of Spain in either hemisphere. Nobody can exult more highly than myself in the prospect of the independence of the *cidevant* Spanish Provinces; but there must expire some generations more, ere their education, laws, and habits, will so radically change, as to convert them into safe arbitrators for nations like ourselves. Neither can they be safe counsellors beyond their immediate interests. They are not in general of a like origin, a like religion—a like language—a like system of laws; and whatever disputed questions of national law are to be changed or adjusted, in which their interests do not already incline them towards our views, it will, in my opinion, be much wiser to trust to the silent and gradual operation of a free press—of books—of increasing civilization and commerce—than to debating assemblies, in which they constitute the majority, and have other subjects at stake, far more momentous and urgent. And who ever heard of a nation being at once convinced against its interest by the plea of a lawyer, or the argument of a diplomatic agent?

Again: it has been suggested by the gentleman from Rhode Island, that it may be useful to have this mission approved, so that the Envoys may watch "contingencies." I did suppose that our present large foreign corps in South America, and one of them at Colombia, in the very neighborhood of this Congress, might be sufficient to watch "contingencies." Or, if we must have some person at the very place of meeting, that a mere agent, without public credentials, and paid from the contingent fund, would be an Argus, much more safe, as well as successful, in watching "contingencies." One incalculable advantage from such a course would be, the impossibility of thus implicating us in the character or measures of the Congress, and the freedom we should still enjoy as to embarking in the present war voluntarily, on the occurence of any of the circumstances already commented on. But a still further advantage would be, that our course, by keeping quietly at home, or sending only such an agent, till we have further light on the organization, objects, and general character of this Congress, would not expose us to any censure on Constitutional grounds, or on grounds of rash and expensive adventure, upon any project dangerous and impracticable.

For, I ask gentlemen, and entreat a reply, whether they are now able to tell us the whole mode of proceeding, and the binding effect intended to be given to such proceeding in this Congress?

One has said it was to be a mere ordinary Congress of Plenipotentiaries, simply with full powers to negotiate on certain points. Another has conjectured that it would be a Congress like the old Provincial Congress, and that our Delegates would form a component part of it, and be bound as other Delegates on the subjects entrusted to the Congress. Another, seeing the difficulties of either of these hypotheses on the documents before us, has insisted, that, whatever may be the true character of the Congress itself, we were not to form a component part of it, but merely to despatch our Representatives to reside near it, and negotiate with its agents, as foreign Ministers negotiate with our agents here. Some of these views have been presented in debate, and others in conversation. But doubts and difficulties insuperable seem to attend either of them. We have already shown, by numerous and clear quotations from the treatics and other documents, that, so far from being an ordinary Congress of mere diplomatic agents, to last a few months or years, and then be dissolved, some of its duties are perpetual, and are judicial rather than diplomatic; and that it has ever been destined to be the perpetual head, "council," and rallying point, of an association of States, under a "perpetual league." These and other circumstances strengthen the second conjecture before named, of its resemblance to our old Congress: because, like that, it is convened under a "Confederation" of independent States. It is convened under a similar contest for liberty, and with a similar view to concentrate their hostile efforts in promotion of the common cause. Like that, the votes of each State are equal, by means of their Representatives being equal in number, and the place of meeting is subject to be changed by a majority of the States. (Doc. p. 33.) The names given to these Representatives, we have before seen, are various, and exhaust almost the whole vocabulary as to agents with delegated power, and consequently settle nothing as to their specific authority. But, like our old Congress, they are to have "rules" of proceeding, (Obregon's Letter, p. 5.) and a regular "organization," (Mr. Clay, p. 4,) and "mode of action," (do.) and to be thus formed into an "Assembly," and with all these things "distinctly arranged prior to the opening of its deliberations," (do.) else they never can proceed in these "deliberations"—collect and register their "votes"—have their judgments as "umpires" in disputes, recorded, and the "quota of troops" between the "Confederates" adjusted. It is true, that in some respects their power seems greater than that of our old Congress, and in some it is manifestly less; though neither of them are permitted to encroach on the separate sovereignty and internal police of the States forming the Confederation, and represented in the Congress.

But, while all this is very well and proper for those "Confederate belligerents," and is just such a Congress as would be expected among them alone, and such as was for three years confined, even in theory, to them alone, as before explained, it is very apparent to every reflecting mind, that we cannot form a component part of it by any clause of power conferred on us in our Constitution. That we can join in no other permanent political assembly without a new charter for our own States; that the interpretation of our treaties cannot by us be transferred to a distant tribunal of Spanish deputies, and that we must continue the umpires of our own disputes, and the head of our own Confederacy, until the People and States of this Union consent to mingle their fortunes with other Confederacies; to be lost in this great swarm of Spanish American States; to become a single sattelite to a larger planet, and with no more power in the great Continental Confederacy of all the American nations, than Peru or Guatemala.

Nor can it be tolerated for a moment, that they will admit us into such a Congress as a component part, unless we are to be bound in common by their decisions; but I admit, that, after such a Congress is formed, it may be considered such a Government or Federal State, that we could despatch Ambassadors to it in the usual way, and to treat with it on usual subjects for negotiation; and this brings us to the last conjecture, as to the manner in which our Envoys are to go and act at Panama.

This hypothesis would accord very happily with the usage of nations in despatching Ministers to our old Congress, after our independence was acknowledged, only it happens unluckily that such Ministers cannot take part in the deliberations, of any kind, of such a Congress; and that our Ministers at Panama are again and again said to be intended "to take part in those questions" there to be discussed; (Obregon's letter, p. 4,) "and in the meeting" of which Congress, "that the United States of America, by means of their Commissioners, should constitute and take part." (Ditto.) They are, also, to have "persons to represent them in this Assembly;" (Salazar's letter, p. 8,) and how else can it be "a general Congress of the American Republics?" (Canas' letter, p. 11.) And if our Ministers are to be seen only in the galleries or lobbies, like other foreign Ministers, what becomes of the splendid illusion sported before our eyes, that we are to

form the head of this great Continental Confederacy, and play in its "Council" the Nestor, Agamemnon, or Ulysses, or all of them at once? In this view of it, likewise, how can our Ministers be deputed to a Congress or Confederacy, with whom, as a *quasi* State, they are to negotiate, until that Congress is organized? Even since the nominations on your table were made, we have heard that the deputies from Mexico had not started, and no information has yet been received of its being organized at all for any purpose whatever. Why this haste to plunge into new experiments and unforeseen dangers? Nor, in this last view of the mission, if their be in any other, does there yet exist any protection for our Ministers—any guaranty for our national honor. If they enter a corner of the territory of Colombia, it is not under a commission to the Colombian Government; and we have no treaty stipulation, like all the other Confederates, as to the persons of our Representatives at the Congress. (See all the treaties in documents.) For aught which appears, they may be imprisoned for debts, or prosecuted for torts; and the sufferings and claims and remonstrances of other Spanish victims like Richard Meade, may longer inflame this nation, and burthen our journals.

In fine, under none of those delusive expectations as to certain ill defined, and unattainable objects, at the imminent hazard of our neutrality, or with a view to redeem pledges, which this Government, as a Government, have never yet given—and I trust never will give—in defiance of all the policy and injunctions of our wisest statesmen, and which pledges tend directly to war—I hope we never shall be incautiously allured into any kind of alliance or connection with this non-descript Congress at Panama.

If our Constitution had not become almost a mere nose of wax, I should add that, if the Congress be a permanent Confederacy, for any political objects whatever, common to it members, we cannot become a component part of it, without transcending our constitutional powers: or if we are not to form a component part, but merely have ministers resident near it, that the Confederacy must be organized, before, by any construction of our constitutional powers, a commission can run to it.

The other idea, that they might be deputed to a Congress at large, of mere Plenipotentiaries, to negotiate treaties of commerce, or peace, or limits, and then disperse; and that they could so be deputed without any guarantee by treaty or otherwise, for their persons, and without any legal provision of any kind for the creation of such Deputies, though in some degree questionable, may be correct in the abstract, for aught I shall now stop to inquire. But in point of fact, it is not correct, from these documents, that the Congress at Panama is a body of this description; but, as before shown, it is a Congress formed under a perpetual league, with perputual duties, and those duties, some belligerent and some peaceful, some political and some judical and municipal, and no more to be joined with in deliberation by a mere Envoy, and a neutral Envoy with customary powers, than we are to be joined with in deliberation by any of the Plenipotentiaries, however respectable, who are deputed hither.

Under all these circumstances, it is, in my opinion, the solemn duty of the Senate, not to advise this mission: the solemn duty of this nation, under such doubt and peril, not to try, while we are well, to be better. I would wait, in patience, till at last we obtained that more specific information about the powers, and character, and objects of the Congress, which the President himself, at first considered indispensable; (Doc. p. 4.) and which information, to the extent desired, the Secretary frankly admits, has never yet been obtained.—Letter, November 30, 1825, page 10.

Peace will doubtless arrive as soon as those belligerent powers will enjoy leisure to engage with utility in any peaceful improvements with us—*Inter arma silent leges;* and it seems to me the dictate of prudence now to remain contentedly at home, without embarking in any new experiments of diplomacy or off coalitions with "confederate belligerents"—to pay of as fast as possible the debts of former wars—to husband our resources—to encourage our States in the cultivation of the arts, of manufactures, and of agriculture—to give due protection to commerce—and retain for our motto, "honest friendship with *all* nations, entangling alliances with *none*." Numerous other considerations press upon my mind in connection with this mission; but I do not choose to fatigue an attention which has been so kindly indulged to me, by repeating what has before been expressed with so much eloquence by the gentleman from South Carolina; or by pressing additional points, which other members will doubtless enforce better at some more seasonable hour.

Under these convictions, sir, as to the principles of the mission, I am prepared to vote against it in every shape; and seek no higher vindication for my conduct, than the consciousness of having formed those convictions after full research and patient reflection.

Mr. WHITE, of Tennessee, said, that, were he to be advised by his feelings, he should remain silent; but, when he reflected upon the relation in which he stood to the report now under consideration, a sense of duty compelled him to submit to the Senate some of the views which his mind had taken of this subject.

The only question is, (said Mr. W.) the *expediency* of the mission to Panama. The President has distinctly asked of us an opinion upon this question. (See his Message, page 1.)

Our advice is to be given as freemen, not as slaves. In this course we serve the Executive, maintain the dignity and independence of the Senate, and promote the best interests of the United States. If the mission should not be advised, we give no cause of offence to the Spanish American States. The evidences heretofore given of our friendship for them, in acknowledging their independence, and interposing our good offices to effect it, ought to shield us against any suspicion of unfriendly feelings towards them, at present. The President will likewise comply with the only promise made to those who have tendered the invitation, his acceptance of it having been *conditional*, "if the Senate advise," &c. (See document, page 10.)

The subject is then fairly before us, for the exercise of our best judgment, without a fear that any promise of the Executive will be violated, should the Senate disagree with him in opinion: but even if this were not so, we could not, without a shameful dereliction of duty, offer any thing, as our advice, but the result of our best judgment.

The first reflection upon this subject, is produced by its novelty. Since the acknowledgment of our independence, it has no precedent in our history. This ought to beget caution and circumspection.

If this mission should be advised, a new æra will have commenced in the history of our foreign relations. Have peace with, and good will towards, all Nations; entangling alliances with none—has been our cardinal policy, in time past. It was recommended by the Father of our Country—repeated, and practised upon, by his *republican* successors. When given, we were few in number, comparatively poor, and insignificant, in the scale of nations: now twelve millions, rich in men, in means, and in character. Our prosperity has surpassed the most extravagant calculations of the most sanguine amongst us.

In our late contest with the most powerful nation in the civilized World, unaided by, and unallied to, any other nation, we furnished conclusive evidence, both upon the ocean and upon the land, that we are able and willing to defend the rich inheritance derived from our ancestors.

The sincerity of our conduct in our intercourse with other nations; a careful abstinence from all interference in their concerns; united to our determined and successful

resistance to lawless encroachments upon our rights; have given us a proud name throughout the nations of the Earth. Happy at home, and respected abroad, why should we change the policy, by which these blessings have been obtained?

We ought not to advise it, except to obtain some *lasting* and *important benefit* for the *United States; certainly* attainable in *this* mode; probably to be attained in *no other*—never from sympathy for *others;* from a desire to serve *them;* or from the desire of gratifying *National vanity.*

We are then naturally led to inquire into the *objects* expected to be obtained and the *probability* of accomplishing them in *this* mode.

Here we cannot fail to perceive how difficult it appears to have been for those who gave the invitations to fix upon any subject for discussion, which they believed of sufficient importance to the United States, to induce them to accept those invitations: hence, both the Minister from Colombia and from Mexico introduce the idea of subjects "which the Congress may give rise to," &c. (See documents, pages 6 and 8.)

How can the Senate advise the President to send Ministers to discuss unknown subjects? to accomplish objects which no person can designate? and in relation to which it is impossible to say whether their attainment would comport with the honor and interest of the United States, or not? Suppose those giving these invitations had specified no subject whatever for discussion, but to have asked the attendance of our Ministers, to discuss, and come to an agreement upon, such subjects as the Congress might give rise to; is there any one member of this Senate, that would advise a mission upon such an invitation? Would it not be thought both useless and hazardous?

To these questions it would seem to me there can be but one answer. Fond would he be of the *creation* of officers, and *heedless* of the honor and interest of his country, who would advise the appointment of Ministers to a Foreign country, to attend a Congress for the purpose of seeing whether a subject *could be* produced that might be proper for an agreement with the United States. I will not degrade the Senate by supposing there is any such man among us, and will proceed with this investigation, as if no allusion had been made to any unknown subject, which could neither be designated nor described.

The first subject mentioned is, the resistance or opposition to be made to the interference of any neutral nation in the war of *Independence,* &c. (See documents, pages 5 and 7.)

This appears to be a point of *primary importance,* in the estimation of all concerned. Let us calmly and dispassionately reflect upon it. Six of the former Spanish American Colonies have declared themselves independent of Spain, and to maintain this independence, have put at hazard their lives and their fortunes. Spain asserts that they are still parts of her dominions, that she has the right to govern them, and that, cost what it may, she will reduce them to subjection. The decision of this issue is submitted to the God of battles. These six colonies have become six States, and are belligerent on one side, and Spain on the other. Heretofore these States have exerted their strength separately without any regular alliance with each other, although they have had a common enemy to contend with. The belief, that it would conduce to their common interest, and best secure that independence for which all are contending, has induced five of them to enter into treaties, by which they are bound to make common cause against Spain, and, by their united efforts, compel her to acknowledge the independence of each. To produce *union* in council, and *concert* in action and design among the new States, they have devised the Congress at Panama. It is to be perpetual—Its *primary* and leading *object* is *belligerent.* Its secondary and inferior objects and duties are *peaceful.* The first subject, then, which will claim the attention of this Congress, is some plan, by which the independence of each State will not only be *maintained,* but *secured.*

A fear has been entertained, that some European Power, now neutral in this war, will be induced to unite with Spain, and lend her assistance to reduce these States to the condition of colonies. They wish to provide against such an event, and in giving these invitations state that they have a pledge from the President, and that there is an accord between them and the cabinet at Washington, that, if any neutral power does take part with Spain, the United States will take part with them; and wish the attendance of our Ministers with a view to discuss this subject, and come to an agreement in relation to it, by which it will be stipulated what contingent each party shall furnish when the casus fœderis shall occur, and say, that in the mean time this agreement or convention may be kept *secret.*

Mr. President, I object to sending Ministers for the purpose of discussing and coming to any agreement or convention upon this subject. It is not true, as far as I am advised, that the United States stand pledged to take part in this war, in any event whatever. Nothing can bind us to go to war with any nation, but a declaration made in the proper form, and by the proper department of this Government. The Executive cannot declare war, but I admit he may pursue a course of policy which will justify other nations in making war upon us. Congress has taken no step, has done no act, has passed no law, by which we are bound to unite with these new States in their war of independence, upon any contingency whatever. The Executive had no power to bind the United States by any *pledge* he could give. But what has he done? The groundwork of this pretended pledge, it seems, is found in President Monroe's Message of December, 1823. It contains no pledge—it is a general declaration to his own Congress, of the sentiment which would be felt if any neutral should interfere on the side of Spain. Notwithstanding that declaration, the United States were still at liberty, consistent with their honor, to take part with the new States, or omit to do so, as the wisdom of Congress might judge best, when any neutral power did take part with Spain. This declaration had a good effect. Not wishing to give offence to the United States, it may have prevented some of the European States from taking part with Spain. The new States have had the full benefit of this declaration. Thus the matter appears to have rested, till the close of Mr. Monroe's Administration. Since the new Administration came into power, it seems that, upon the appearance of a French fleet in our seas, some of the new States called upon the Executive to redeem the pledge which had been given. Upon this application, in place of correcting the mistake upon this subject, it would appear from the documents with which we are furnished, the Administration admitted that which I do not see was the fact, that a pledge had been given, and directed Mr. Brown, our Minister in France, to ask an explanation, &c. Upon this point, however, I think we are still in the dark; we have no copy of the application from the new States, nor of our answer to them. These documents would have shown how far our new Administration have gone towards compelling us to take part in this war. It is very singular, that after all the calls for information which the Senate have been compelled to make, upon this important business, there is still a want of documents, that would, probably, be useful. But, if we are at liberty to judge from the correspondence between Mr. Poinsett and the Mexican Minister, and from Mr. Secretary's letter to Mr. Poinsett, it does really seem, that the Executive has admitted to Mexico, that we have given a pledge, which we may be called on to redeem, whenever the contingency shall

occur.* Of this pledge, the People of these States are yet uninformed. I feel persuaded they have no idea we stand pledged upon any contingency, to embark in the war with these new States, whether it may compete with our interest or not. This is an inadvertence which cannot be corrected too soon. If we send Ministers, and an agreement is entered into, then, indeed, will the United States be *pledged*. We now know the object—we see the predicament in which we are placed; and with this knowledge, if Congress can be induced to give its sanction to this measure, and this pledge of the Executive is refined into an agreement, by which the United States shall be bound to furnish men, money, ships, &c. in aid of the new States, whenever any Power, now neutral, may chuse to take part with Spain, then, indeed, shall I think this nation has given a pledge, one that it may cost us too much to redeem, when the casus fœderis shall happen.

But, sir, how is it that we are told our neutral character is not to be compromitted? that we are not to enter into any alliance? to engage in nothing importing hostility to any other nation? Are we to be led away from the substance of things by mere names? Are we to have so much faith as to induce us to disregard the plainest evidence that can be furnished? I hope not. What is the substance of this proposition? These new States say, the President has given a pledge to take a part in the war now waged, if any neutral nation shall take part with Spain; and that the Cabinet at Washington has done the like; but, as this is only a *general pledge*, and they do not know exactly what assistance they are to receive, they wish the United States to send Ministers to Panama, empowered to discuss this subject, and come to a *definite agreement* upon it, by which it may be distinctly known what contingent the United States are to furnish, when the casus fœderis happens, and that all this matter shall be kept secret.

Suppose we do send Ministers, for such a purpose, to a Congress composed entirely of belligerents on one side, is it not a violation of our neutrality? What is our situation? We profess friendship for both the parties to this war, and that we are not disposed to aid either. Is it no departure from these professions to send our Ministers? Can any gentleman doubt upon this point? Recollect that this Congress is *created* and assembled avowedly for the purpose of discussing *war* measures, settling *plans*, and devising *means*, by which Spain shall be compelled to acknowledge their independence, and by which that independence can be best secured. With this knowledge, and for the purpose of entering upon the discussion, and making an agreement, by which we will be bound, upon a certain contingency, to aid the party with whom we make the agreement, we send our Ministers. Can we be called indifferent? Countenancing neither, to the prejudice of the other? Surely not. What is the answer to this argument? The only one as yet attempted is by the gentleman from Rhode Island, that, if two nations are at war, it is no breach of neutrality in a third Power to send a Minister to both, or either. This is very true, and yet it proves nothing, as it relates to the question now in dispute. For peaceful purposes—for any purpose unconnected with the *war*, the third Power may send a Minister, may discuss, may treat upon any *peaceful subject;* but, does this prove that you may send a Minister to the Court of one *belligerent* to discuss *belligerent questions*, to advise one party what steps he is to take in the *war*, whether it is most prudent to *strike* his adversary at a given time, or in a given quarter? Surely not. And yet this is the very point which gentlemen on the other side must maintain. This part of the subject has been placed by the gentleman from South Carolina on ground which cannot be shaken. His argument has not been answered. It never will be, while there is a distinction between truth and the reverse.

Mr. President, I go one step farther, and insist, if you do send Ministers, and they discuss this subject, and enter into the *proposed agreement*, so far as you have power over the matter, your neutrality is not only broken, but you are in a state of *war*, and that with any and every Power that is *now* neutral, and may hereafter elect to take a part with Spain. This is a dilemma from which we cannot escape, without disgrace. Send Ministers, make the agreement—and the question of peace, or war, is not *with us;* and, at any moment afterwards any European, or even American nation can put you at war, whether it may suit your interest or not.

I object to sending Ministers for the discussion of any *such* subject, or for the accomplishment of any *such* object. Even if we believed that such a state of things would probably be produced, as to make it proper for us to take a part in this war, I would still be opposed to any agreement by which we will become bound to do so. It is impossible now to foresee what may best comport with the interest of the United States at any *subsequent* period; and they ought to be left *free* to act, unfettered by any agreement whatever, as their interest or honor may require, when some other Power does actually interfere.

It is vain to say, we are not to take a part in any belligerent question; that our neutrality is not to be violated; that we are not to engage in any thing importing hostility to any other Power; while this proposition is presented to us. One of the Ministers who gave the invitation classes the subjects to be discussed into *belligerent* and *peaceful*, and states that the United States are not expected to take any part in the *first;* but, in the last, they are, and, in *this class*, he specifies this very subject. Does this make it peaceful? Surely not. It is belligerent. I admit it is not an *absolute* stipulation to take part in the war, and, therefore, some may feel justified in saying it does not import hostility; yet, it is undoubtedly an agreement to take part upon the happening of a certain contingency. It will import hostility upon a certain condition, which contingency or condition is not within the *control* of the United States.

It may be said there is no danger of any mischief following from such an agreement; that the war is, in substance, at an end; and that there is good reason to believe the independence of the new States will be speedily recognized by Spain. I admit, that, when the correspondence between our Government and Russia was communicated to the Senate, upon a resolution seeking additional information, if any could be furnished, an opinion of that kind was intimated by some of our officers. It then struck me as singular; I did not believe those documents warranted any such opinion; but, as our Minister in Russia and the Secretary of State understood the rules by which diplomatic conversations were to be interpreted, to wit: that, when a man says one thing he means another, I was inclined to think I was mistaken; but even in that view of the case, I believed we ought not to enter into any such agreement, because, if the war of independence was at an end, the agreement would be useless, as the casus fœderis could never happen; and, if, contrary to these

* Mr. Poinsett's letter to Mr. Clay, 28th September last.

"To these observations I replied, that, against the power of Spain they had given sufficient proof that they required "no assistance, and the United States had *pledged* themselves not to permit any other Power to interfere with their "independence or form of Government; and that, as in the event of such an attempt being made by the Powers of "Europe, we would be *compelled to take the most active and efficient part, and to bear the brunt of the contest*, it was "not just that we should be placed on a less favorable footing than the other Republics of America, whose existence "we were ready to *support at such hazards.*"

opinions, the war continued, and the casus fœderis should happen, then such agreement might be very inconvenient, if not ruinous to us.

But after the report of the committee had been made, the gentleman from New York thought it might be well to know in what spirit Spain had received the mediation of the Emperor of Russia, and he submitted a resolution asking information upon this point, from the President, and this resolution produced the information communicated by Mr. Everett to our Government. And how does it correspond with the complexion previously given to the case? It shows that the opinion entertained, that Spain would recognize the independence of the new States, was destitute of any plausible evidence to support it—that Spain is determined to persevere in the war, until these States are reduced to their former condition—that she expects a struggle in her behalf within these States themselves—that she will procure assistance either from France, or from some other European nation; and, finally, that, as these colonies are hers of right, if all other resources fail, the Supreme Being will miraculously interpose, and put her again in possession of those rights, attempted to be wrested from her improperly. To many, I believe I might say to all, it appeared strange that this correspondence should not have been communicated, when that from Mr. Middleton and Count Nesselrode was furnished, because the Secretary, in answer to the resolution which caused the transmission of that, says, it "opens a wide field, and might be made to embrace all the Foreign relations;" and yet, by some oversight, the information most important was entirely omitted. With this evidence before us, it would seem that he who will insist that there is even a probability that the Spanish King will speedily acknowledge the independence of these States, must be as incapable of reasoning correctly, as is that King himself.

So far as we have the means of judging, this war is to be continued, and it becomes a very important question to settle in our own minds the direction it will most probably take. It appears to me that, if we consult the documents before us, we can come to a satisfactory conclusion upon this point, so far, at least, as we are concerned. These new States are now struggling for their independence—infatuated Spain will not acknowledge it—they will very naturally recur to such measures as will be most likely to injure her, and thereby compel her to do that which, if reasonable, she would do without compulsion. They will be sure to strike where it can be done with most effect, where she will feel most sensibly. Look at the correspondence between the Secretary of State and Mr. Middleton, between Mr. Middleton and Count Nesselrode, and between Mr. Clay and the Ministers of Colombia and of Mexico, and say if you are not convinced they will strike Spain through her colonies in Cuba and Porto Rico. These colonies are convenient to the new States: they have expelled the enemy from their own territory; they will probably stimulate a portion of the inhabitants of those Islands to rebel, to declare themselves independent of Spain; and, by uniting their forces with those revolted subjects, endeavor to put down the Spanish authorities in those Islands. What consequences are likely to flow from such a measure? Russia, probably, and France almost certainly, would then immediately take part *with Spain*, in the war. From the documents, we have evidence that they would have strong inducements to interpose immediately. It is their wish that Spain should retain her dominion over those Islands, because then that *balance* would be kept up in the seas where those Islands are situate, which those powers think ought to be preserved.*

Again: All monarchs, and these in particular, would feel an interest to check this spirit of revolt; if not put down, none of them would feel safe; and, while aiding Spain, they would be rendering more secure their own dominions. To lend assistance would be esteemed by them a principle of self-defence. Lastly, these new States have told us, even now, they suspect that France is secretly furnishing Spain the means of continuing the war. Spain tells you France is her friend—that "in six troubles she has stood by her, and that, in the seventh, she will not forsake;" and from the connexion between these powers, at home, it is rendered extremely probable, that the opinions entertained, both by the new States and Spain, as to the policy of France, will turn out to be correct. Suppose, then, you sanction this mission, your Ministers discuss this subject, come to an agreement upon it, stipulate that if any neutral power interferes on the part of Spain, that the United States will take part with the new States, and Russia and France do thus take part with Spain, the *casus fœderis* will then have happened, and the United States, in connexion with the Spanish American States, will thus become one party in the war, and Spain, Russia, and France, the other, and how, or when, it will terminate, no man can foresee.

In this state of things, what is to become of our important interests, our commerce for example, to secure which we seem so anxious? Great Britain, ever attentive to her own interest, watching the course of events, and turning them to the advantage of her own subjects, even now, some fear she is at this Congress not as a party, as a listener, and will gain some advantage by our delay: how would she probably act? Take no part in the war—she would be neutral, the United States belligerent, and what then becomes of your commerce? It will be engrossed by your neighbor, who has been attending to her own interest, while you have been seeking distinction by neglecting your own concerns, and attending to those of other nations.

But, sir, if in this I mistake the course of Great Britain, and she should elect to take a part in the war, it would probably be on the side of Spain, and then we should have our difficulties increased, to the full extent of her means and resources.

To this view of the case, I beg the attention of the gentleman from Rhode Island, and respectfully ask an application of the rule of "probabilities," and then let him say whether this Congress is so harmless, and whether, in his judgment, we have nothing to apprehend?

There are other views of this subject which render it inexpedient to sanction this measure.

This agreement or treaty is to be kept secret. By the frame of our Government, treaties are to be the supreme law; would it be discreet to have a treaty, by which the United States may be involved, *concealed* from the People? It is their Government, it is their interests, that are

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* "She is, however, in the mean while, pleased to hope, that the United States, becoming every day more convinced of the evils and dangers that would result to Cuba and Porto Rico from a change of Government, being satisfied, as Mr. Clay has said in his despatch, with the commercial legislation of these two Islands, and deriving an additional motive of security from the honorable resolution of Spain, not to grant to them any longer letters of marque, will use their influence in defeating, as far as may be in their power, every enterprize against those Islands, in securing to the rights of his Catholic Majesty, constant and proper respect in maintaining the *only state of things that can preserve a just balance of power in the Sea of the Antilles, prevent shocking examples*, and, as the Cabinet at Washington has remarked, secure to the general peace salutary guarantees."—*Count Nesselrode to Mr. Middleton, 20th August last.*

at stake, and nothing material ought to be secreted from them.

Again, such an arrangement would be inconsistent with our character for candor. We owe it to ourselves to do no act, to make no agreement, that we ought to be unwilling to avow.

The very circumstance of a desire to *conceal*, is a proof that the project is inconsistent with our professed neutrality, and would be justly offensive to Spain and to other nations.

It is, however, suggested, that the very fact of having an agreement, which must be concealed, would strengthen the mutual friendship of the United States, and those new States. How? I suppose, by each proving, how safely the other may repose confidence, where *honor* is concerned. Our situation is not mutual; the new States could not have their character affected should the arrangement be divulged—they are belligerent; that of the United States would be, because we are neutral.

But, sir, the agreement might be disclosed, and if known, would it not furnish an inducement to other nations to take part with Spain?

This is one of the leading objects of this Congress; one which the new States say is of vital importance to them; to discuss and agree upon which, we have been invited to send Ministers. If we do send, we must, in candor to them, discuss and settle it; if we do not, we hazard giving them offence, instead of strengthening our friendship with them.

It has been suggested no danger need be apprehended upon this point, because no agreement would be binding until ratified by the Senate; and if we do not like the arrangement we can refuse to ratify, and thus all danger may be avoided.

A little reflection will, I think, satisfy us that this suggestion is entitled to no weight. One main object we have in view is to strengthen our friendship with the new States; they have invited us to agree upon this very question; if we send, and enter into the agreement, with what face could we refuse to ratify? A failure to ratify, under such circumstances, would betray such an inconsistency of character as would destroy all confidence in us. The fair way to test this matter is to suppose such an agreement to have been entered into, and *now* submitted for ratification; and if we are prepared to say we would ratify it, then we ought to advise the Mission, otherwise not. I then put the question on that ground, and call upon gentlemen to say whether they would now ratify such an agreement? I call upon the honorable member who is willing to avow to the American People that he is prepared to take such a step.

Again: if this were not so, if our failure to ratify the agreement would not be liable to the objection stated, there is another view of this part of the subject, which, as I think, ought to satisfy us, that the power to refuse our ratification does not furnish an adequate security.

Suppose this Mission to be sanctioned, our Ministers sent to Panama, this subject discussed, and an agreement entered into that the United States shall take a part in the war, if any neutral power interferes on the side of Spain; and *immediately after* the agreement is thus made, and *before* the Senate meets, so as to have the agreement submitted to it for ratification, some neutral power does actually determine to aid Spain in the war, and then the agreement is submitted to us for ratification—do not gentlemen see in what a delicate situation the Senate will be placed? If we refuse the ratification under such circumstances, we encounter all the risks I have just mentioned, and more. In the supposed case, the *casus fœderis* will have occurred; the time to put forth our strength will actually have arrived. Suppose in such a crisis we refuse to ratify, what becomes of the character of our country in the opinion of the new States, and of the world? It is destroyed; we would be chargeable not only with inconsistency and insincerity, but with national *cowardice* likewise. To hesitate, or to annul the agreement under such circumstances, would be a sacrifice of those traits, in our national character, of which every citizen is so justly proud. We would then be placed in this dilemma: should the Senate ratify the agreement, we would be embarked in a war which might sacrifice our best interests: should they refuse to ratify it, we would be considered both a *faithless* and *dastardly* nation, unfit in future to negotiate with any high-minded honorable nation on the face of the globe.

If we sanction this mission, the very state of things, which I have supposed, is not unlikely to come to pass. Ought we then to run such a risk? I answer, with great respect for the opinions of those who may think differently, we ought not.

Secondly. The next specified subject for discussion is, that some arrangement may be made by which European powers may be prevented from planting any colony upon the American continent. I have felt somewhat at a loss to know what has given rise to wish for an agreement upon this point at this time. I well remember that, when President Monroe stated in his message an unwillingness to see a colony planted by any European power, an idea was taken up, that these sentiments were thrown out in opposition to the pretensions of Russia in the Northwest, and with a view to induce her to abandon those extraordinary pretensions. If that was really the object, and this project owes its origin to these expressions, there can now be no necessity for any agreement upon that subject; because, in 1824, we have a convention with Russia, which removes, for the present, all difficulty with that Power, and I am not apprized of any attempt by any other European Power to plant a colony, at any place to which we could have an objection.

If it means that we shall enter into an agreement by which we will stipulate that Spain shall not *re-colonize* these new States, then I urge all the objections against such a stipulation which have been urged against the other proposition, and they apply to this with equal, if not with greater force than they did to the other. If it be intended that we shall stipulate with the new States, that we will use all our means to prevent any foreign power from planting a colony within the United States, and that they shall stipulate to use all their means to prevent a colony from being planted within their limits, I object to it for most obvious reasons. The United States ought never to degrade themselves by any such stipulation, so far as her territory is concerned; they are both able and willing to defend it against the encroachment of any foreign nation, and ought not to stipulate with any other Power as to the use which we will make, or permit others to make, of any portion of our territory.

Whenever we can feel the necessity for such a stipulation, to guard our Territory against the encroachments of European nations, then, indeed, shall I think, we are prepared for the vassal condition of colonies. If these new States set so little value upon independence, as to require such an agreement to stimulate them to exert their means to prevent colonies from being planted within their limits, then I shall conclude they are unfit for self-government, and that no agreement with them, upon any subject, can be of much utility to us.

I have yet one other objection against an agreement upon any of the subjects mentioned. We profess, and I doubt not sincerely, to have a partiality for these new States: a question then presents itself, Will we not benefit them most by abstaining from an agreement upon any of these points? The United States have, deservedly, a high character abroad, and especially, with these States. If we enter into the agreements proposed, we will induce them to relax their endeavors to maintain and secure their independence, by their own prowess, and with their own

means; they will rely and depend upon us, when it is their interest to rely and depend upon themselves. In this latter course, they will be stimulated to all the exertion they are capable of, and this very exertion will produce an enlargement of mind, and elevation of national character, that will be of immense value to them. From the former, a desponding disposition is produced, a state of dependence upon foreigners is made familiar to them, and a degraded national character will be the consequence.

The worthy member (Mr. ROBBINS) from Rhode Island, seems to have taken up the idea that, if the *sovereignty* of the Spanish American States is not transferred to this Congress, no danger, whatever, is to be apprehended from joining in it; and that the whole report is radically wrong, in supposing that this sovereignty was vested in the Congress, and that the United States would give up their sovereignty also, by establishing this mission; and he has referred us to page 4 of the Report.

If I have been favored with the attention of the worthy gentleman, to the remarks which I have made, he will have perceived how it may happen that the "destinies" of the United States may be effected by joining in this Congress, even supposing it composed of common diplomatists. That, although they may not be able "to make decrees," pass "judgments," or "execute them," yet they may hold *consultations*, *discuss subjects*, and come to *agreements*, upon them, in consequence of which the United States may be involved in war, and thus their "destinies" may be very materially affected.

I cannot but lament that the worthy gentleman does not seem to have read this report, and the documents upon which it is founded, with his usual profit; if he had, we should not have heard that the report said, uniting in this mission would transfer our sovereignty to this Congress. There is not one such idea, either in page 4, or any other part of the document.

I flatter myself that the gentleman will yet take the trouble of re-perusing it, taking with him that impartiality and those faculties for which he is said to be remarkable, and when he does so, I cannot but feel assured, he will himself perceive how strangely he has been heretofore mistaken, as to the statements and reasoning it contains.

Mr. President: I pass to the next subject specified. It is to discuss and agree upon the means to be employed for the *entire abolition* of the *slave trade*. Of all subjects that could be thought of, none would be found more unfortunate than this. It was hoped, that, after rejecting the convention with Colombia upon this subject, the Senate would hear no more of it from foreigners. If slavery is an affliction, all the Southern and Western States have it, and with it, their peculiar modes of thinking upon all subjects connected with it. In these new States, some of them have put it down in their fundamental law, "that whoever owns a slave shall cease to be a citizen." Is it then fit that the United States should disturb the quiet of the Southern and Western States, by a discussion and agreement with the new States, upon any subject connected with slavery? I think not. Can it be the desire of any *prominent* politician in the United States, to divide us into parties upon the subject of *slavery?* I hope not. Let us then cease to talk of slavery in this House; let us cease to negotiate upon any subject connected with it. The United States have, by their own laws, put an end to the slave trade, so far as their citizens, or their vessels, are concerned in it—more than this, they ought not to attempt. Let other nations discharge their duty as well, and the slave trade, so called, will be abolished.

One word more upon this point, Mr. President, and I will dismiss it. If there be any gentlemen in the United States who seriously wish to see an end of slavery, let them cease talking and writing, to induce the Federal Government to take up the subject, because, by the course now pursued, by some, they are protracting a measure which they profess a wish to hasten the accomplishment of. Whenever the States, in which slavery exists, feel it as an evil *too intolerable*, move towards its removal at home, and apply, through their Legislatures, to this Government for aid *to abolish it, then*, and not *sooner*, we may discuss it within these walls.

4th. We are invited to attend and settle "the basis of our relations to Hayti, *and others*, that may be in the like circumstances," &c.

Will gentlemen tell us whether a Representative from Hayti is invited to attend this Congress? It appears to me that it will be very unfair to settle this question, where that Government is unrepresented. It is, therefore, most probable, her Minister is to be there likewise. Reflect, Mr. President, upon the population of that country, and upon that of a portion of our own, as well as upon the peculiar modes of thinking in Spanish America, and then let honorable gentlemen say whether they think this will be a fit subject for discussion. It is a question which the American Statesmen must settle for *themselves*, and by *themselves*. Our situation, in relation to this subject, is so peculiarly delicate, that I cannot suppose any real friend to the Union would propose that it should be settled at the Congress at Panama. The suggestion of such a project may be readily excused in a Foreigner; but in an American citizen it would be highly inexcusable.

The Minister from Central America proposes, that, at this Congress, an American Continental System shall be got up, as Europe has one.

Let us bestow a few thoughts upon this subject, and see to what it tends. In Europe, the object of their system is to make common cause to support Monarchs on their Thrones.

The contrary would be, to make common cause to secure, in America, a Republican form of government to each Nation. Our fundamental principle is, that every Nation ought to be permitted to have just such a form of government as the People of that Nation may think best suited to their condition, and best calculated to secure their lives, liberty, and property; and that, in settling their forms of government, no other Nation has any right to interfere.

We find fault with the European system, and with the Holy Alliance, because it is their object to fix Monarchy upon the People of the respective States, whether the majorities in those States are pleased with such governments or not. Are we then to combine with other States to compel each one to preserve a Republican form of Government, whether they *will* it or not? We believe, and I flatter myself truly believe, that ours is the best plan of government which has yet been devised. but if it is the best for the People of these United States, does it thence follow that it would be the best for every other Nation?

Ours is the best for an intelligent and virtuous People: but it does not thence follow, that it would be best for an ignorant and vicious People. The People of each country ought to understand their own character, better than the People of any other country; and they ought to be the exclusive judges what plan of Government is best suited to their peculiar character and condition; and any interference by the People of any other country, to force upon them a form of Government which they do not, themselves, choose, is an act of tyranny and oppression. The whole project, then, is wrong in principle, and, therefore, ought not to meet our sanction.

Again, we are only in the course of experiment at home. Whether our plan is as perfect as it ought to be, is at this moment a subject of discussion over the way. We are endeavoring to improve it, and hope to render it so perfect that we will be pleased with it forever: yet, even we may change our minds upon that subject; and if we do, we will claim the right of changing our Government like-

wise. Let us not then be too hasty. Are we sure our politicians are well acquainted with the character of our own People, upon all points? It would be unreasonable to suppose them intimately acquainted with every peculiarity of character in each of the Spanish American States. Without this knowledge, we are not in a situation to form an opinion on this subject. Their true character is yet to be developed. The war must be finished first. A foreign enemy may have kept them in a state of internal peace. Remove the idea of this foreign enemy, and we cannot foresee how soon discord and bloodshed may ensue among themselves. Even the other day, in one of these States, we see considerable resistance made to some of their laws. Let us, then, afford time for a thorough development of character, before we identify our fate with theirs, to too great an extent, upon this or any other point.

But, again, in Europe they have a Continental System, and, therefore, we are to get up a countervailing one in America. We are to have system opposed to system; the friends of each endeavoring to make proselytes: in what will this course terminate? In warm words, if not in blows. It leads to discord and war. We have extensive commercial intercourse with the Powers of Europe, as well as with those of the new States. Our interest consists in peace and friendship with all: let us not rashly adopt a course calculated to disturb our harmony with either. To preserve our own liberty; to better the condition of our own citizens; will furnish sufficient employ for our most enlightened public servants: and, from a vain desire to fill an uncommon number of pages in our future history, suffer no one to influence us to such an interference *in the concerns* of others, as will put in jeopardy those of our own People.

Mr. President: I have now made some remarks upon each of the subjects *specifically* mentioned in the invitations we have received, and have insisted that it is *unfit* we should take any part in their discussion; and that, if *fit*, it would be unwise in us to enter into any agreement or convention respecting them, and here the question very naturally presents itself: If we do accept these invitations, and send Ministers, will they not be considered *bound* to discuss, and decide upon each of these subjects? I respectfully submit that they will. An attention to the facts will, I think, inevitably lead to this conclusion. Last Spring, these Ministers asked if the United States would accept an invitation, if formally given? The Secretary of State, by command, answers—"Specify the subjects to be discussed, the mode in which the Congress will be organized, and the manner of its action, and we will then give you an answer."

Under date of the 2d, 3d, and 14th of November last, these Ministers tender formal invitations, and specify *these* subjects, as a part of those in the discussion of which *we* are expected to take a part; and, on the 30th of the same month, the Secretary of State accepts the invitation, *if the Senate will concur*, and gives no *notice* that any one of the subjects is considered, by the President, as unfit for us to discuss and agree upon.

Suppose, then, our Ministers to be appointed—when they arrive at Panama, will not those who gave the invitations consider that the United States have agreed to discuss and decide upon each of these questions in particular, and upon such others as the proceedings of the Congress may give rise to? If we object to the discussion of either of the specific propositions, will we not be told, Your Government asked us to specify the subjects, for the purpose of enabling it to determine whether they could send Ministers to take a part; we did specify them in our invitations, and when those invitations were accepted, you ought to have notified us that, in the discussion of some of these subjects, you could take no part; as you did not do so, we consider you pledged to aid in deliberating upon each of them. What answer could we give to such an argument? None, that I can think of, unless one could be derived from the general statement of our Secretary, that we could not take part in any belligerent question. The reply would be immediately given—"The abolition of the slave trade," "the relations we shall bear to Hayti," &c. are surely peaceful, not belligerent questions; and the questions relating to colonization and to resistance, if any neutral Power should take part with Spain, were specified by us as falling within the same class, to which you made no objection whatever; and, therefore, we were not at liberty to suppose your general declaration had any relation to either of them; and, if we had suspected you did not intend to take part with us in considering those subjects, we would, most surely, have given you no invitation whatever

To this reply I know not what satisfactory answer we could give. I, therefore, consider, if we send Ministers, they will go *pledged* to discuss and decide upon each of these questions. Thus circumstanced, it would seem to me to be the only safe plan for us to abstain from advising the President that the Mission is expedient.

Sir, I now proceed to a consideration of those subjects specified in the President's Message to us, and which he supposes will justify this mission. Some of these relate to commerce; others to different subjects. Let me very briefly notice those which would seem to be at all material.

1st. "The new States have, at times, manifested a disposition to grant special favors to Spain, as the price of their Independence."

2d. Sometimes they have established impositions unfriendly to us, and friendly to the Europeans.

These subjects may be conveniently noticed together.

It occurs to me that, when we consider the point to which the war between Spain and these States has progressed, we have no reason now to apprehend that the new States will be disposed to purchase their independence from Spain, by giving her commercial advantages of any description whatever. But we are told, by the Executive, that, in these instances, the new States have already yielded to friendly remonstrances. We, therefore, have nothing to apprehend on these subjects.

Again: we now have treaties with two of those States, to wit: Colombia and Guatemala, which secures our commercial intercourse with them; and no doubt can reasonably be entertained, but we can negotiate with each of the others, separately, in the ordinary way, treaties containing similar provisions: therefore, there cannot be a necessity for this extraordinary measure.

3d. "Some of these new States wish to retain a Power to grant special favors to each other, which shall not be extended to any other nation."

It appears to me that this extraordinary mission is not called for to get the better of this difficulty.

With the two Powers before named, we already have treaties, which will put it out of their power to grant any such special favors to the other States, without our consent. If we do not send Ministers, the new States cannot come to any such agreement between themselves, because two of them are restrained from doing so by their treaties with us, and this will necessarily restrain the others: but, if we send Ministers, this subject will be discussed, and, as we have treaties with only two, they may tell us that we ought to release them from the restrictions imposed by the treaties, unless the others will enter into similar treaties; and the others may object to doing so, unless we agree to become, on all points, identified with them as to the present war. We, therefore, will be in a much better situation by remaining at home, than by being at the Congress, so far as this question is concerned.

Again: It seems to me probable that we will better succeed in making advantageous commercial treaties, by treating with these States separately, than by attempting to negotiate with all, when their Representatives are *all*

present. Is it not probable that, upon a disputed point, the talents of all the Ministers of these six new States will be met and resisted with more difficulty by our Ministers, than the talents of any two of them would be, when detached from all opportunity of associating with the others?

Lastly, we see, from the despatches of Mr. Poinsett, that both he and the Mexican negotiator labor under the impression that no difficulty whatever stands in the way of making just such treaties with Peru and Buenos Ayres as we already have with Colombia and Guatemala. Add to this the late information that a treaty is probably concluded by Mr. Poinsett with the Mexican States, and there is not left even a pretext for this extraordinary mission, so far as our commerce with them is concerned.

4th. The consentaneous adoption of principles of maritime law, friendly to neutrality, such as that free ships shall make free goods, to define and limit the doctrine of blockade, &c.

Here again we see there is no use for settling any such principles at this Congress. So far as two of these States are concerned, these very points are settled to our entire satisfaction, by separate treaties. As to Mexico, we see, from the documents, she is ready, by a separate treaty, to make such stipulations as we wish upon these subjects, if she has not already done so; and, as to the other States, we are informed they will enter into similar treaties whenever we may choose. As we have Agents or Representatives at these other Governments, these matters can, with convenience, and without hazard, or the expense of this mission, be put at rest by separate treaties.

Again: If these principles could be better adjusted at the Congress, the *time* is not propitious. These Spanish States are now belligerent. No neutral nation, except the United States, will be a member of the Congress, and it is not likely that any principles settled under such circumstances would have an influence beyond the parties who may have agreed upon them. Would it not then be more likely to benefit the civilized world, that such points should be settled at some meeting composed entirely of Powers at peace? There is no necessity for being in haste, as this Congress is to be *perpetual*. After all belligerent purposes shall have been accomplished, and they are in a state of peace, these doubtful questions of international law can be agreed upon with a much fairer prospect that they will be received and sanctioned by other nations, than if it is attempted to adjust them now.

If these questions should be adjusted while this Congress is sitting, *mainly* for belligerent purposes, may it not well be feared that an opposing European code will be got up, and that one code, being in opposition to the other, will be the means of producing more confusion and discord, than now exists among the family of nations? We ought never to lose sight of the idea that we have a deep interest in a friendly commercial intercourse with the European world.

But it is said commercial men are friendly to this mission, and that is one of its recommendations. Yes, Mr. President, and it would be difficult to get up a project, at all connected with commerce, to which they would be unfriendly. They very wisely look steadily to their own interests; and if, by *possibility*, they may be benefitted, no matter how hazardous to all the other concerns of the Government, they will be always willing you should embark in it. Their interests ought to be promoted, so far as it can be done with a due regard to the other great interests of the country, and no farther. To benefit, by possibility, one class of the community, we are not at liberty to hazard the sacrifice of every other, and yet that is the attempt in the measure under consideration.

5th. We are told that the moral influence of this mission may remove the relics of religious bigotry, which has induced some of these States to establish a particular religion in their fundamental laws.

And are we to send Ministers to interfere with the religious opinions of any People upon earth? This feature in this mission is peculiarly objectionble. In the treaties which have been formed with these States, provision is made that American citizens within their limits may enjoy, uninterruptedly, their own religious opinions, and that, if they die there, they shall have the right of sepulchre, and this was a very proper stipulation in a treaty with any Roman Catholic country; and I hope to see similar provisions in any treaties which have been, or may be, formed with the other new States.

But I object to any mission which has for its object an interference with the religious opinions of any community, among themselves.

Politicians, at home, dare not interfere with religion—shall we send them among others to do that which they cannot do here? This is an officious intermeddling with the concerns of others, upon a most delicate subject. Our creed is, that the Government shall support no religious sect. Let every denomination make all the proselytes they can by every peaceable means. This principle is engrafted upon our Federal Government, and it is suited to the character and condition of our People: but it will not thence follow that it will suit the character and condition of the People of these new States. It is possible that, in their condition, an established religion is one of the *corner stones* on which their political edifice rests. Will you persuade them to remove it? Are you well enough acquainted with their moral character to be sure you would not be doing them a serious mischief? This is a point upon which we are not competent to form an opinion. It is one with which we have no concern; it relates to the internal affairs of other Governments, upon which they, and they alone, have the means of forming, and the right to form an opinion.

Some great men have advanced the opinion that no nation can exist without a religion established and supported by law; the United States think differently, and our experiment has succeeded thus far.

The Federal Government never has interfered, and never can interfere, with religion. It never can support any one sect to the exclusion of others. But this Government is based upon that of the States. How long is it since each of these State Governments has entirely abstained from countenancing religion? Have all of them removed every trace of religious intolerance? And when was this done? Let us be sure that we have wiped all the motes out of our own eyes before we engage in plucking the beams out of those of our neighbors.

Sir, have we not good reason to think that we have been, at all times, and yet are, a peculiarly favored People—that there were some admirable traits in the characters of our forefathers, to which the People of other countries can lay but little claim? Was not the acquisition of religious liberty a main inducement to the migration of our ancestors? Is this the case with Spanish America? Has not a strong sense of the Christian religion had an influence upon the moral character of the People of the United States, from the first settlement of the country to this moment? May not this have been the *true substitute* in our Government, for an *established religion*, in other countries? Can these things be urged in favor of the Spanish American States?

We have no established religion; and yet will any one say the Christian religion—I mean all sects of Christians—is not established? Yes, sir, it is established, not by your statutes, but by the valuable moral influence which the different sects of Christians have upon the great mass of your population.

What countenance would a disciple of Mahomet, have among your People? None. To be of any value, he must be a Christian, or, be must be one, upon whom the moral influence, produced by Christianity, has its effect.

If we take away the established religion of the Catholics in Spanish America, could this be said of them? I do not know that it could, and, therefore, they may have been politically wise to establish religion by law. While these new States were colonies of Spain, the population were Roman Catholics, and of course much under the influence of their priests. Could the revolution have been effected without the agency of the priests? Would the priests have lent their influence to the revolution, save on the condition that their religion should be established by the new Governments? These questions, I apprehend, must be answered in the negative. If so, would it not be a hopeless mission, to endeavor to persuade them that this principle should be expunged from their Constitutions? Not only would it be hopeless, but, by them, it would be esteemed *wicked*, and were we anxious to secure their most inveterate hate, we could not easily devise so good a plan to secure it, as to establish this mission for such a purpose.

Mr. President, I feel persuaded I need not dwell upon this subject. None can seriously expect to sustain this mission, upon such a proposition, before any tribunal where the human mind is left free to act. Whenever these Spanish American nations are freed from this remnant of, what we esteem, religious bigotry and intolerance, the Agent by whom this important work will be effected, will hold his commission from a much higher power than these United States.

The following is an exact copy of every word in the President's Message, to the Senate on this subject; I transcribe it, lest some might suppose I have designedly misrepresented this part of the Message, when nothing is farther from my wish.

"There is yet another subject, upon which, without "entering into any treaty, the moral influence of the "United States may, perhaps, be exerted with beneficial "consequences at such a meeting—the advancement of "religious liberty. Some of the Southern nations are, "even yet, so far under the dominion of prejudice, that "they have incorporated with their *political constitutions*, "*an exclusive church*, without toleration of any other than "the dominant sect. The abandonment of this last badge "of *religious bigotry and oppression*, may be pressed more "effectually by the united exertions of those who concur "in the principles of freedom of conscience, upon those "who are yet to be convinced of their justice and wisdom, "than by the solitary efforts of a Minister to any one of "the separate Governments."

6th. Says the Message, "The indirect influence which "the United States may exercise upon *any projects or* "*purposes originating in the war*, in which the Southern "Republics are still engaged, which might *seriously affect* "*the interests of this Union*, and the good offices by which "the United States may ultimately contribute to bring "that war to a speedier termination, though among the "motives which have convinced me of the propriety of "complying with this invitation, are so far contingent and "eventual, that it would be improper to dwell upon them "more at large."

Mr. President: I regret the obscurity of this paragraph, and shall esteem it a serious misfortune to the United States, that the day should ever arrive, when the President will be unwilling, in communicating with his constitutional advisers, to use language sufficiently explicit to enable them clearly to comprehend his meaning. For myself, I am free to declare, I have, at different times, been inclined to doubt the interpretation which ought to be put upon the language here employed. It ought to be our endeavor to relieve the subject from the obscurity in which it is enveloped, and to examine it, both freely and fairly, with the aid of such other passages as relate to the same point. I submit to the Senate an opinion, that, by "projects and purposes originating in the war," we are to understand an attack upon the Islands of Cuba and Porto Rico, and that it is bad policy to send Ministers to this Congress, where the situation of those Islands is to be a subject of discussion and decision, provided we intend to act a part consistent with the interest and high character of the United States.

The documents before us conclusively establish these facts, that the United States have, at all times, and to all nations, professed a wish, that the political condition of these Islands should not be changed; they have induced the new States to refrain from striking Spain through these her colonies, under an expectation raised, that, through the mediation of Russia, Spain would terminate the war, by an acknowledgment of the independence of her former colonies. That hope is now extinct by the death of the Emperor Alexander, and by the solemn and repeated assurances of Spain, that she will not terminate the contest upon any such terms. We have only asked the new States to withhold the blow, until the effect of this mediation could be ascertained; and have stated, that if Spain would not terminate the contest, that the new States had the right to strike Spain in this vulnerable point, and that we could not interfere to avert, or farther suspend, the stroke. The new States have explicitly stated that, at this Congress, they will settle the plan, by which this blow will be made most effectual, and it appears most likely the plan will probably be, to induce a portion of the population to revolt, and assert their independence; and, with the aid to be furnished by the new States, endeavor to maintain that independence, and be thus severed from all political connexion with Spain.

Upon these facts we are to form an opinion, whether this mission would be useful.

Suppose our Ministers there. If we act in good faith, they could take no part in the deliberations of the Congress upon this part of the subject, because it is of a highly belligerent character. But it is said we could have an indirect influence upon the question. How? Could our Ministers persuade them not to strike the blow? No; because the time has arrived, when we have said our importunities shall cease. Could we hold out any inducement for a suspension of the blow? No. The resources of Spain are now at their ebb, and a change of her condition at home, and in these Islands, might prevent them from striking, with so much prospect of success, at any future period. Could our Ministers threaten them? No. This would be very inconsistent, after the assurances we have given them. What, then, could we do, that would induce them, probably, to desist from this enterprise? One thing, and one only: *Guarantee their independence*; this, I have no doubt, they would receive as a substitute for the projected attack. This we dare not do, because the People, whose *servants* we are, would never forgive so open a dereliction of our duty to them.

Again: If we send Ministers to this Congress of belligerents, we lose all influence with Spain. It is hardly possible that we could ever satisfy her that we were impartial in any question between her and her former colonies. We abandon all chance of benefiting either party by advising Spain; but if we do not send Ministers, we retain our neutral character, and with it every benefit, which friendly suggestions, or advice, could furnish, either directly, or through the agency of others.

We fear an attack on these Islands will disturb our repose, and affect our interests; would it not then be more wise to inform the new States directly, and without any disguise, that we could not, and would not, permit those Islands to be disturbed, because our peace and our interests would be jeopardized thereby?

If this were a Congress of neutrals, and about to assemble to devise a plan by which to secure the quiet of these Islands during the war, we would then have a deep inte-

rest in sending Ministers to it; because we could lawfully confer with them on the subject, and because they, and we, would have an interest in attaining the same common object. Not so here; we cannot lawfully discuss this subject in this Congress; and they have an interest in changing the conditiou of these Islands, we in preventing such change.

Mr. President, there is another view of this subject, which, if correct, must place this mission on very unfavorable ground. This part of the Message deals more in vague and indefinite hints, than in satisfactory and clear statements, as to the views and intentions of our own Government. We see plainly that the plan of the new States is to produce a rebellion in these Islands; to induce them to declare their independence; they readily see this is to produce a most violent and protracted conflict between Spain and the inhabitants of those Islands, and that it may be long, very long, before Spain will be disposed to recognize their independence; hence the invitation that we shall attend to *settle the relations* which "Hayti," *and others*, in the like condition, shall bear to us, and to the new States. "*Others in the like condition with Hayti*," mean *Cuba* and *Porto Rico*, after they have been induced to revolt, and carry on an internal and cruel war, and before their independence is acknowledged. If any man doubts this, let him carefully examine the publication referred to by the gentleman from South Carolina; compare what is there said, with the words in this invitation, and those words with this part of the Message, and then say what he believes to be the nature of this whole negotiation, as to this part of the subject.

This is to be an amphibious Congress—having a war side and a peace side; a day on which to discuss and settle war plans, and a day on which to adjust peaceful subjects. On the first our Ministers cannot attend, on the last they may. On the first it is settled that a rebellion shall be produced in Cuba and Porto Rico; and, on the second, it is to be settled, with the advice of our Ministers, what relation these rebels shall bear, politically, to the United States while this rebellion may happen to continue. Is this right? Will it comport with our character for candor and good faith, even towards wretched, degraded Spain? Suppose Russia, or Great Britain, in place of Spain, would any man sanction such a project?

It may be easy for us to avoid being counselled by our fears where Spain is concerned, but that will not change the nature of right and wrong in the judgment of an enlightened world. Brave men, and chivalrous nations, never boast of their bravery, where the weak are concerned: by acting candidly, openly, and justly, towards all, they give the surest guarantee that, in the hour of trial, their efforts and firmness will preserve their rights unimpaired, and their honor unsullied.

Sir, it must be always injurious to a nation to be found in such equivocal conduct as to require explanation. If we send these Ministers, even by Spain we will be called upon to explain, and must do so; and when given, I hope the explanation may be founded on truth, and such as no citizen need blush to read.

In the last place, we are informed by the President, that a decisive inducement to accept the invitation is, "to "show, by this token of respect to the Southern Republics, the interest that we take in their welfare, and our "disposition to comply with their wishes," &c.

Had the President declined the invitation for every other purpose but this, a very different question would have been presented, from that which we are now to consider.

When the invitation was given, if the Ministers had been answered, that the subjects proposed for our discussion were deemed such as we could not act upon, with the exception of those confined exclusively to commerce, and to the settlement of disputed questions relative to international law, I say we would have had a case to consider of a very different character from that now before us.

We have an invitation containing some propositions which I deem highly exceptionable, and intermingled with them, the proposition to create the mission "as a proof of our friendship." If this last inducement would, by itself, have been sufficient, it must cease to be so when blended with the other subjects. How easy would it be to give such an explanation as would satisfy them of our continued sympathy and friendship, without sanctioning a mission which, under many aspects, must be deemed very hazardous, and highly exceptionable. But let us consider this "as the main inducement to the mission," and see whether, for such a purpose, it is expedient to advise the appointment of the Minister.

To give a proof of our friendship, we are called upon to sanction a *perpetual* mission of this kind. I insist this ought not to be done. It is not the *theory* of our Government, and it ought not to be the practice of it, to multiply offices without necessity. If it does no other mischief, so far as the compensation extends, it is heaping an unnecessary burthen upon the People.

Should this mission be sanctioned, I presume the Ministers will have commissions to continue as long as the Congress is to exist; and as we see the Congress is to be permanent, so must their offices be. By this means we create two offices, and more, that, for the first year, may cost from forty to fifty thousand dollars, and for each succeeding year, not less than from twenty to thirty thousand dollars; and the main inducement for this, "is to give a proof to these new States that we are friendly with them."

Could not this object have been completely attained without this expense? These new States have Ministers resident at this place; the necessary assurances and explanation could very conveniently have been made to them, and they could have transmitted them to the Congress, and thus the benefit could be attained without the inconveniences of this mission.

Again: we have a resident Minister in Colombia, and, if more respectful, how easy would it have been, through him, to have made the necessary explanations, and to have given every suitable assurance of our continued friendship for them.

Although the money which will be thus disposed of, may not, of itself, be a matter of any consequence, in a great nation, which must make vast expenditures; yet I consider this principle, avowed as the cause of the expenditure, to be of immense consequence. We ought not to have in our Government a *single officer*, whose services could be dispensed with *without injury*; and those officers which we must employ should be fully paid. Upon this principle, the People would have their business well done, without a swarm of officers, who may eventually devour their substance.

Reflect on the principle which is avowed, and see to what it may lead, if sanctioned. "The main inducement to this mission is to give a proof of our friendship." Sustain this principle of action, and your officers may be swelled to almost any extent. A patriot, who deserves well of the Executive, wants an office, and all existing offices are filled; a nomination of this gentleman is made to some court where you already have a Minister; the reason is asked, why do you want another? The answer is—"My main inducement is to give an additional proof of the friendship felt by the United States."

The avowal of this principle of action becomes the more alarming, when you see that, in the same message, the President maintains that he has the power to do this without consulting either branch of the Legislature. Sanction this doctrine, and there is at once an end of all limitation as to the *creation* of officers, and of course of public expenditure. It may do no mischief, while you have a

virtuous Chief Magistrate; but we ought not to sanction a principle, which might be productive of so much mischief when it comes to be practised upon by one of a different character.

Again, I say, there is no necessity for this mission as an evidence of our friendship; I cannot suppose the new States would exact it for any such reason.

At a very early period, they were recognized, both by our Executive and by our Judiciary, as belligerents, and thereby their privateers secured against charges of piracy. We were the first to acknowledge their independence—we have sent Ministers among them—we have made treaties with them—we have interposed our good offices to procure an acknowledgment of their Independence, by other Nations, and even by Spain herself. Where are we to stop? If, from friendship, we must send Ministers to Panama, we must, from the same motives, discuss the different questions proposed, and, when discussed, we must conclude agreements upon them; and thus we go on, from step to step, until we are involved in war, by which the best interests of our country may be sacrificed.

We must pause at once; this is a species of *duress*, to which we ought not to yield. Let us give to these new States every reasonable evidence of our good will; but we ought not to hazard the interest or honor of the United States, to please any other Nation upon earth.

Mr. President: I have now examined each of the subjects proposed by either of these new States, as fit for our decision, in common with them, and likewise those suggested by the President in addition, and think I see, that they are either improper for discussion and decision, or that they are not of sufficient importance to justify this extraordinary mission. That, where proper, the time is not propitious for their discussion and decision, or that they could most probably be attained in the ordinary mode.

Other points of great moment are presented for decision, such as the character of this Congress, the manner in which it is to be organized, and the mode of its action. Upon many of these subjects we are very much in the dark; there is, of course, a variety of opinion, as we have no certain means of forming a correct one. Upon each of these I should have said something, but the arguments of the gentleman from South Carolina, and from New Hampshire, have been so full and satisfactory upon these points, that I am not a liberty, after having so long taxed your patience, to endeavor to add any thing. I rest for the present upon their arguments.

I am now ready to hear, with patience and with pleasure, any additional arguments on the other side of this question; if in error, convince me of it, and my opinion is changed. If this is not done, I must record my vote against the expediency of this mission.

Another point, however, is not to be lost sight of. I have, Mr. President, upon this argument, been endeavoring to maintain that this mission is inexpedient. Upon one of the incidental questions which we have heretofore partially discussed, I had the honor of making to the Senate, some observations upon a question first suggested by a gentleman from Kentucky, and afterwards enlarged upon by the gentleman from Virginia. It is this—Is there, in truth, any vacant office to fill with the persons now nominated? I have insisted there is not; that we have begun this business at the wrong end. In our Government we can have but two sources from which offices can be created. The one is the Constitution, the other statutes made by Congress. These offices are not created by the one, or by the other. By the Constitution, the President, by and with the advice and consent of the Senate, can appoint Ambassadors, and other public Ministers, &c.

Under this provision, the President has the power, with the advice and consent of the Senate, to appoint an Ambassador, or any other public agent, recognized by, and known to the laws of civilized nations: but, as to all other offices, they must be *created* by some *statute* of the United States, before any person is nominated to fill them. The sole question upon this point, then, is, are such Ministers as those now proposed, known to, and recognized by the law of nations? I deny that they are. The Congress is created by treaties, among the Spanish American States. It is contended, by gentlemen on the other side, that it has no attribute of sovereignty attached to it—if this be so, then you cannot, by the law of nations, send any Minister to transact business with such a body. If you do send them, it must be in virtue of some treaty, or by virtue of some statute of the United States. In this instance, there is neither the one nor the other; therefore, there is no office as yet created, and until one is created, neither the President alone, nor he, with the advice of the Senate, can, consistent with the Constitution, proceed to fill it. The fair way to have taken the sense of the Nation upon the expediency of this mission, would have been to have consulted Congress, in their *legislative* capacity, on the propriety of the mission, by asking an appropriation to defray the expense of it, and stating the objects expected to be obtained by it. The subject would then have come fairly before the Representatives of the Nation, who would have discussed and decided upon its expediency, with *open doors*. If affirmatively decided, the officers would have been created by statute, and then the President could have nominated characters, which he deemed suitable to fill them, and upon these nominations the Senate would have acted in their executive capacity, and advised the President, whether, in their opinion, these men were, or were not, suitable persons to fill these offices. But here the order of things is reversed—the Senate has been called upon to discuss and settle the expediency of this mission, upon mere *nominations* to office, and if the nominations should be confirmed, then we are to pass a law in the shape of an appropriation bill, by which the offices will, for the first time, be *created*. The injustice of this course, to the minority on this question, and to the nation, is obvious. Upon the nominations we have been constrained to act with *closed doors;* the nation has no knowledge of the facts upon which our opinions rest, nor of the reasons in support of those opinions. Little do they expect that principles of such vital importance are involved in this decision.

I have again mentioned this point, not intending to argue it the second time. I mention it because, if a majority—thus irregularly, I might say—in my opinion, unconstitutionally—determine that this mission is expedient, I must and will, entertaining the opinion I now do, vote against any man, who has been, or can be, nominated, because I will not agree to fill any office which I do not believe has the sanction of either the Constitution or law of the United States for its *creation*.

Mr. J. S. JOHNSTON, of Louisiana, said he regretted the necessity of deviating from the course he had prescribed to himself in this debate. I had determined, (said Mr. J.) to form my own judgment from a careful examination of the documents, with the aid of those reflections which my own mind suggested, and to pronounce that opinion, which should result, by my vote. But the indisposition of the gentleman from Massachusetts, (Mr. MILLS,) leaves me no longer at liberty to decline the discussion, however unprofitable it may be, and at whatever waste of time. The report of the committee, it is said, must be taken for granted. The arguments that have been offered are called unanswerable, because unanswered. It becomes, therefore, my duty, I regret to say, to vindicate our opinions; to present to the Senate a full and fair view of this question; and, in doing so, to reply to the report and the arguments of the gentlemen who have preceded me.

We have been invited by the Governments of Colombia, Mexico, and Guatemala, to send Ministers to the Con-

gress of Panama. The President has expressed a willingness to accept the invitation, with the advice and consent of the Senate; and we are now to give that advice. The respect and courtesy which distinguish the intercourse of nations—which ought especially to belong to the existing relations with them—would seem to require that the invitation should be met in the amicable spirit in which it is offered, unless it involves a departure from our duty or our policy. But I do not place the argument on that ground. There are objects of great and pressing concern to this country, and of deep and vital interest to that portion which I represent, which call for the immediate interposition of this Government. I regret to differ with the Representatives of that interest here, with regard to the mode of obtaining our object; while there is no difference of opinion with regard to the extent of the evil or the magnitude of the danger. There are other objects, of a general nature, which recommend this mission to us, to which it will be my duty to advert in the course of my remarks.

It has been assumed in debate, that the acceptance will involve a violation of our neutrality, and that all the objects are either dangerous, inexpedient, or unnecessary. I mean to meet this argument fairly. The question turns upon it. I freely admit that, if, as it has been strongly urged by both the gentlemen who preceded me, (Mr. WHITE and Mr. HAYNE,) this was a Confederacy of American States, of which we should form a part; if this was a belligerent Congress, and we should sit in council with them, to deliberate on those belligerent questions, vote with them, and be bound by them, there is no doubt of the manner it would affect our neutrality, and the consequences to which it would lead. But, if these facts are not true, but assumed—if they are not warranted by the documents, but inferred—it will as clearly follow, that there is no ground for the argument, and the whole of the superstructure will fall with it; and to this issue I bring the debate.

A Confederacy, for certain specified objects, has been formed by the Spanish American States. It is expressly declared to be composed "of the States of America formerly Spanish"—"of the ci-devant Spanish American States." This Confederacy is already formed by mutual Conventions, which are now before us; for objects peculiar to themselves. To this league we are not parties, even in contemplation. The purpose of it is foreign to us; we have no war; we are not threatened with invasion; we want no alliance; we require no rallying point; we have no motive to change our present happy and peaceful relations. Although we have recently formed treaties with each of them, there has been no such Convention proposed to us; nor is it any where suggested, but in debate, that we are to form a part of the league. As we were not originally a part of the Confederacy, we could not now be admitted without a new compact, and without violating the commercial rights and interest of the parties under it. This compact could not be formed, certainly, without a treaty, which would require the ratification of this body. There is no provision for the admission of new States. The union is limited to those who had a common interest. We have been invited with peculiar caution and delicacy, not as a member of the family, but as a guest; not to a Congress of which we were a party, but as a friend and visiter; to afford them an opportunity of manifesting to us the sentiments of kindness and friendship with which they are animated.

These Spanish American States have been engaged in a war of Revolution. They have achieved their Independence; all the force of Spain has been driven from the continent. But, as Spain refuses all terms with them, and may renew the war upon either, the most exposed or the most feeble; as she will concentrate all her power upon a given point; as the occupation of any position on the continent will form a basis of operations on which to act against all the rest; as it will become the rallying point of all her adherents, and enable them to prolong the war—it became necessary to unite for the common defence of all, and mutually to guaranty peace, security, and independence.

In such a compact, it was not our duty, our policy, or inclination, to engage; and, accordingly, we find that no proposition was made to us to become a party, and all the communications speak with the most guarded precautions, and the most explicit avowals. To believe that they intended to unite us in their councils, or to draw us into their measures, would be to arrive at this conclusion, not only without evidence, but against all evidence, and in the face of the most solemn assurances. This alliance of Spanish American States is already formed. The parties that compose it, the principles on which it is based, the obligations it imposes, and the means to be employed, are fully set forth in the Convention before us; to which I confidently refer.

But it has been called a belligerent Congress. All the objects of this league are either international regulations of a peaceful character, or an alliance for defence against the invasion of Spain or her adherents. It is, in this last case, but an union to provide for peace and security. It is but a common guaranty for mutual succor and defence, when war shall be carried into their country. There is no power to direct foreign war or offensive measures against any nation: "The parties voluntarily promise and "contract a league of close alliance, and firm and constant friendship, for the common defence, for the security of their independence and liberty, for their reciprocal and general good, and for the internal tranquillity, "obliging themselves to succor each other, and to repel "in common ever *attack* or *invasion* which may in any "manner threaten their *political existence*." To carry this defensive alliance into effect, an assembly should be formed, composed of two Plenipotentiaries from each party, on the same terms, and with the same formalities, which, in conformity with established usage, ought to be observed for the appointment of Ministers of equal class near the Government of Foreign Nations.

Those Ministers will compose a sort of Diplomatic Council, "whose object will be to confirm and establish "intimate relations between the whole and each one of "the States. It will serve as a point of union in common "danger, a faithful interpreter of public treaties, and as "an arbitrator and conciliator of disputes and differences." This description confers no express powers on this Congress—they will have no powers but those, like all other Ministers, specially delegated under their respective instructions. This Confederacy is already formed; all the engagements are made; nothing now remains to give it effect, but to fix the amount of naval and military force which the parties are to furnish, to repel the invasion when made; and this, by the third and fourth articles of the treaty between Colombia and Mexico, is to be fixed by *special* Conventions. One year after the war, certain incidental expenses will be paid, that shall be settled by *separate* Conventions. The only duty they have to perform of a belligerent character, must wait for a renewal of the war by Spain, and then to be adjusted by special Convention—fifth article. There is nothing in the powers and duties of this body which imports hostility to any nation. They are defensive and conservatory. This diplomatic assembly, called a Congress, can do no act touching the laws, or sovereignty, or foreign relations of the respective States. They can neither regulate commerce, negotiate treaties, make war or peace, under these Conventions; and, if such powers are to be exercised by them in time of war, it will be under the authority of graduated instructions. In all its aspects, it looks more like a committee of public safety, or of general welfare, than a belligerent council.

But, if in this view it is considered belligerent, it is so only in one point, while all the others are peaceful. But, if it was, an acceptance of the invitation would not, according to the laws and usages of nations, affect our neutral relations. Even in the midst of war, the ordinary intercourse of nations is not interrupted. The neutral continues to trade and to treat, to be faithful to its friendship, and constant to its principles and its connexions, without giving just cause of offence to any party in the war.

Neutrality requires only "not to furnish troops, arms, "ammunition, or any thing of direct use in war"—"not "to refuse to one party, what it grants to another. This "does not trespass on its *liberty in negotiation, connexions* "*of friendship, its trade,* or of governing itself by what is "most advantageous to the State. When this reason in- "duces it to preferences in things of which every one has "the free disposal, it only makes use of its right, and is "not chargeable with partiality."—Vattel, b. iii. ch. vii. § 104, p. 399.

A violation of neutrality imports some act of hostility; like treason, to which it has been, *not* inaptly, compared, it requires some overt act to consummate it.

Congress, under the Confederation, sent Ministers to Berlin, Vienna, Tuscany, and other courts, without violating their neutrality.

The British Government was represented at the Congress of the Allied Sovereigns, although, from the character of that league, and the nature of her Constitution, she could not be a member of that Confederacy; her Minister met the Congress at Verona, represented the opinions and views of the Ministry, in regard to the great questions of war about to be settled there. That Minister dissented; and remonstrated against the principles upon which that alliance determined to act in relation to Spain; and yet England did not depart from her neutrality; on the contrary, she was in the discharge of a high public duty, and her Minister, while there, though not a member, proposed to declare the slave trade piracy by the Laws of Nations.

The French Convention was a belligerent Congress. France was actually engaged in war, not only of revolution, but a general war. That body received the American Minister, who publicly expressed towards them the deep interest and sympathy which this country felt in the great cause of public liberty, in which she was struggling. We had then our neutrality to maintain; we were peculiarly and delicately situated with regard to England and the other Powers at war. But, notwithstanding, we fearlessly said to them, in the face of all Europe, then in arms, "Republics should approach near each other; in many "respects they have the same interest; their Governments "are similar; they both cherish the same principles, and "rest on the same basis."—"America is not an unfeeling "spectator of your affairs at the present crisis."—"The "recollection of common dangers and difficulties will in- "crease the harmony and cement the union."—"America "has had her day of oppression, difficulty, and war, but "her sons were virtuous and brave; the storm has passed "away, and left them in the enjoyment of peace, liberty, "and independence."—"France, our ally and our friend, "who aided us in the cause, has now embarked in the "same noble career."—(*Mr. Monroe's Address.*)—Every branch of this Government expressed the most sincere attachment to the liberty, prosperity, and happiness, of the French Republic. These were the manly sentiments we then uttered to the World. They were not then deemed inconsistent with our neutral character; they did not give offence by any supposed violation of our duties and obligations.

But now, no feeling towards our Spanish neighbors can be indulged, though no actual war exists; no public sympathy can be expressed. Republics dare not now approach near each other. We must now stand unfeeling spectators of events. Such is our extreme sensibility and delicacy, that we cannot hold public intercourse with the Republics, without the apprehension of offence to Spain or the Holy Alliance.

We have become suddenly alive to the claims of Spain. We have more than once invaded her territories. We have, during the whole contest, received the flags of the revolting Colonies in our ports. We have recognized their independence. We have recommended to Spain to do the last act of national humiliation, by consenting to the separation. We have mediated for the interposition and influence of the Powers of Europe, to terminate this unnatural war. But now, taking lessons from prudence, and counsel from our fears, we cannot send Ministers to Panama, without violating the delicate relations of neutrality.

Admitting this was a belligerent Congress—sitting in council on the means of making war upon Spain—we are not to take part in the discussion of those measures; and, for which, I again refer to the documents:

DOCUMENTS.—*Panama Message, 26th Dec.* 1825.

The President says, [page 1]—"The United States do "not intend, nor are expected, to take part in any delibe- "rations of a belligerent character; that the motive of "their attendance is neither to contract alliances, nor to "engage in any undertaking or project importing hostility "to any other nation."

III. Mr. Clay says, [page 3]—"It was also stated, by "each of those Ministers, that his Government did not "expect that the United States would change their pre- "sent neutral policy; nor was it desired that they should "take part in such of the deliberations of the proposed "Congress, as might relate to the prosecution of the pre- "sent war."

IV. Mr. Clay stated, they could not make themselves a party to the existing war with Spain: nor to councils for deliberating on the means of its further prosecution.

V. [Page 5]—Mexican Minister did not wish nor desire the United States to take part.

VII. [Page 6, 7]—Salazar *suggests* merely two classes of subjects:—1st. Matters peculiarly and exclusively concerning the belligerents. 2d. Matters between belligerents and neutrals. He expressly states we are not to take part in the first. In regard to the second, he clearly indicates the intention of establishing some principles of international law, relating to the rights of neutrals and belligerents.

Mr. Clay says: "Whilst they will not be authorized to "enter upon any deliberations, or to concur in any acts, "inconsistent with the present neutral position of the "United States, and its obligations, they will be fully em- "powered and instructed upon all questions likely to "arise in the Congress on subjects in which the nations "of America have a common interest."

Mr. Canas says:—"And which will not require that the "Representatives of the United States should, in the "least, compromit their present neutrality, harmony, and "good intelligence, with other nations."

Is it not extraordinary, after all this, we hear it repeated that we must sit in this council—take part in the discussion and decision of these military operations? We must, say those gentlemen, become a part of the Confederacy—join in their deliberations—vote by States—be bound by a majority—furnish our quota—and even invade Cuba—and do all acts as if we were in a state of actual war with Spain.

Mr. Salazar invites us to meet those Ministers at Panama, to *propose* certain subjects of a general interest to this hemisphere, for discussion; but not take part in any belligerent measure. The President will neither contract alliances, nor engage in any project importing hostility to any nation; Mr. Clay will not change the present neutral policy; nor make themselves a party to councils for deliberating on the means of prosecuting the war. These

sentiments have been uttered by all parties concerned, in various forms of expression, and on all occasions; and, notwithstanding all the precautions, explanations, and limitations—all the guards on our neutrality—and all the care to avoid misapprehension—we are solemnly told that clouds and darkness hang over it—"that ample powers must be given to accomplish undefined objects;" and we are gravely warned "not to commit the *destinies* of the United States to the deliberations and decisions of a Congress composed, not of our own citizens, but of the Representatives of many different Nations."

But suppose we were to take part in the discussion of belligerent measures, what part should we take? It is our interest and our duty to keep Cuba as it is: a movement there would be dangerous to us. The Secretary of State has said, we desire to see Cuba remain as it is. The President has, on a memorable occasion, said: "We cannot view with indifference the interposition of any European nation." We should, therefore, advise them to husband their strength and resources—to secure what they have gained. We should dissuade them from striking at that island—a measure, perhaps, fatal to them, and injurious to us.

How, then, can we participate in any belligerent measure? or any act prejudicial to Spain? or any act inconsistent with our faith, our honor, or our neutrality?

But, if, contrary to all expectation, the character of this Assembly, and our motives in sending this mission, should be misconceived, and beget suspicion, the President ought and would remove it, by amicable explanations.

Our conduct has been always distinguished by frankness and good faith. There is nothing in this affair to conceal—nothing doubtful—nothing that we cannot avow—as we have heretofore done every thing connected with these Republics, in the face of the world. Certainly, if we do not take part in this Congress, even in respect to its defensive alliance, and we make these friendly explanations, no nation will believe that we mean to take part, except to produce peace.

But, if the President was disposed to do wrong, and should make a treaty, (which is not even imagined) it would not be binding. It must receive the saction of the Senate, and, if, in the language of the report, "the power possessed by the Senate, of withholding its assent, ought not to be regarded as a sufficient assurance against the possible and probable effects of the proposed measure," there is another and a double assurance, to wit: that the President and Senate cannot commit this country in a war—it requires "An act of Congress."

There is nothing peculiar in the present case. The President has, at all times, the power to commit the peace of this country, and involve us in hostilities, as far as he has power in this case. To him is confided all intercourse with foreign nations. To his discretion and responsibility is entrusted all our delicate and difficult relations: all negotiations and all treaties are conducted and brought to issue by him. He speaks in the name and with the authority of this Government with all the Powers of Europe. That confidence has never been deceived. The character, talent, and public virtue, which placed them in that high station, is the guarantee of their conduct. Their own fame, their love of country, make it their interest and their duty to cultivate peace, commerce, and honest friendship, with all nations: and all the motives of self-love and ambition conspire to ensure from them, as from us, a faithful discharge of the trust confided to them by the Constitution and the country. But there must be confidence. No Government can exist without it. And this distrust and jealousy of the Executive will destroy all power to do good, and all power to act efficiently.

The whole of the argument which I have attempted to refute, is founded on the fact, that we are to form an alliance, to confederate with them, to make common cause. The answer is, there is not a fact to warrant the assumption; and not a man in America will believe that this Government had such a measure in view; and yet we hear that this is a measure involving the dignity and neutrality of the United States, the fundamental principles of the Union, and the peace and security of a great subdivision of the Confederacy.

I conclude that this meeting of diplomatic agents is for convenience and facility of action; that they are to act ministerially; and that, therefore, what is done will be done in the usual diplomatic form, by conventions: which, in that case, must be negotiated under instructions from the Executive, and be referred back to the Senate for ratification; and, if it was a legislative assembly, then we are not parties to it, nor members of it; nor has the Executive power to enter such a body—certainly not without a formal act of this Government—and if he did authorize such an intercourse, it would not be obligatory on us. So that all these dangers are imaginary, and conjured up to frighten and alarm.

The gentlemen have seized, with some ability and address, upon the expressions of the Colombian and Mexican Ministers, with a view to give color to the charge of involving the peace and neutrality of the United States. But all apprehensions will cease the moment the truth is disclosed.

In the message of the President, of December, 1823, he declares the neutrality of the United States in the contest between Spain and her colonies. "It is still," says he, "the true policy to leave the parties to themselves, in the hope that other Powers will pursue the same course." "But, with the Governments who have declared their independence, and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition, for the purpose of oppressing them, or controlling, in any other manner, their destiny, by any European Power, in any other light than as the manifestation of an unfriendly disposition towards the United States." "It is equally impossible, therefore, that we should behold such interposition, in any form, with indifference." This declaration of the Executive was received throughout Europe and America with enthusiasm. Every man in this country responded to the sentiment, "and every heart beat high in sympathy." On the other side of the Atlantic, it touched every bosom. Every friend of freedom felt his faith and confidence confirmed. The Powers of Europe paused. England, immediately after, no doubt in concert with this Government, acknowledged the independence of the Spanish American Republics. The designs of the Holy Alliance were disconcerted. This memorable declaration has had its effect. It has resulted in the determination of all parties to leave Spain free to regain her lost dominions, and they free to defend them. It has accomplished its work. Do we now wish to take it back, or weaken its force?

Since the influence of this sentiment was felt in Europe, and the recognition of these Republics by England, all interference in the contest, and all designs on this Continent have been abandoned, if any such were ever entertained. The desire of the Emperor of Russia and the King of France to follow the example of England, has been heretofore restrained, by a sense of justice, and the laws of nations, from prejudging or anticipating the determinations of Spain. But the public interest, the love of peace, and the inability of one of the parties to continue the war, will no doubt render their recommendation with Spain effectual. But, at this time, all Europe and America are in accord, with regard to any interposition of any Power in the present contest, and consequently all arrangement now, to resist or oppose it, is idle.

These Republics were no doubt alarmed at the ambitious pretensions of the Holy Alliance. They apprehended that they, like Spain, might be visited by an army, to put

back the spirit of revolution, and to restore the old order of things. The declaration of the President had inspired the hope of making resistance to such interference effectual; ignorant of the sentiments entertained in Europe with regard to them, believing the danger imminent, that such interference would be regarded as of general interest to this continent, and that we accorded in opinion with them, they proposed to discuss with us the means of giving that resistance all possible force.

The Colombian Minister says—"The manner in which "all colonization of European Powers on the American "Continent shall be resisted, and their interference with "the present contest between Spain and her former colo- "nies prevented, are other points of great interest. Were "it proper, an eventual alliance, in case these events "should occur, which is within the range of possibilities; "and the treaty, of which no use shall be made until the "*casus fœderis* shall happen, to remain secret; or, if this "should be premature, a convention, so anticipated, would "be different means of preventing foreign influence." Now the answer of all this, which has been so much magnified, is, that no such colonization or interference with this Continent is contemplated. The policy of European Powers with regard to their conduct in the present contest is as fixed, and as well known as our own. This was proposed, as all other subjects by that Minister, "as suggestions by way of example." The President has said—it is not intended "either to contract alliances, nor to engage in any undertaking importing hostility to any other nation." The President has no power to contract a secret treaty, without the object being first known and approved by the Senate; and, if he did, he could not carry it into effect without the knowledge and assent of the House of Representatives.

Mr. President, much has been said about a pledge. It is now the policy to make an impression that some secret understanding has taken place; some unknown and mysterious arrangement, which the Government will now be bound in honor and good faith, if this mission is sent, to carry into effect.

The gentleman from Tennessee inquires what this pledge is; and the gentleman from South Carolina intimates strongly that this Government has given a pledge. The declaration of the President admonished neutral nations not to interfere with Spain and her colonies. It was a distinct and positive enunciation of the views of this Government. It was supposed, at the time, to *mean something*. By some, it has been termed a protest; by others a pledge; but more properly designated as the memorable declaration No other or different assurance has been given to strengthen the connections with these new States. But admit there was: all motive to treat on that subject now has ceased; there is now no danger, or even expectation, that the contingency will ever happen; and if we cannot rely upon the assurance of the President, that no alliance will be formed, we may rely upon the fact that no pledge has been given, by the inference arising from the fact, that Mexico refused to place us on the footing of the most favored nations. If we had given the pledge to protect her independence, there would have existed no reason for the distinction taken between us and the other American States.

Mr. Poinsett, in his letter to Mr. Clay, detailing his conversations with the Mexican Minister, says, "The United States had pledged themselves not to permit any other Power to interfere either with their independence, or form of Government; and that as, in the event of such an attempt being made by the Powers of Europe, we would be compelled to take the most active and efficient part, and to bear the brunt of the contest, it was not just we should be placed on a less favorable footing than the other Republics of America, whose existence we were ready to support at such hazards."

Mr. Poinsett was a Member of Congress when the President's message, containing the supposed pledge, was delivered. He, no doubt, formed his own opinion of the extent and character of this pledge. He naturally believed, as every man in that Congress and in this country did, that the declaration meant something. He has used that argumentatively, after all expectation of such interference had ceased, to induce them to place us on the footing of American States, in our commercial relations. The argument of Mr. Poinsett failed, because there was no other pledge than the President's pledge of 1823. If any separate, specific, positive pledge of protection had been given, who doubts that they would have placed us on the footing with the most favored? The Ministers of Mexico persisted in refusing to place us on an equality and a reciprocity with the other Spanish American States, and no treaty is yet formed, in consequence. They stated, in reply, "that Mexico was united by fraternal ties and strong "sympathies, to the nations which had, like themselves, "shaken off the yoke of Spain; and that they had conclud- "ed with them an offensive and defensive alliance, which "united them more *intimately*; and placed them on a *dif- "ferent footing* from that on which they stood towards the "*United States.*"—They understood perfectly well—although we profess we cannot—the extent of that pledge to which Mr. Poinsett had alluded, and they insisted on placing us on the *footing of England*. This fact is irreconcileable with the idea of any promises of protection, or pledge to make common cause. It has been strongly insinuated here, in the face of these facts, that, from the well known prudence of Mr. Poinsett, this Government must have instructed him to make such pledge. Instead of giving Mr. Poinsett credit for ability in negotiation, and the employment of the best arguments to obtain the end, they choose to accuse the Executive with a promise he has no power to make, and then to convict him of the folly of publishing Mr. Poinsett's letter, by way of keeping the secret. The Secretary of State, in answer to Mr. Poinsett, says: "Ready themselves to extend to the United Mexi- "can States any favors which they have granted to *other "nations*, the United States feel themselves authorized to "demand, in this respect, a perfect reciprocity." There is nothing in the whole correspondence to justify the inference which has been attempted to be drawn. Fortunately, however, we have the cotemporaneous exposition of this pledge, by Mr. Poinsett himself. On the 24th January, 1824, he offered to the House of Representatives the following resolution:

"*Resolved*, That this House concur in the sentiments expressed by the President, in relation to this hemisphere, and would view any attempts to oppress or control the free Governments of America, South of us, by the allied Powers of Europe, as dangerous to the peace and happiness of the United States, and that such *measures* as may be deemed expedient *to protect them from the attacks of any Power*, other than that of Spain, alone and unassisted, will meet its cordial support."

Other resolutions were presented, of similar character. They were only intended to give a more distinct expression of opinion; and it is those resolutions, following the President's message, that made the impression general, that we were in accord, as it regarded resistance to any attempt on this continent. Nothing more definitive was ever said or done on this subject.

But if any apprehension existed of an armed interference by any neutral, between Spain and her colonies, and they had misconceived the nature of this pledge, it might be consistent with our good faith to be candid and explicit with them. Such an event cannot fail deeply to interest the People, whenever it may occur. They will not look on cold and indifferent spectators of a crisis, which involves the independence of six Republics, and perhaps the cause of public liberty, throughout the world. The caution and

calculation of statesmen may dictate concealment—the country in such a period would require an honest, open, manly policy: It may be safe to hold this event in our own hands, to act as emergencies demand—but it neither would comport with our dignity, our honor, or our principles, to weaken the force of that moral influence which this memorable declaration has had on the European Continent.

Mr. President: I shall draw the attention of the Senate now to the consideration of some of those subjects which I deem of public interest, which have been suggested as proper for discussion by our Ministers at Panama. I am met here by a sweeping declaration of the Committee in their report—"That they have not been able to discover, "among the objects particularly designated, *a single subject*, concerning which the United States ought to enter "into any negotiation with the States of America assembled "at Panama;" and in the argument, they have been boldly denounced as either dangerous, inexpedient, or unnecessary, or improper. I trust I have shown that many of the dangers which were imagined, are groundless. That arising from being a member of this new Confederacy, which rendered the mission unconstitutional—that arising from the fear of contracting alliances, which would violate our neutrality—that arising from a supposed pledge to make common cause, which might involve us in war—that arising from the interference of neutral or allied Powers of Europe in this contest, which might threaten our peaceful condition—these have been fully, I hope satisfactorily, explained.

What is dangerous in execution, expedient in policy, and necessary to good government, depends much on the minds and imaginations of men—their education, their organization, and their principles.

Every thing is in some sort dangerous, and, if we listened to our fears, no enterprise in private or public life, would ever succeed. If we had stopped to count the cost and sacrifice, would our Revolution have been achieved? Would our happy Constitution have been adopted, if we had acted on the fears and imaginations of statesmen?

The apprehension of mischief, the anticipations of danger, have exerted a mighty influence in human affairs—every improvement which Governments have made, has been by victories over them; every step which has been gained in the amelioration of society, every benefit which mankind has obtained, has been by a struggle against the fear of innovation and the dread of change. This danger, continually inculcated and magnified, has been employed to strengthen the force of resistance, and to abate and enfeeble the spirit of improvement; at every stage of its progress, it has been its chief enemy; success has been obtained against all the calculations of caution, and the most fearful auguries—"slowly and with incredible difficulty, and dearly bought victories over this universal resistance, improvement has made its way." If we listen to our fears, nothing great will ever be achieved, either in public or private life—every thing is dangerous, life itself is full of peril. But, instead of yielding to our fears, and acting on their suggestions, we must proportion our energy to the danger to be overcome. We must act on great principles, do our duty fearlessly, and with confidence—otherwise the operations of Government will be weak, wavering, inefficient, and distracted.

What is expedient, also, depends much on our peculiar frame of mind, and our temperament. Some are slow and cold: relying chiefly on the effect of natural causes, they let things alone: satisfied with our happy condition, they forget the operation of mind and the energy of action, by which it has been attained. Some are ardent, confident, and restless—bold in council, daring in execution, and impatient of results. And between these two classes of statesmen, will be found what is expedient, necessary, and proper.

Government is not a self-moving machine: it is a forced state, and requires the constant stimulus of life. Without it, man would go back, civilization retrograde, and government deteriorate. "She ever holds her course against "an adverse current; if the popular spring does not contin-"nue firm and elastic, a short interval of debilitated nerve "and broken force, will send you down the stream again, "and re-consign you to the condition of a province."

On the other hand, we must not stimulate too high; overaction will produce reaction and collapse, and is more dangerous than inaction.

It has been said in this debate, that this nation will gradually advance in the development of its great resources and the fulfilment of its high destinies; and no one can doubt it, without the interposition of some unforeseen and adverse circumstance. But it must not be forgotten, that our rapid advancement is attributable to the principles and policy on which our system is founded—to enlightened and liberal legislation. Would this country have grown to wealth and power by her own development? Is it in the nature of human improvement to advance? Is there any danger it will move too fast? We know from its history how slow and painful has been its march. I believe there are great principles in government, which, like great causes in the natural world, produce great results; that, without the constant operation of these great principles, no great effect will be *constantly* produced; that these principles may be extended, and this policy enlarged and improved, and still continue to develop new resources, and to fulfil still higher destinies. The natural sagacity of man, the enterprize of our People, the effect of equal laws, the protection of property, the natural advantages of our country, and many causes depending on government, operating favorably on us, will, no doubt, do much. But every great interest in this nation has been cherished and fostered by legislation, and protected by able councils. They must still be guarded by constant vigilance, and a wise forecast. We are building up a system peculiar to ourselves, and adapted to our condition. I am not one of those who believe the work accomplished—that we may leave things to take care of themselves. There is no resting place in human affairs.

In this unfortunate mission, nothing is right, even by accident. The measure, new and extraordinary—the objects, undefined—the powers, unlimited—the Senate cannot be relied on to resist the probable consequences—the objects, unknown, or unnecessary; and those that are known, are disapproved. If we discuss, we shall disagree; if we do not, we shall offend.

Let us now see if there are not some objects that are expedient; and let us inquire if the real interests of the country have not been as greatly misconceived, as the danger of the mission has been exaggerated and aggravated.

Among the events of greatest magnitude, and most anxious concern to this country, is the future condition of Cuba. We know that Colombia and Mexico have long contemplated the independence of that Island. It has probably been delayed by want of concert, and by our mediation to produce peace. But we now know that the fortune of that Island is now to be settled. They have waited for a favorable moment to attack them with a certainty of success, by the greater forces which the alliance of all the sections of the South and Mexico will procure. The final decision is now to be made, and the combination of forces and plan of attack to be formed. With regard to the effect of that mission upon us, there is no difference of opinion. It is deprecated by all, as equally dangerous to our peace and their safety. What, then, at such a crisis, becomes the duty of this Government? Send your Ministers instantly to this Diplomatic Assembly, where this measure is maturing. Advise with them—remonstrate—menace them, if necessary, against a step so dangerous to us, and perhaps fatal to them. Urge them to be satisfied with what they have achieved—to establish their Govern-

ments—consolidate their Union—improve their resources. Guard them against the madness and folly of this enterprise. Warn them of the danger of provoking the allies to take part with Spain. Admonish them of their duty and obligation they owe to themselves, to us, and to all Europe—not to disturb the peace and repose of the world. Our advice will be respected, and the danger averted. The consequences of this event in Cuba have been depicted in lively colors, but not too highly drawn. There is no difference of opinion with regard to the consequences which must ensue.

"If the war against those islands should be conducted "in a desolating manner—if they should put arms into the "hands of one race of the inhabitants to destroy the lives of "another; if, in short, they should countenance and en- "courage excesses and examples, the contagion of which, "from our neighborhood, would be dangerous to our quiet "and safety, the Government might feel itself called on to "interpose its power." In this state of things, what do gentlemen propose to do? To fold our arms—to stand silently by—see the event occur—wait the catastrophe—and then—one says—employ the naval and military force against them. Another says, wait till the emergency happens—hold the thing in your own hands—act as circumstances require. Another, (the gentleman from New Hampshire,) says, what right have we to interfere with the fate of Cuba? What right have we to interpose, to prevent the independence of Cuba? What right have we to prevent any European nation from taking possession of Cuba? Have we not, says he, bought Louisiana and Florida; and has not Spain as much right to sell Cuba to France?—and shall we go to war to preserve Cuba in its present political condition? One gentleman says, this subject, so far from recommending the mission, is the principal objection against it. To my mind, it is better to avoid the evil, than to meet it when it occurs. If our advice fails to have effect, we shall be early informed of the course they will pursue. We shall have time to deliberate on the measures which this new state of things may demand. When the war has already happened, it will be too late to avert the effect of it. Congress may not agree on the propriety of making a war, to prevent the independence of Cuba, much less to prevent the change in the condition of a part of its population, however dangerous the influence of that example to the South. Those who seem to dread the violation of our neutrality by sending this mission, look with indifference on this war, which may involve us and all Europe in hostility; the consequences of which cannot be foreseen. I regret my peculiar and delicate situation, as one of the Representatives of that great interest, most deeply affected by this measure. We stand alone representing the State nearest the seat of war, and most exposed to the contagion of this example. We have viewed this question with intense interest and painful anxiety; but we have arrived at the conviction that this mission is the only means left to avert the calamities it threatens.

Some gentlemen, convinced of the pressing and urgent necessity of arresting this enterprise, recommend a private mission: but, to my mind, this informal and unofficial commission will not correspond with the importance of the subject—will fail to make a due impression—and is altogether unworthy the occasion.

The establishment of principles of a liberal commercial intercourse, is another subject well entitled to deliberate consultation with the Spanish American States. It is well known that an idea has prevailed among them of giving special favors to each other, and of discriminating between the commerce and navigation of the United States, and American States formerly Spanish. Mexico still adheres to the justice of this principle, and has refused to sign a treaty on the basis of equality and reciprocity, after a full discussion. The other States have adopted the principle of equality. But as treaties are temporary—as this great question is to be again discussed—and as a uniform system for all will be adopted—it seems of great moment to secure to our navigation the benefits of that extensive and increasing commerce. But the reference of this subject is opposed in the report, on a principle as new in diplomacy as it is novel in the practice of nations; and founded on refinements in liberality and disinterestedness, utterly incompatible with the rights and advantages which it is the duty of every Government to secure to its citizens.

It is maintained, that, if these People believe that mutual concessions of exclusive favor will advance their interests, it would be incompatible with the spirit of generous kindness and fraternal friendship we profess, to strive to induce them to establish liberal principles. Suppose it was the interest of these new Republics to give exclusive favors to Great Britain—must we acquiesce in it for the same reason? Because it might be injurious to them to establish commercial intercourse upon just and equal principles, we are to submit to unfavorable restrictions upon us, and not even to discuss it. Because these regulations "may be safely confided to the natural disposition of man promptly to discover and eagerly to advance his own best interests," such a policy would dispense with the necessity of diplomatic intercourse.

We have established our commercial relations upon great and liberal principles of equality and reciprocity. It is a primary interest, and worthy our highest care. We desire that this Continent shall recognize the principle. The meeting at Panama will afford the occasion of friendly communication on this subject. Of the value of that principle to us, with our navigation, capital, and enterprise, some idea may be formed, from the amount of their commerce, and the extent of their coast upon both seas. To be excluded from this trade by unequal and unjust regulations, would not comport with our sentiments of kindness and friendship for them, nor with a proper sense of our own proper interests. This subject alone is well worthy the mission to Panama.

With regard to the policy of mitigating the practice and laws of nations in maritime war, and of establishing the same rules that have obtained in other wars—to exempt non-combatants and private property from its operations, there can be but one opinion here. Such a modification of the public law on the ocean, would deprive war of most of its destructive and unhappy consequences; would cause the war now permitted against regular commerce and private rights, producing disorders, violence, and crimes, ruinous to one class by making them a prey to the needy and desperate adventurers, who rob and plunder by commission, and demoralizing in its influence on all—to cease to disgrace the code of civilized nations; and this object is worthy the profound attention of this Government, and of the enlightened age in which we live.

The frequent wars in Europe will afford us and other peaceful and neutral nations the opportunity of becoming the carriers for the belligerent nations, whose ships and mariners will be required for military operations. To avail ourselves of these advantages to the greatest extent, two principles become important to be established. First, That our neutral vessels should protect the goods on board, to whomsoever they may belong; and that articles which are called contraband, which we are not to furnish the parties at war, should be limited to the smallest possible number of articles of direct use, and essential in its operations. By the public law of nations, the flag of the neutral does not protect the property of an enemy. The effects of an enemy found on board a neutral ship, are seized by the rights of war, although the goods of a friend, found in the vessel of an enemy, are free. England has generally adhered rigorously to this principle, because it is her peculiar interest, while all the rest of Europe have, at different times, consented to change the principle

operating so unfavorable on them. The Empress of Russia invited the neutral Powers to join her in a declaration of principles, affirming the opposite doctrine, "that free ships should make free goods." Sweden, Denmark, and the other Northern Powers, entered into a Convention to support each other. We established this principle in our treaties with France, Holland, and Prussia. England once yielded the principle in a treaty with France. During the American war, a Congress was proposed on the continent, for settling a maritime code, to adjust the rights of belligerents and neutrals on these principles. They were afterwards called by France the modern law of nations. It is now a favorable moment to establish permanently that principle throughout this continent, and gradually to extend it as far as other nations may consent to concur in it. Perhaps it will rarely happen that a peace so general will prevail. A war exists only in name, between Spain and her Colonies. The committee "deem it, however, highly inexpedient to make such experiment at this time," on account of "the risk of compromising and destroying the relations of neutrality." How can the abrogation of war upon private property on the ocean between the United States and these Republics, affect Spain or any other Power of Europe? Will the establishment of the principle, that our vessels may safely carry Spanish property, be unfavorable to Spain? And how will any other maritime nation be injured by such a compact? And if it could be in any way detrimental to either, the principle has already been settled by several of the new States by separate treaties. The President thinks these doctrines may be established with more ease, and perhaps less danger, by the general engagement to adhere to them, than by partial conventions. By the treaty with France, ratified 31st July, 1801, it is stipulated, "That the citizens of "either country might sail, with their ships and merchandise, (contraband only excepted,) from any port whatever, to any port of the enemy of the other, and from a "port of such enemy, either to a neutral or any other "port of the enemy, unless such port should be *actually* "blockaded—that a vessel sailing from an enemy's port, "not knowing that the same was blockaded, should be "turned away, but should neither be detained nor her "cargo confiscated—that *implements and munitions* of war "should also be considered contraband of war—that free "ships should make free goods, extending that freedom "even to an enemy's property, on board the ship belonging to the citizens of either country." This treaty was not considered by England as a violation of neutrality—on the contrary, it was favorable to her commerce, as it protected her property under our flag in a period of war. This war upon private property, and the incidental right of search, is the principal danger of involving us in war, which we have to fear. It is extremely difficult to pass between the belligerents under the existing laws, without being drawn into the vortex. How important, then, to guard against the recurrence of this event, by wise and provident regulations; but I am ignorant how such regulations can affect our relations with Spain.

Mr. Salazar has suggested the propriety of resuming the discussion of means of suppressing the Slave Trade, to which the President had, by virtue of a resolution of Congress, called the attention of his Government.

At the close of the session of 1823, a resolution passed the House of Representatives, almost *unanimously*, declaring that "the President of the United States be requested to enter upon, and to prosecute, from time to "time, such negotiations with the several maritime Powers of Europe and America, as he may deem expedient, "for the effectual abolition of the African Slave Trade, "and its ultimate denunciation as piracy under the laws "of nations, or by the consent of the civilized world." This resolution, which imposed this duty on the Executive, left the means to be concerted by him with Foreign nations; and there was found great difficulty in adopting means, and insuperable repugnance to those that were deemed effectual. A correspondence was formally opened with all the Powers referred to—a treaty was entered into with Great Britain, predicated on the mutual concession of the right of maritime search in time of peace, to the armed vessels of both, cruizing for Slave traders on the coast of America, Africa, and the West Indies. When this treaty came before the Senate, it was considered by all, that, objectionable as the right of search was, it might be considered to the extent claimed by Mr. Canning, that was, "to confine the right of visit to a fixed number of "cruisers on each side, restricted in the performance of "this duty to certain specified parts of the ocean, and acting under regulations, prepared by mutual consent, for "the purpose of preventing abuses"—"and the arrangement to be made temporary, and continued, if found, "on trial, to operate in a satisfactory manner." It was thought the treaty had extended the limits of the cruising, which we viewed with extreme jealousy, beyond the necessity of the case, and beyond what would have been satisfactory to the British Government. It was, therefore, proposed to limit the right of search to the coast of Africa—the immediate theatre of these criminal enterprises—and to limit its operation to a short period, in order to try the experiment. It was moved by myself, to strike out America, and the West Indies. The former prevailed, but the latter was retained, upon full discussion.

This treaty, executed under the direction of the House of Representatives, almost unanimously given, and approved of by more than two-thirds of the Senate, became the basis of future negotiations, which it was the duty of the Executive to enter into with other Powers. A treaty was accordingly made with Colombia upon the same principles; but a sudden change had taken place in the Senate; and this treaty, made with a Power having no means of vexatiously using the right of search, was rejected, although, shortly before, we had conceded the right of search to the only Power capable of using the right.

A general accordance in principle and sentiment prevails throughout the civilized world, with regard to the duty and obligation of nations to exterminate the slave trade. It is the prevailing feeling of the age. This inhuman traffic, which fills the world with misery, ought to be effectually suppressed. It belongs to Christian nations to put an end to the infamous practice, with all the crimes and horrors that follow its commission. To accomplish that object, there is but one mode; and that is, by common consent to blockade the ports of the coast of Africa with a competent force; beyond those limits it is useless to cruise in search of slave ships. The right of visiting, except under this limitation, is repugnant to our feelings, liable to abuse, and not to be conceded under any circumstances. The crime excites universal abhorrence and just indignation; and, from the resolution of the House of Representatives—the act of Congress declaring it piracy because it was an offence against the human race—and from my own knowledge of public sentiment—I believe a right of guarding that coast, and the punishment of the crime as piracy, would be conceded freely by the People of this country; and I am confident it is the only effectual mode, consistent with the freedom of the seas, and our own just rights.

This subject was not deemed worthy of special notice by the President. He knew it was a delicate subject; that great sensibility had been manifested with regard to it, at different times; and that he found insuperable difficulty in reconciling the opposite and adverse sentiments of the two Houses of Congress—one impelling him to act, the other counteracting him. But the invitation to renew the discussion there, which we had ourselves provoked, while it affords an opportunity of amicable explanation of our sentiments, and the honest differences of opinion that

prevail, will not bind us to enter on any new engagements, until the mode of accomplishing the object shall be known and approved here.

I do not perceive or feel any connexion between this subject and domestic slavery, as it exists here. I perceive no danger to that interest here from any quarter. Nothing that impairs my confidence in its stability or value. No one asserts the right to touch it—no one wishes to disturb it; Congress have no power, nor do they claim the right to act on it. There is no power any where, but force, that could interpose. The great body of the People accord in sentiment, that, however they may deprecate the evil, there is no remedy; that the rights of property must be sacred. As to fools and fanatics, I do not regard them. My faith and confidence in the solidity of that interest is unshaken; I know very well the danger is imaginary and very distant, and that we may safely rely upon ourselves to defend our rights, whenever they may be invaded. I want no other guarantee.

The condition of Hayti is another subject, not alluded to by the President, and only intended to be alluded to by Mr. Salazar.

With regard to the relations with that country, no change is desired—none will take place here. It may be proper to express to the South American States, the unalterable opinion entertained here in regard to intercourse with them. It will have its due weight and influence in their councils, and I hope, it will be effectual. The unadvised recognition of that island, and the public reception of their Ministers, will nearly sever our Diplomatic intercourse, and bring about a separation and alienation, injurious to both. I deem it of the highest concern to the political connexion of these countries, to remonstrate against a measure so justly offensive to us, and to make that remonstrance effectual.

I trust I have shown, that, if this mission is not due to courtesy, it is due to a just estimate of our essential interests. It is due to friendship, to peace, to commerce, to our principles; it can do no injury—it may do good—it will do good.

The objection that we cannot send Ministers under the laws of nations, because there is no sovereignty to receive them, no laws to protect them, &c. I consider altogether techninal; it is a sacrifice of substance to words and forms; it is a subtlety—a mere refinement on terms. Is Panama not in Colombia? Are we not invited by their Minister? Instead of there not being one Sovereign, there will be the Representatives of half a dozen of Sovereignties; and how will that differ from the diplomatic meeting at Utrecht in the last century, and at Ghent in the present?

When this invitation was first given to the President, he naturally supposed it was intended to make us a party, and a member of some Congress, the object of which he did not know. We had not seen the conventions; the invitation was verbal and general, without explanation of its object. The President very judiciously inquired what were the subjects to be discussed—how the body was to be organized—how they were to act? &c. And he made his acceptance depend upon this information. But, when he received the written invitation, in which it appeared that we were not considered as a part of their system; that we were to take no share in the deliberations of belligerent questions; that we were merely to consult upon other measures of general interest, and discuss such propositions in regard thereto, as we might propose; that it was merely a ministerial diplomatic intercourse; he gave his assent freely to the meeting.

This defensive alliance has been magnified into a great Confederacy. The meeting of the Ministers is dignified into a Congress. It required but little imagination to create out of it a Holy Alliance; and we are admonished, in the report of the Committee, that "no effect yet produced by the continental system of Europe, is of a character to invite the States of this continent to take that system as a model or example fit for their imitation." Again; it is considered as a counterpoise to the Holy Alliance. And, as their object was to maintain the rights of kings, and the existing order of things, ours, of course, must be to defend the rights of the Republics, and to perpetuate our existing institutions. And now we are informed that "the short political existence of all the States on this "continent—even of the United States, the most ancient "of any—hath enabled them to profit so little, as yet, by "*experience*, that it would seem *rash* to proclaim *their perfection* at this time, or to *pledge* any of them, to perpetuate either their present institutions, or existing political relations."

Names are important things—and a bad name is a dangerous thing. The associations in the mind are so strong, that they influence the judgment, even when the delusion is seen. We with difficulty resist the impression, while we are conscious of the fallacy; and those who cannot detect the error will be misled. We want no counsel here, with regard to the end and means of the Holy Alliance, to increase the odium, or excite reprobation. Nor of the danger of any combination, to pledge themselves to maintain any order of things, whilst the People have the right to change. But, if a Holy Alliance should ever become necessary on this side of the water, I confess my object would be to perpetuate the present political institutions.

It has been said, in this debate, that this league is to have infinite duration: this council is to be permanent: and this mission perpetual. The league will last as long as the cause of its creation exists. The war has now ceased—Spain is unable to renew it. Europe is neutral, and desires peace. The project against Cuba will, I trust, be abandoned. Hostilities will die away. The armies will be disbanded, and this council dissolved. Perhaps in one year all things will be settted. This mission is special in its object, and temporary. It will be terminated in less time.

I must pass over many topics of this debate; the subject is too ample for a speech; I should fatigue myself, and weary the Senate. I have touched lightly on the interesting and various points it involves. My remarks have been altogether unworthy the occasion, and the attention they have received. I had expected this duty would have devolved on another.

From the best view I have been able to take, I approve this mission. I hope it will accomplish the beneficent objects we contemplate; and that, in a short period, there will be restored a solid friendship, a liberal intercourse, and a permanent peace, throughout Europe and America.

Mr. VAN BUREN, of New York, said, it was with great reluctance that he rose to address the Senate. The cause of that reluctance, (said Mr. V. B.) shall be stated with frankness, but without asperity. I entertain no feelings but those of perfect liberality towards gentlemen with whom it is my misfortune to differ. Claiming for myself an entire freedom of opinion, I yield it cheerfully to them. With their motives I do not interfere. That they are pure no one will question. But, against the course pursued by the advocates of the mission, I do object. It is my right to do so; a right which I shall exercise freely, but respectfully.

The subject before us presents a question entirely new. It is one, too, of intense interest, involving considerations which, when once fully understood, cannot fail to excite the deep solicitude of our constituents, and ought to fill us with proportionate anxiety. It has grieved me to hear it announced, on different occasions, and in various forms, that gentlemen had so definitively made up their minds as to render discussion unavailing. I venture to affirm, that a similar course has never been pursued in a deliberative assembly. Cases have occurred, where the sinister designs of a factious minority have been defeated by a refu-

sal to reply to speeches made after a subject had been fully discussed, and with the sole view of embarrassing the operations of Government; but to commence the consideration of a great national measure with the declaration, on the part of its advocates, that it ought to be settled by a silent vote, is an occurrence, in the annals of legislation, which, as it now stands without precedent, will remain, I trust, for ever, without imitation.

It is not for me to advise those with whom I differ in opinion: nor am I disposed to arrogate a privilege to which I have no claim. I will, however, with permission, and in all kindness, intreat gentlemen to re-consider the propriety of a course which cannot, I am persuaded, receive the sanction of their deliberate judgments. Let each determine for himself whether it will read well in the history of this measure, that its progress through this House has been marked by a circumstance of so extraordinary a character. Entertaining an entire confidence in the motives of gentlemen, I will still encourage the hope, that they will diffuse the light which has brought conviction to their minds; and, as far as practicable, divest themselves of all predetermination. This hope alone induces me to trespass, for a moment, on the time of the Senate.

Nothing can contribute more to a just decision of the question before us, than a correct understanding of what that question is. I will endeavor to state it.

A Congress of Deputies from several of the Spanish American States is to be held at the Isthmus of Panama. The objects, powers, and duties, of the Congress, are set forth in certain treaties, formed by those of whom the Congress will be composed.

The United States were not parties to these treaties; but, subsequently to their formation, it was thought advisable by some of the States, to invite us to join them. Foreseeing the difficulties which might prevent an acceptance of their invitation, and unwilling to impose the necessity of a refusal, these States, with a commendable delicacy, made an informal application to our Government, to know if it would be agreeable to it, that such an invitation should be given. On receiving this intimation, the President had before him the choice of one of several courses. If he believed that the attendance of an authorized Agent of the United States at Panama, with suitable instructions, would be beneficial, it was competent for him to have sent a private Agent, at the public expense, with proper credentials. If he had thought it more advisable, because more respectful, he might have directed our Ministers at Colombia and Mexico, or either of them, to repair to the proposed seat of the Congress, instructed to express the interest we take in the success and prosperity of the States there assembled; to explain to them the principles of our policy, and the reasons which dissuaded our Government from uniting in the Congress; and to communicate whatever else, in the opinion of the Executive, the interests of the United States required. Or he might have expressed his desire, that the invitation to the United States to be represented in the proposed Congress, should be given; and as far as his constitutional power extended, determined to accept it. He has chosen the latter; and if the Senate approve, and Congress make the necessary appropriation, his decision will of course supersede any other steps which might have been taken. But if the Senate do not approve, or Congress refuse the appropriation, either of the other measures may still be adopted. Their execution is within the constitutional competency of the Executive, and the contingent fund will supply the means. It will be seen, therefore, that the question is *not* whether measures shall be taken to avail ourselves of all attainable advantages from the Assembly of the Spanish American States, but whether they *shall be of the character, and in the form proposed.* That form is, to send a representation on the part of the United States, to the Congress of Panama, according to the invitation given to our Government, and its conditional acceptance. I cannot give my advice and consent to this measure; and in assigning the reasons for my dissent, I hope to be excused for omitting to notice some of the topics so largely dwelt on in former debates, on the subject of Spanish American affairs; such as the geographical description and great extent of these States, the character of their inhabitants, moral, physical, and intellectual, the injustice of their first enslavement, the odious tyranny practised upon them for a succession of ages, and the cruelties inflicted by their unnatural mother during the war of independence. Subjects which, although they may at times have produced some of the finest effusions of genuine patriotism, have also not unfrequently been the theme of wild and enthusiastic, not to say frothy and unprofitable declamation. We have had enough of such essays.

I will not say that they have become stale, because I would not so speak of any honest efforts in the cause of public liberty. For the present, at least, they would be misdirected. The condition of things is changed. Affairs have advanced. The colonies, whose distressed condition has occasioned these strong appeals to our sympathies, are now of right, and in fact, free and sovereign States. Their independence has been deliberately recognized by us and other Powers, in the face of the world; and, though not yet acknowledged by Spain, (or likely soon to be,) is held by as good a tenure, and stands, I hope, upon as firm a basis, as our own. They have severed the tie which bound them to the mother country; and, unlike ourselves, have achieved their liberation by their own unaided efforts. As they have thus won an honorable station among independent States, it becomes our imperative duty to treat with them as such. In our intercourse with them, as with all, it should be our first and highest concern to guard, with anxious solicitude, the peace and happiness of our own country; and, in the fulfilment of this duty, to reject every measure, however dazzling, which can have a tendency to put these great interests at hazard. Whether the measure now proposed will endanger those interests, or whether there is not reasonable ground to apprehend it, is the question. To this will my observations be directed, alike regardless of all extraneous excitement, and indifferent to the unmerited suspicion of being lukewarm in the cause of South American liberty.

The first points which naturally present themselves for our consideration, are the character of the Congress, and the limitations under which it is proposed that the United States should become a party. In the former are embraced the objects of the Assembly, present and future; the powers of the Deputies; its duration, whether temporary or permanent, and its manner of acting, whether legislative or diplomatic. In the latter are embraced the portion of the concerns of the Congress, in which the United States are invited to participate, and the manner of that participation. Upon some, if not all these points, it must be admitted, we are without satisfactory information. But the fault, if fault there be, in this particular, does not lie at our door. There was a time when the Executive required, as a condition precedent to the acceptance of the invitation, an adjustment of several preliminary points, such as "the subject to which the attention of Congress was to be directed;" the nature and form of the powers to be given to the diplomatic Agents who were "to compose it; and the mode of its organization and action." But that condition was afterwards, and I cannot but think improvidently, dispensed with. When this subject was first laid before us, we were furnished with no evidence, upon some of the points referred to, except the little that could be gleaned from the letters of invitation: It was not until the 10th of January, in compliance with the call of the Senate, of the 4th, that the treaties, in virtue of which the Congress is to be held, were sent to us. Sir, the inroads which the insinuating, not to say insidious, influence

of Executive authority has made upon the rights and privileges of this body, from which so much was expected by the framers of the Constitution, are great indeed. This remark is not made with particular reference to the present Executive. The history of our Government, for many years, presents an unbroken series of similar encroachments. The relation in which the President stands to the Senate, when acting under the treaty-making power, is essentially different from the other relations prescribed by the Constitution. He has Executive duties to discharge, in which the Legislature have no participation; duties which ordinarily commence, when theirs have terminated. Information, in his possession, relating to that branch of his public duties, it is his right to communicate or withhold from Congress, as, in his opinion, may best subserve the public interest. By the Constitution, also, the exclusive right of nomination to office is given to him, and the Senate are called on, only, to approve or disapprove. There, too, he acts distinct from us, and possesses a discretion, though perhaps more limited, with regard to the communication of information. But on the subject of treaties, the case is evidently different. They are to be *made* "by and with the advice and consent of the Senate." Upon that subject, every step, preliminary as well as final, ought, in the spirit of the Constitution, to be submitted to the Senate. The practice of conceding to the Executive the preliminary steps in a negotiation, first adopted from convenience, and since acquiesced in from habit, is now considered by some as an unquestioned right. But in the early administration of the Government it was different. General Washington, pursuing the spirit of the Constitution, before commencing any new negotiation, laid before the Senate the views of the Executive, the instructions proposed to be given to Ministers, and all the information in his possession, and then asked the benefit of their counsel. *He* appears to have thought that information necessary to both should be viewed in all respects as the common property of both. But now, instead of those full and explicit communications, a portion only of the requisite information is sparingly doled out—just enough to satisfy the successive calls of the Senate; calls always made with reluctance, because considered by some as implying an unwillingness to communicate what may be desired. It will be recollected, that it was not until the 2d of February that the Senate obtained the information upon which it consented to act. It is not my intention to impute to the Executive a disposition to suppress any thing connected with this subject. I have no reason to believe that these views exist. It is to the practice itself, which he found on entering into office, that I have deemed this a proper opportunity to object, not without a hope that a remedy may be applied. It is known to every member of the Senate that, from this cause on the subject before us, its deliberations have been embarrassed, and its action impeded.

Hoping to be excused from a digression not wholly irrelevant, I shall proceed to the discussion of the subject.

What is the character of the Congress of Panama, first, as it respects the Spanish American States, by whom it is constituted, and secondly, the footing on which our Representatives are to stand? Is it to be, as asserted by the gentleman from Rhode Island, a mere Diplomatic Council, held for convenience in negotiation, with power to make and receive proposals, but without authority to bind the represented States?* or is it to be an efficient public body, the permanent organ of a confederation of free States, formed for great national purposes? In short, is it to be an *advising* or an *acting* body?

The treaties between the Republics of Colombia and those of Peru, Chili, Mexico, and Guatemala, formed in the years 1822, 1823, and 1825, so far as they relate to the institution and character of the Congress, are alike. By these treaties, a permanent league and confederation, in peace and war, is established among the parties: containing guarantees of the territories of the respective States, and stipulating for contributions in ships, men, and money, for the common defence. In a word, they provide for the union and application of their joint means, for the purpose of promoting the general good of the Confederate States, reserving to each its sovereignty in whatever relates to its internal concerns, and certain portions of its foreign relations. The second, third, and fourth articles of the treaty between Colombia and Chili, are in the following words:

"ART. 1. The Republic of Colombia and the State of "Chili are united, bound, and confederated, in *peace and* "*war*, to maintain with their influences and forces, by "sea and land, as far as circumstances permit, their inde- "pendence of the Spanish nation, and of *any other* fo- "reign domination whatever; and to secure, after that is "recognized, their mutual prosperity, the greatest har- "mony and good understanding, as well between their "people, subjects, and citizens, as with other Powers "with which they may enter into relations.

"ART. 2. The Republic of Colombia, and the State of "Chili, therefore, voluntarily promise and contract a "league of close alliance and constant friendship, for the "*common defence*, for the security of their independence "and liberty, for the reciprocal and general good, obliging "themselves to succor each other, and repel, in common, "every attack or invasion which may, in any manner, "threaten their political existence.

"ART. 3. In order to contribute to the objects pointed "out in the foregoing articles, the Republic of Colombia "binds itself to assist, with the disposable sea and land "forces, of which the number, or its equivalent, shall be "fixed at a meeting of Plenipotentiaries.

"ART. 4. The State of Chili shall also contribute with "the disposable sea and land forces, of which the number, "or its equivalent, shall likewise be fixed at said meeting."

The other treaties contain stipulations of similar import. For the Confederation thus formed, a National Council is provided, composed of two Deputies from each of the Confederate States: they are to meet at Panama; but if ever, from the accidents of war, or for any other reason, that should be deemed an improper place, a majority of the States may remove it to some other spot in *Spanish America*. Its objects and powers are thus stated in all the treaties: "A General Congress shall be assem- "bled, composed of Plenipotentiaries from the American "States, for the purpose of establishing on a more solid "basis, the intimate relations which should exist between "them all, individually and collectively: and that it may "serve as a Council in great events, as a point of union in "common danger, as a faithful *interpreter* of public trea- "ties, in cases of misunderstanding, and as an *arbitrator* "and conciliator of disputes and differences."

Now, for the purpose of simplifying the question, permit me to ask, can the two specific objects and duties of the Congress, viz: the *interpretation* of treaties, and the *umpirage* of all disputes and differences between the confederate States, be effected upon the limited construction now, for the first time, given to its powers; a construction resorted to, and enforced with much ingenuity, by the gentleman from Rhode Island, when the dangerous steps we are about to take are fully presented to his view? Upon further reflection, that gentleman cannot fail to de-

* The President, in his late Message to the House of Representatives, adopts a similar construction of the treaty. His opinion is founded on the matter here discussed, and upon nothing else. The question remains: Is that construction the true one? Does it comport with the views and intentions of the Spanish American States, who have instituted the Congress? It is respectfully contended that it does not.—*Note by Mr. T. B.*

tect the fallacy of the reasoning, by which he has been induced to adopt a construction against the express letter of the treaties. He asks, Where are the powers by which the Congress is to enforce its decisions? none are given; hence he infers, that they are only authorized to *advise*, but not to *direct*. Permit me to ask the worthy gentleman to define the character of our Congress under the Articles of Confederation. Was that a mere diplomatic council—an advising power—a convention of diplomatists met to negotiate, but not to decide? It was a legislative body, acting to the extent of the powers conferred. If the gentleman will compare the treaties by which the Congress of Panama is established with our Articles of Confederation, he will perceive a striking similarity between them. Our "Congress was declared to be the last resort or ap-"peal for all disputes or differences now subsisting, or "that may, hereafter, arise, between two or more States, "concerning boundary, jurisdiction, *or any other cause* "whatever." Was any direct power conferred to enforce its decisions? Not at all. That Congress was left, as the Congress of Spanish American States is left, to the obligations resting on each of the confederate States, to abide by the decisions of a tribunal of their own creation, and to the known consequences of contumacy. Our Congress, it is true, had the express power to decide on peace or war. But was it clothed with the means of sustaining their decision? Was it not wholly dependent on the voluntary contributions of the States? The gentleman also refers to the stipulation contained in the treaties, securing "the exercise of the national sovereignty of each "of the contracting parties, as well as to what regards "their laws, and to the establishment and form of their "respective Governments," &c. &c. By adverting to the Articles of our Confederation, he will again find a stipulation "that each State should retain its sovereignty, free-"dom, and independence, and every power, jurisdiction, "and right," which was not expressly delegated to the United States. But, if he be correct in supposing that this Congress will be a mere diplomatic meeting, for the purpose of negotiating treaties in the usual form, and without power to bind any State, *except by its own consent*, whence the necessity of this reservation? Does he not perceive that the very fact of inserting the exception, on which he so confidently relies, overthrows the argument he attempts to sustain by it? It can require no argument or elucidation to establish the permanent character of the Congress; it has no limitation as to time in the treaties. It is to be the Congress of the Confederation, and of course to last as long as the Confederation endures. Such is the necessary result; and that such is the design of its founders, appears from the provision authorizing the removal of the seat of Government, by the vote of a majority, if *ever* the casualties of war, or any other cause, may render it advisable to do so. There is no express stipulation as to the manner of acting by the Congress. Our Government required information upon this point, and afterwards, as I have already stated, consented to act without it. But that its decisions are to be governed by a majority, results from the propriety of that course, from the equality of representation, from the provision that such shall be the case, in relation to the place of meeting, and the absence of any other provision in regard to the other concerns of the Congress. This view of the subject is confirmed by the letter from the Government Council of Peru, to the Government of Buenos Ayres, of the 2d of May last, urging a union in the arrangements of the Congress, in which, after stating that, if the world had to *elect* a *Capital*, "the Isthmus of Panama would be pointed "out for that august destiny, placed as it is in the centre "of the globe, looking on the one side to Asia, and on "the other to Africa and Europe: that the Isthmus had "been offered for *that purpose* by the Republic of Co-"lombia; that it was at an equal distance from both extre-"mities, and, on that account, might serve as a provisional "place for the *first* Assembly of the Confederates:" it is added, that, "in the first conference between the Ple-"nipotentiaries, the *residence* of the *Assembly*, and its "*powers*, may be settled in a solemn manner, by *the ma-"jority*, after which every thing will be arranged to our "satisfaction."

We have been invited to unite in a Congress thus constituted. The Executive asks our consent to his acceptance of that invitation. What are the limits contained in the invitation, and the restriction prescribed in the proposed acceptance? They consist in this, and in this *only*: that the United States shall not be called upon to do any act, during the continuance of the *present* war between Spain and the other States, which will conflict with our neutral obligations. If there be any other restriction or limitation, I call upon gentlemen to point it out. I affirm that there is none. I do not ask gentlemen for the suggestions or opinions of those either within or without doors. I appeal to the documents by which we are to judge now, and by which we shall be judged hereafter. If no other is pointed out, I shall assume that none exists. We are then invited to become a member of the proposed Congress, and of this *Confederacy of American States*. If the views of the Executive are not such as the documents import, why, in the communications made to us, are we not specially advised upon this point? But we are not without evidence of the most explicit character. We have called upon the Executive for information. Among other things sent us, are extracts from the correspondence between Mr. Clay and Mr. Poinsett, our Minister at Mexico. When the declarations of one of our Ministers, bearing distinctly upon a question before the Senate, made directly and officially to a foreign Government, is sent to us by the Executive, without explanation or disavowal, I know not how we are to avoid the conclusion, that the Minister has spoken a language authorized by his Government. More especially must that be the case when the declaration of the Minister, instead of being disavowed by his Government, is substantially in accordance with the declarations of its official organ, the Secretary of State. If this assumption be correct, much light, as to the views of our Government, may be derived from the correspondence before referred to, between Mr. Poinsett and Mr. Clay. In the letter of the former to the latter, of the 28th September, 1825, we find the following sentiments: "I "first objected to the exception in favor of the Ame-"rican Nations, formerly Spanish possessions, on the "ground that no distinctions ought to be made between "any of the members of the Great American Family. "That Great Britain having consented to such a provision, "ought not to influence the American States, because "the Republics of America were united by *one and the "same interest*, and that it was the interest of the Euro-"pean Powers to cause such distinctions to be made, as "would divide it into small confederacies, and, if possible, "to prevent us from uniting, so as to present one front "against the attempts of Europe, upon our Republican "Institutions." And afterwards still more explicitly, as follows: "I then recapitulated the course of policy pur-"sued towards the Spanish colonies, by our Government, "which had so largely contributed to secure their inde-"pendence, and declared what *further* we were willing "to do to *defend their rights and liberties;* but that this "could only be expected from us, and could only be ac-"complished, by a *strict union of all the American Repub-"lics*, on terms of perfect equality and reciprocity; and "repeated that it was the obvious policy of Europe to "divide us into small confederacies, with separate and "distinct interests; and as manifestly ours *to form a single "great Confederacy, which might oppose one united front to "the attacks of our enemies.*"

So far from disapproving the sentiments thus avowed

by Mr. Poinsett, in his letter of the 28th September, Mr. Clay, in his despatch to Mr. Poinsett, of the 9th of November, holds the following language: "Again the United Mexican Government has invited that of the United States "to be represented at the Congress of Panama, and the "President has determined to accept the invitation. *Such "an invitation has been given to no European Government, "and ought not to have been given to this, if it is not to be "considered as one of the American Nations.*" It is, therefore, fair to conclude, that the language of Mr. Poinsett to the Mexican Government was authorized by his own; and if this be conceded, the views of the Executive must be such as I have contended. With these views, ought we to join a Congress thus constituted? I contend we ought not if we could, and that the power to do so is not conferred by the Constitution. I will not detain the Senate by the discussion of either of those points. The first is too plain to require elucidation—and in noticing the second, (the constitutional objection,) I only repeat an objection, first made on this floor by my friend from Virginia, (Mr. RANDOLPH.) The distinct and impressive view he has taken of it, and the knowledge that the point has been fully considered, and will be thoroughly discussed, by at least two other gentlemen, (Messrs. BENTON and BERRIEN,) induces me to desist from doing so myself.

Such in my judgment, is a correct view of the first great question arising on the subject of the Panama mission. I will now ask the attention of the Senate to the next branch of the subject, viz: THE BUSINESS TO BE TRANSACTED at the Congress, and particularly that portion of it in which we have been invited to participate. Unless I greatly deceive myself, the difficulties will be found to multiply as we proceed in the discussion of the matters proposed to be acted upon, so far as the United States are concerned. There are those which, in the view of the Spanish American States, as well as of our own Government, are of primary importance; and others of a secondary character, which, although they would not have furnished adequate inducement for the invitation or acceptance, are still deemed worthy of consideration if our Ministers attend. *Of the former, stipulations on our part to make common cause with the Spanish American States, in the event of any European Power assisting Spain to re-establish her dominion in Spanish America, and resistance to European Colonization on this continent*, stand in the front ground. But for these, the United States would never have been invited to send a Representative to the Congress of Panama. But for these, the presence of our Deputies would cause embarrassment, instead of affording facilities to the confederate States. Never, in the course of the little experience which it has been my good or ill fortune to have had in public affairs, have I been more thoroughly disappointed, as to the probable course of discussion upon any point than I have been upon this. That our Ministers, or Commissioners, or Deputies, or whatever else they may be called, shall be fully empowered to enter into an agreement (in whatever form gentlemen may please)—first, that the United States, upon the happening of the *casus fœderis*, the interference of any of the Powers of Europe, in the struggle between Spain and her revolted Colonies, shall make common cause with the latter in repelling such interference; and, secondly, that we shall resist, either jointly or separately, all attempts on the part of any European Power to establish new colonies in this hemisphere, are matters so precisely enumerated, and so clearly concurred in by all parties, that I did not imagine either that the views of our Government, or those of the Spanish American States, in regard to them, could be misunderstood by any honorable gentleman. Judge then of my surprise, to hear it denied from all quarters that such views are entertained by the Executive—to hear it announced, that if there were grounds to believe that any such agreement was contemplated, there would be perfect unanimity in the Senate in checking, in its birth, a design so adverse to the interests of this country. A state of things so unexpected, necessarily changes the course of discussion from an attempt to prove the impolicy of the contemplated measure, to the establishment of the position that such, in reality, are the views of the Executive. From the year 1818 to 1823, a sort of rivalship existed in this country, between the President, (Mr. MONROE) and a *quasi* opposition to his administration, on the subject of Spanish American affairs. On the one hand, the boldest steps were taken to impel the administration to the recognition of the independence of Spanish America, accompanied by unreserved censures on the imputed reluctance and timidity of the Government. This spirit was combated, on the part of the administration, by ascribing their conduct to a prudent and circumspect policy, designed to effect the greatest good with the least possible hazard. Time will not permit the enumeration of the various acts of the contending parties on the political arena in reference to this matter: suffice it to say, that, in 1823, Mr. MONROE determined to crown the measures of the Government upon this subject, by adopting a course in relation to it, which, while it rendered efficient service to the Spanish American cause, could not fail to secure to his administration the reputation of being its greatest patron. In pursuance of this policy he, in his Message of December, 1823, among other things, said—"We owe it, therefore, to candor, and "and to the amicable relations subsisting between the "United States and those Powers [the Powers of Europe] "to declare that we should consider any attempt on their "part to extend their system to any portion of this he-"misphere, as dangerous to our peace and safety. With "the existing Colonies or dependencies of any European "Powers, we have not interfered, and shall not interfere. "But with the Governments who have declared their Inde-"pendence, and maintained it, and whose independence "we have on great consideration and on just principles "acknowledged, we could not view any interposition, for "the purpose of oppressing them, or controlling, in any "manner, their destiny, by any European Power, in any "other light than as the manifestation of an unfriendly "disposition towards the United States, in the war be-"tween those New Governments and Spain. We de-"clared our neutrality at the time of their recognition; "and to this we have adhered, and shall continue to ad-"here, provided no change shall occur which, in the "judgment of the competent authorities of the Govern-"ment, shall make a corresponding change on the part "of the United States, indispensable to their security." And further, in the discussion with Russia relative to the Northwestern coast of this continent, the occasion was embraced, "for asserting, as a principle, in which the "rights and interests of the United States were involved, "that the American continents, by the free and independ-"ent position which they had assumed and maintained, "were thenceforward not to be considered as subjects for "future colonization by any European Power."

The character and effect which has been given, or attempted to be given, to these declarations, is full of instruction as to the probable consequences of similar acts at this day. To say *here* that they did not pledge the United States to any course, would be superfluous. There are few who require to be informed that no declaration of the Executive could have that effect. But he had no such intention. He asserted (if you please) correct principles, but left us at liberty to act, or not, in enforcing them, as our interest or our policy might at the moment require: a question to be decided like all similar questions, by determining whether, under all circumstances, it will best promote the honor and interest of the country to act or stand still. But how strangely have these declarations been distorted not only by others, but

our public fmtionaries themselves. In a letter from the Secretary of Foreign Affairs of the Republic of Colombia, to the Envoy of the Republic of Buenos Ayres, of the 6th March last, announcing the assent of the Republic of Peru to the proposition of the General Assembly of the American States at Panama, and requesting the concurrence of the Government of Buenos Ayres, it is stated that among the objects of the Congress will be "to take into consideration the means to give effect to the "declaration of the President of the United States of A-"merica, in his Message to the Congress last year, con-"cerning the means to prostrate any ulterior design of "colonization upon this continent, by the Powers of Eu-"rope, and resist all interference in our domestic con-"cerns."

In the letter of invitation from the Mexican Minister, Mr. Obregon, of the 25th of November last, he says, the "Government of the subscriber never supposed nor de-"sired that the United States would take part in the Con-"gress about to be held, in other matters than those "which, from *their nature* and importance, the late ad-"ministration *pointed out* as being of *general interest to* "*the continent; for which reason*, one of the subjects "which will occupy the attention of the Congress, will be "the *resistance or opposition to the interference of any neu-*"*tral nation in the question and war of independence be-*"*tween the new Powers of the continent and Spain.* The "Government of the undersigned apprehends that, as the "Powers of America *are of accord* as to resistance, it be-"hooves them to discuss the *means* of giving to that resist-"ance all possible force, that the evil may be met if it "cannot be avoided; and the only means of accomplish-"ing this object is by a previous *concert* as to the *mode* in "which each of them shall lend its co-operation," &c.

"The opposition to colonization is in the like predica-"ment with the foregoing."*

Having this specified the objects of deliberation, he invites our Government to send "*Representatives*" to the Congress of Panama, with authorities as aforesaid, and with *express instructions* upon *the two principal questions.*

Mr. Salazar, the Colombian Minister, in his letter of invitation of the 2d November last, thus expresses himself upon the topics referred to: "The *manner* in which all "colonization of European Powers, on the American con-"tinent, shall be resisted, and *their interference* in the "*present contest between Spain and her former colonies* "*prevented*, are other points of great interest. Were it "proper, an eventual alliance, in case these events should "occur, which is within the range of possibilities, and "the treaty, of which no use should be made until the "*casus fœderis* should happen, to remain secret; or, if "this should seem premature, a *convention so anticipated* "would be different means to secure the same end, of "preventing foreign influence. This is a matter of im-"mediate utility to the American States that are at war "with Spain, and is in accordance with the repeated de-"declarations of *the Cabinet of Washington.*"

Mr. Canas, the Minister of the Republic of Central America, says, that, "as Europe has formed a *Continental* "*system*, and held a Congress whenever questions affect-"ing its interests were to be discussed, America should "have a system for itself, and assemble by *its Representa-*"*tives in Cortes*, when circumstances of necessity and "great importance should demand it."

The views entertained by those Governments, as to the condition of the United States, in relation to its obligation to resist any attempts on the part of Europe upon the two subjects referred to, appears still more clearly from the fact, stated by our Secretary of State, (Mr. Clay,) that when, in the course of the last Summer, an invasion of the Island of Cuba was apprehended, from the appearance of a French fleet in our waters, we were promptly called on, by the Government of Mexico, to fulfil the alleged *pledge* of Mr. MONROE, in his message of December, 1823. Such are the views and expectations of the Spanish American States, in inviting us to the Congress of Panama.

Permit me now to show how far these extravagant pretensions have been encouraged, countenanced, and recognized, by our own Government. I confess, sir, that I approach this part of the subject with regret and disappointment. If I know my heart, it harbors no inclination to view either this or any measure of the Government, with any other feelings than those of liberality and indulgence. But, if there be here no cause for censure, I am under the influence of the grossest delusion.

I have before had occassion to allude to the correspondence of Mr. Poinsett, our Minister at Mexico. The discretion of this gentleman is well known, and it is difficult, if not impossible, to conceive, that he would commit the honor and interest of his country, upon a point of great delicacy and importance, unless authorized by the letter of his instructions. The communications from the Executive contain no intimation of his having transcended his instructions; and the striking coincidence between *his* declarations, and those of the Secretary of State, leaves little ground to think that he has done so. In his letter to Mr. Clay, of the 28th of September last, speaking of his discussions with the Plenipotentiaries of the Mexican Government, upon the subject of the Commercial Treaty, then under negotiation, he says: "To these observations, "I replied that, against the power of Spain, they had "given sufficient proof that they required no assistance, "and the United States had PLEDGED THEMSELVES NOT to "permit any other Power to interfere, either with their "independence, or form of Government; and that, as, in "the event of such an attempt being made by the Powers of "Europe, *we would be compelled to take the most active and* "*efficient part, and to bear the brunt of the contest*, it was "not just that we should be placed on a less favorable "footing than the other Republics of America, whose ex-"istence we were ready to support at such hazards."

The language of the Secretary coincides with that of Mr. Poinsett. In his letter to the latter, of the 9th November, he thus expresses himself: "No longer than about "three months ago, when an invasion by France of the "Island of Cuba was believed at Mexico, the United Mex-"ican Government promptly called upon the Government "of the United States, through you, *to fulfil the memora-*"*ble pledge* of the President of the United States, in his "message to Congress, of December, 1823. *What they* "*would have done*, had the contingency happened, may "be inferred from a despatch to the American Minister at "Paris, a copy of which is herewith sent—which you are "at liberty to read to the Plenipotentiaries of the United "Mexican States."

Mr. President: Consider for a moment, the entire coincidence between the language expressed abroad by Mr. Poinsett, our Minister, and at home by Mr. Clay, the responsible organ of the Government, and if you do not concur with me in thinking it amounts to a recognition of a pledge on the part of the Government, of the character claimed by the Spanish American States, and an avowal of our readiness to redeem it, I will hereafter distrust the clearest deductions of my understanding. Had the opinion of the Executive been different, the language of our Government, instead of declaring what we would have done, "had the contingency happened," would have been, what it ought to have been, an explicit disavowal of all

* "Most of the new American Republics have declared their entire assent to them, and they now propose, among "the subjects of consultation at Panama, to take into consideration the means of making effectual the assertion of "that principle, (resistance to European colonization,) *as well as the means of resisting interference from abroad with* "*the domestic concerns of the American Government.*"—President's message to the House of Representatives.

obligation on the part of the United States to take any other part in any state of things, than that which the interests of the country might be supposed to require. But if a doubt could exist as to the views of the Executive, it would be dispelled by a reference to the invitations and letters of acceptances, especially when connected with the subjects referred to. In the letters of invitation, the Mexican and Colombian Ministers specify the subjects which, in their view, are of "*general interest to the Continent*," viz: resistance to European interference—and colonization—and request that our Ministers should have express instructions upon these two "principal questions." Our Government, without questioning the specification thus made at their instance, in the letters of acceptance, say, that our *Commissioners to the Congress* of Panama will be fully empowered and instructed upon all questions likely to arise in the Congress, on subjects in which the nations of America have a common interest. What those subjects are, had been stated by the parties inviting, with express reference to our explanations, and unequivocally assented to by us.* The President, in his message communicating the nominations, leaves the subject of European interference in the struggle between Spain and her former Colonies, to the correspondence between the Secretary of State and the inviting Governments, to which I have referred; but on the subject of colonization he contemplates an agreement between all the parties represented at the meeting, "that each "will guard, by its own means, against the establishment of "any future European Colonies within its borders." If these two prominent points were not intended, by our Government, to be the subjects on which stipulations were to be entered into at the Congress, what was meant by the President, in his declaration to the Ministers of Mexico and Colombia, that, in his opinion, "such a Congress might "be highly useful in settling several important questions "of public law, and in arranging other matters of *deep* "*interest to the American Continent?*" And if it be, indeed, true, that the proposed mission is designed to be no more than a matter of compliment to our sister Republics, without subjecting the rights or duties of the United States to the decision of that Congress, then why the solicitude, on the part of our Government, to adjust, previously, the powers to be given to the Deputies, and the mode of its organization and action? But I forbear to multiply proofs upon this point. Had it not been for the strong manifestation of unwillingness, on the part of the Senate, to enter into any such agreement, I am strongly inclined to think no question would have been made respecting it. With these Governments, above all others, it is both our duty and policy to observe the most scrupulous sincerity and good faith. With them, at least, we ought not to encourage expectations not intended to be realized—a course alike reprehensible in principle, and ruinous in its effects. It is, then, the design of the Executive to enter into an agreement at the Congress, (it is not material for the present in what form,) that if the powers of Europe make common cause with Spain, or otherwise attempt the subjugation of Spanish America, we shall unite with the latter, and contribute our proportion to the means necessary to make resistance effectual: and further, that we shall bind ourselves, at that Congress, as to the manner in which we shall resist any attempts, by the European Powers, to colonize any portion of this Continent. This design has been fully, frankly, and explicitly stated to the Spanish American States, and to us. Is the Senate of the United States willing to sanction a measure of that description? I care not for the present whether it be by treaty or by act, decree, or ordinance of the Congress. Will you, in any shape or form, preliminary or final, give to it your sanction? Upon this subject, at least, we have had "thoughts that breathe." In the confidence that I do not misunderstand them, I will venture to affirm that there is not a member on this floor who will avow his willingness to enter into such a stipulation. If mistaken, I desire to be corrected. No—I am not. Whatever may be his views, no one, within these walls, is yet prepared to give his sanction to such a measure—a measure by which the peace of the country is to be exposed to a contingency beyond the control of our Government—by which the great question of peace or war will be taken from the Representatives of the People—by which, instead of retaining that freedom of action which we now possess, we shall bind ourselves, in a certain event, to pursue a certain course, whatever those, to whom the government of the country may then have been committed, shall think the honor or interest of the country may require—by which, in the language of the Father of his Country, we "shall quit our own to stand on foreign ground." No—thank Heaven—a policy so opposite to all the feelings of the American People; so adverse, as I firmly believe it to be, to its true interests, has no friend, at least no advocate on this floor. If, by any act of ours, we contribute to its adoption, it will be, (and I derive infinite satisfaction from the conviction,) through a mistaken belief that the measure of which I speak is not contemplated by the Executive.

* The views here taken, are, it is contended, confirmed by the last Message of the President to the House of Representatives. The expressions of Mr. Poinsett were referred to in support of the following declaration of the Mexican Minister, contained in his note of invitation: "The Government of the undersigned apprehends that, as the Pow-"ers of America *are of accord as to resistance*, it behooves them to discuss the means of giving to that resistance all pos-"sible force, that the evil may be met, if it cannot be avoided; and the only means of accomplishing this object, is by "a previous *concert* as to the mode in which each *shall lend its co-operation*." And of that of Mr. Salazar, the Colombian Minister, that these views are "in strict accordance with the repeated declarations and protests of the Cabinet of Washington." Mr. Poinsett, in his communication with the Mexican Government, urges favorable commercial stipulations, on the ground of our liability to aid the Spanish American States in resisting European interference in their internal concerns. Mr. Clay, in his letter to Mr. Poinsett, refers that obligation to "the memorable pledge of the President of the United States, in his message to Congress, in December, 1823." In the report communicated to the House of Representatives, with the message now referred to, the Secretary says: "If, indeed, any attempt by "force had been made by allied Europe, to subvert the liberties of the Southern Nations on this Continent, and to "erect upon the ruins of the free institutions, monarchical systems, the People of the United States would have *stood* "*pledged*," in the opinion of the Executive, not to any foreign State, but to themselves and their posterity, by their "dearest interests and highest duties, to resist to the utmost such an attempt; and it is to a pledge of that character "that Mr. Poinsett alone refers." These are but different modes of accounting for and describing the same thing. An obligation on our part, in a certain event to assist Spanish America, equally warranting the inference that the Southern Republics expect that stipulations upon that subject will be made at the Congress of Panama, and that our Government are willing to do do so; no one supposed that Mr. Poinsett had been specially instructed to make or renew any pledge upon this subject, or that he had done so. He was instructed to "impress the principles of the "Message of Mr. Monroe, in 1823, upon the Government of the United Mexican States," and he has done it in a manner satisfactory to our Government. What that manner was, the above extracts from his letter show.—*Note by Mr. V. B.*

It has, I am aware, been asserted, that, if such views are elsewhere entertained, they can be effected by treaty only, and that the Senate may refuse its sanction. That this would be the fate of such a treaty, is certain. But, if correct in my position, that the Executive has distinctly apprized you of his intention to negotiate such a treaty, with what propriety can you refuse to ratify? What excuse can you give your friends, the Spanish American States, for the entire prostration of all the expectations you have raised?

What justification will you be able to render to your constituents for the exacerbation which would result from the rejection of stipulations, deriving sanction from your acquiescence, if not your approval? None that I can perceive; none, most certainly, that they will approve.

But let it be supposed that I mistake the intention of the President and his Cabinet—that our Ministers are to have no such instructions. Reject, if you please, the irresistible evidence of a fixed determination on the part of the Executive, to form, with the South American States, a dangerous political connection.* What, let me ask, will be the consequence of declining a proposed co-operation? Let it be remembered that they consider the recognition of their independence by Spain as essential to their security; that their only ground of apprehension is the assistance which may be yielded to Spain by the Powers of Europe, and that, to prevent this aid, they place reliance on the anticipated compact with us. Can there then be a doubt whether a failure to enter into the proposed stipulations would tend to impair our friendly relations? Will they not refer you to your own exposition of the message of Mr. Monroe, of 1823; to the assurance given by Mr. Poinsett to the Mexican Government; to the despatch of Mr. Clay in reply to their application; to the explicit avowal of *their* motives in inviting us to the Congress; and to our unreserved acceptance of that invitation? And if holding to our view this mass of evidence, which, unfortunately, it would not be in our power to palliate, to cancel, or deny, they should charge us with insincerity and duplicity—where would we find an advocate so unblushing as to attempt our justification, or to urge that our conduct had been marked with the frankness and singleness of purpose which are the surest defence of all Republican Governments, and have hitherto been the boast and glory of our own? The fair fame of our Republic would be tarnished—shame would precede our approach—and disgrace follow in our path. Is it possible, if such be the natural, the inevitable result of the favorable construction assumed by the advocates of the mission, that the mission itself can receive the sanction of the Senate, or the support of the People?

The subject I have thus far considered, is avowedly the principal inducement to the mission. Others, of subordinate character, have been thrown out for consideration; but I affirm, that there is not one wholly free from serious objection—not one from which there is reasonable ground to expect either credit or advantage. I will briefly consider those suggested in the Message. And, first, that which may justly be said to be least objectionable: "*The "consentaneous adoption of principles of maritime neutra-"lity,*" such as, "*that free ships shall make free goods, and "the restriction of reason upon the extent of blockades.*"—To effect this object, it is not necessary to unite with the Congress at Panama. It may be reached in another way. That it can be better attained at the Congress is mere conjecture. The probability is different. No evidence is afforded that the Ministers of the Confederate States will be empowered to enter into treaties concerning their foreign relations. But, should it be otherwise, what great object remains to be accomplished? With the Republic of Colombia, standing at the head of the Confederacy, we have already entered into a treaty, containing all the proposed stipulations. With that of Central America, we have been alike successful. With Mexico, we have reason to believe that a similar treaty has been formed, and *we know*, if our negotiation with that Government is not yet finally concluded, that this point presents no serious obstacle. Can it, then, be urged by any honorable member, that he apprehends serious difficulty in negotiating treaties with the smaller States, similar to those we have already concluded with the larger? I think not. Why, then, go to Panama?

But, if any such object could be accomplished at the Congress, is this the time most suitable to effect it? In my judgment it is not. The reasons are obvious. Those States are at war. Their views, like those of other States, will be controlled by their condition. The relation of neutral and belligerent is not the state best adapted to the amicable adjustment of neutral rights. The interests of the parties are adverse—the war in which they are engaged involves their existence, and they may not now be disposed to believe the adoption of a principle is expedient, because they know it to be just. But when are the principles, proposed to be established, to have their beneficial operation? During the present war, they cannot. Take, for instance, the stipulation that free ships shall make free goods. A modern condition attached to that stipulation is, that it shall be binding only in cases where the property sought to be protected by the flag of the neutral, belongs to the citizens or subjects of a country, whose Government is bound by a similar engagement. We have a stipulation in our treaty with Spain, that free ships shall make free goods. Suppose the case of goods belonging to the citizens of either of the Spanish American States, found on board of one of our vessels. Will Spain respect it? No. She denies the capacity of her revolted Colonies to enter into treaty stipulations, and she seizes the property as belonging to her rebellious subjects. Unless, therefore, you can force Spain to recognize their Independence, you cannot oblige her to respect, as far as regards them, this article in our treaty with her. If Spain does not, as she assuredly will not, will the Southern Republics? Can you expect it? Ought you to ask it? *And Spain and those Republics are the only belligerents.* If the operation of the desired stipulations is to be deferred to a future period, to that period let their settlement be also deferred. At present there is little reason to hope that, upon this point, any advantageous stipulation can be made at the Congress. The enumeration of these objects may serve to make, on paper, an imposing parade; but on paper only.

I forbear to notice the objectionable manner in which

* In the late message of the President to the House of Representatives, sent after the decision of the Senate, he represents his views upon this subject, in the following explicit terms:

"Compare our situation and the circumstances of that time, with those of the present day, and what, from the "very words of Washington, then, would be his counsels to his countrymen now? Europe has still her set of primary "interests, with which we have little or a remote relation. Our distant and detached situation, with reference to "Europe, remains the same. But we were then the only independent nation of this hemisphere, and we were surrounded by European colonies, with the greater part of which we have no more intercourse than with the inhabitants "of another planet. Those colonies have now been transformed into eight independent nations, extending to our "very border. Seven of them, Republics like ourselves, with whom we have an immensely growing commercial, "and *must* have, and have already, important political connections."—*Note by Mr. V. B.*

these principles of international law are proposed to be settled; the occasion does not require it.

"*The indirect influence which the United States may* "*exercise upon any projects or purposes originating in the* "*war, in which the Southern Republics are still engaged,* "*which might seriously affect the interests of this Union,*" is another of the objects referred to by the Executive as among the "contingent and eventual motives" to the mission. I subscribe to the complaints of the worthy gentleman from Tennessee (Mr. WHITE,) of the want of clearness in the diplomatic language held throughout upon this subject. Why not specify what those "projects or purposes" are supposed to be, so that we may act understandingly? This part of the Message is, however, supposed to refer to the probable designs of the Confederate States upon the Islands of Cuba and Porto Rico. The gentleman from Rhode Island (who, unlike most of those who agree with him in opinion, has assigned the reasons which will determine his vote) supposes that nothing can be decided by the Congress on this subject. In this he is doubtless mistaken. We have before us abundant evidence, that, if the independence of Spanish America is not recognized by old Spain, the fate of those islands is to be settled by the Congress of Panama. Mr. Salazar informs our Government "that the fortune of these Islands must be *decided* in the Congress of the Isthmus of Panama." Assuming (as we may) that this will be the case, can we effect any thing by sending a representation to that Congress? I have earnestly reflected on this branch of the subject, as one in which the United States are deeply concerned, and the result is a conviction, that, under existing circumstances, no benefit whatever can result from the measure proposed. Before I assign my specific reasons for this opinion, I shall be excused for a brief reference to the novel and embarrassing position of our deputies in offering advice on the fate of Cuba and Porto Rico. They must present themselves as the Representatives of a Power which seeks a peace through the mediation of another Power, which maintains, *theoretically*, the right of Spain to the Islands in question; as the Representatives of a Power which has advocated a peace by which they are to be forever condemned to Spain. They go to confederate with a Congress of free States for the purpose of *resisting* the designs of the Holy Alliance; and of *supporting*, so far as Cuba and Porto Rico are concerned, the views, if not the doctrines, of the Holy Alliance; and that too under the auspices of the very head of that unhallowed combination. We affect to glory in the success of the principles upon which the Revolution of Spanish America is founded —but still consent to become the advocates of a peace which will condemn Cuba and Porto Rico to the yoke of Spain; and, for the very justifiable and consistent reason, that our *interests* require it!! But, leaving these glaring inconsistencies to their merited fate, what are we to do? What can we do? It is contended that the interests of our country require that the condition of Cuba should remain unchanged—that upon this point we should hazard every thing. Admit the fact: Will our Ministers be allowed to take that ground? Can the *Executive* instruct them to protest against any movements on the part of the Confederate States against those Islands?—to admonish them of its impropriety, and denounce resistance? No, sir. Upon a subject of such vital importance, the only one in which our presence at the Congress could be useful, the Executive has already taken a step which *he* can never retrace. Deceived by the artful letter of Count Nesselrode; misled by the unsuspecting confidence of Mr. Middleton; and supposing that the Emperor Alexander would undertake, in earnest, the desired mediation, and that, under his high auspices, its success would be inevitable; he has solemnly declared that we *ought not* and *will not* resist the attempts of the Confederates upon these Islands, should Spain refuse compliance. In the letter from Mr. Clay to Mr. Middleton, of the 10th of May last, instructing him to invite the mediation of Russia, which *was read to the Colombian Minister*, and communicated to the principal European Governments, it is declared, "and thus the Peninsula, instead of deriving the revenue and the aid so necessary to the revival of its prosperity from Cuba and Porto Rico, must be further drained to succor those Islands; for it cannot be doubted, that the new States will direct their combined and unemployed forces to the reduction of those valuable Islands. They will naturally strike their enemy wherever they can reach him, and they will be stimulated to the attack by the double motive arising from the richness of the prize, and from the fact that those Islands constitute the rendezvous of Spain, where are concentrated, and from which issue, all the means of annoying them which remain to her." Having understood that an expedition was fitting out at Carthagena against Cuba or Porto Rico, by Colombia, or Mexico, or both, our Secretary of State, on the 20th of December last, addressed notes to the Ministers of those Governments, in which, after assuring them that by late advices from St. Petersburg, he was enabled to say that the appeal to the Emperor of Russia had not been without effect, and that there was reason to believe that he was then exerting his friendly endeavors to put an end to the war, he solicited their Governments, in the name of the President, "to forbear to attack those Islands until a sufficient time has elapsed to ascertain the result of the pacific efforts the great Powers are now making on Spain." These communications were transmitted by those Ministers to their respective Governments; and, finally, in the letter from the Secretary to Mr. Middleton, of 26th Dec. he thus explicitly communicates the views and opinions of this Government on the subject: "We cannot allow the transfer of the Islands to any European Power. But if Spain should refuse to conclude a peace, and obstinately resolve on continuing the war, although we do not desire that either Colombia or Mexico should acquire the Island of Cuba, *the President cannot see any justifiable ground on which we can forcibly interfere.* Upon the hypothesis of an unnecessary protraction of the war, imputable to Spain, it is evident that Cuba will be her only *point d'appui* in this hemisphere. *How can we interpose, on that supposition, against the party* CLEARLY HAVING RIGHT ON HIS SIDE, *to restrain or defeat a lawful operation of war?* If the war against the Islands should be conducted by those Republics in a desolating manner; if, contrary to all expectation, they should put arms into the hands of one race of the inhabitants to destroy the lives of another; if, in short, they should countenance and encourage excesses and examples, the contagion of which, from our neighborhood, would be dangerous to our quiet and safety; the Government of the United States might feel itself called upon to interpose its power. But it is not apprehended that any of those contingencies will arise, and, consequently, it is most probable that the United States, should the war continue, will remain hereafter, as they have been heretofore, neutral observers of the progress of events." Mr. Middleton was directed to communicate the contents of this letter to the Russian Government, and they were, doubtless, also communicated to the Colombian and Mexican Ministers, with the views which induced the communication to them of the former letter to Mr. Middleton on the same subject.* Now, sir, should the Confederate States think the invasion of those Islands necessary to the successful prosecution of the war, can our Ministers at the

* This important letter has not been laid before the House of Representatives.—*Note by Mr. V. B.*

Congress, with these deliberate opinions and unequivocal declarations of our Government, raise a voice against the measure? If they did so, would not the Deputies from the other States charge our Government with insincerity?—would not the evidence to support the imputation be complete?—and is it not in their possession? Is it reasonable to expect, that, in a war, waged not only for their security, but existence, they could be induced to be more attentive to our interests than their own? No, sir, in my judgment, the period for efficient operation on that point, *through the agency of Ministers*, has passed away. If the United States are willing, if it be their interest to resist, at all hazards, and by whomsoever attempted, the invasion of those Islands, the manifestation of that resolution, to be efficient, must proceed from another branch of the Government—the Legislature. They are, fortunately, unfettered by diplomatic entanglements. If our Deputies there cannot effect this object, what are they to do? Surely not to countenance measures which may be adopted by the assembled States against those Islands. This would be not only to counteract our views, but make ourselves, at once, a party to the war. Suppose that, doing neither, they remain passive spectators, and the invasion is directed by the Congress. Being a war measure, all proceedings upon it must be secret. Can we hope to allay the awakened jealousies of Spain, that we have connived at, if not sanctioned, the invasion of her territory? Will we not, at all events, be driven to the necessity of extensive and humiliating explanations to the Government immediately concerned, and to those to whom we have made professions on the subject? Why thus embarrass ourselves? Why render our relations upon this subject more complicated than they are? Is it to favor Old Spain? No—we have uniformly disapproved and reprobated her conduct. We owe her nothing. Whatever we may say to the contrary, we know, and, what is more, the world knows, that it is solely on the ground of the utter helplessness of her condition, that we wish the continuance of her dominion over these Islands. To favor the Southern Republics? They do not admit that this is a subject in which we have any concern. It is not one in which they have asked or expect us to take a part. They know that we cannot interfere without violating our neutrality. They do not want our aid, and would only be embarrassed by our interference. Is it for the benefit of these Islands themselves? No—we have deliberately abandoned them to their fate. We have formally acquiesced in the hopelessness of their condition, and labored to make their connexion with Spain indissoluble. In this particular, at least, our interference and our counsels have been adverse to those free and liberal principles, in whose success, in the South American States, we so justly and so cordially triumph. Such is now our embarrassing condition. How has it been produced? Is it not evidently the result of a course of measures which we seem determined to prosecute still farther? Is it not the fruit of over action, of an unwise anxiety to figure in great concerns? Of an ambition to take upon ourselves the business of other nations, to the prejudice, if not neglect, of our own? How different would have been our condition, if, instead of all this diplomacy, we had simply and plainly informed the Governments of Spanish America what we have said to the Powers of Europe; that we would not suffer the occupation of the Island of Cuba by any other Power except Spain, cost what it might. Depend upon it, sir, we should then have had no difficulties concerning Cuba; nor would we have been reduced to the necessity of sending Deputies to the Congress of Panama, to extricate ourselves from the meshes of our own weaving.

But we are informed by the President, that we "*may exercise good offices which may ultimately contribute to bring the war to a speedy termination.*" Where lies the difficulty, permit me to ask, in the way of pacification? With Old Spain? What is the great point in controversy? Independence. Shall *we* become the advocates of its surrender? Shall we urge upon the new Republics to purchase it by degrading concessions, or by any which they have not already evinced their willingness to make? Mexico and Colombia have already declared their readiness, upon the acknowledgment of their Independence, to desist from any attempts upon Cuba and Porto Rico. Their sincerity cannot be doubted. Have they any thing else to offer as the price of their recognition? Is it commercial preferences, the equivalent of Hayti to France?

The President intimates that, at times, they have evinced this disposition. But he would doubtless be the last to encourage a measure so fatal to our interests. Nothing, therefore, can be done, not already attempted, without success. If we must appear in the office of mediators—an object of so much apparent solicitude with our Government—let our appeals be directed to Spain, where alone they can be availing. But, let us remember, that our admonitions, our remonstrances, our solicitations, will derive no additional weight from the circumstance that they emanate from the bosom of a Congress, composed, with the single exception of the United States, of the Representatives of her confederate foes. Will we not, on the contrary, by the proposed step, render all our future efforts abortive? Shall we not, by it, have taken a stand, inconsistent with our assumed mediatorial office?

The next subject proposed by the President, is *the influence our Representatives at the proposed Congress may have in promoting the advancement of religious liberty.* Upon this subject he says, "There is yet another subject "upon which, without entering into any treaty, the moral "influence of the United States may, perhaps, be exert-"ed, with beneficial consequences, at such a meeting—"the advancement of religious liberty. Some of the "Southern Nations are even yet so far under the domi-"nion of prejudice, that they have incorporated with "their *political constitutions* an exclusive church, with-"out toleration of any other than the dominant sect. "The abandonment of *this last badge of religious bigotry* "may be pressed more effectually by the united exer-"tions of those who concur in the principles of freedom "of conscience, upon those who are yet to be convinced "of their justice and wisdom, than by the solitary efforts "of a Minister to any one of the separate Governments."

The strong ground upon which this matter has been placed by the Committee, would render any thing like an elaborate discussion of it by me inexcusable. "That the Apostolic Roman Catholic Religion shall be the Religion of the State," is among the foremost articles in all the Constitutions of the Spanish American States, as it was in the late Constitution of Old Spain. It is not to be doubted, that most of the leaders in Old Spain, during the Constitutional Government, and the Patriots who achieved the Independence of Spanish America, were as just and liberal in their religious, as they have shewn themselves to have been in their political principles! It is not within the laws of character like theirs, to be the advocates of intolerance of any description. It is, therefore, but fair to presume, that exertions in favor of religious toleration were omitted, from a conviction that they could not have been made without disturbing the public feeling to an extent injurious, if not destructive, to the great object of the Revolution.

This inference is fully confirmed by the testimony of those who have had opportunities to become acquainted with the subject. From these we learn that the establishment of the Roman Catholic Religion was a matter of indispensable necessity. They inform us, that the Patriot cause was greatly indebted for its success to the exertions of the lower order of Ecclesiastics, who, in opposition to the Bishops, threw the great weight of their influence into the Revolutionary scale: that all that order, and those they influence, constituting the physical force of the country, would, unhesitatingly, desert the party who aban-

doned what they honestly consider to be the only true faith. Add to these considerations the fact, that there are no sects in the country, and we will, perhaps, have more reason to commend the discretion of the Patriots in leaving that matter to the silent progress of liberality in public sentiment, than to censure their seeming insensibility to what the President justly regards as among the greatest of all human privileges—religious freedom. It appears to me, (with deference to the high source from whence this suggestion proceeds,) that, from all we know of the great body of the People, nothing could have a greater tendency to defeat the objects of the Congress, and to endanger, if not destroy, the present order of things in Spanish America, than the promulgation of the idea that any change or modification in the religious establishment of the country, was, in any way, to be effected or accelerated at that Assembly. If we send Deputies there with any such views, however restricted in their powers, their arrival will be regarded as a calamity. The committee have spoken with great truth of the public opinion in this country on the subject of interference, direct or indirect, with the internal concerns of other States, and especially of that most delicate of all subjects—the religion of its inhabitants. On a reference to the treaties between the Confederate States, it will be seen that the views expressed are in strict conformity with theirs. It will be seen that, on this subject, they were not willing to trust to construction, but inserted express stipulations, against any interference with the internal concerns of the respective States.

[Mr. VAN BUREN said, that he had thus far discussed the subject without reference to the question, how far the adoption of the measures proposed would conflict with our neutral obligation, and thus conduce to a war with Spain. He then proceeded to the discussion of that branch of the subject; declaring, at the same time, that it had been so fully and so ably discussed by the gentleman from South Carolina, (Mr. HAYNE,) from New Hampshire, (Mr. WOODBURY,) and from Tennessee, (Mr. WHITE,) that he despaired of being able to do more than repeat objections which had already been urged with so much eloquence and ability. The remarks he made are not published. He then continued]—

I will now, Mr. President, call the attention of the Senate to another view of this subject, to a question of the gravest character, and most deeply affecting the dearest interests of the country—a question growing out of considerations which have heretofore occupied the best minds, and interested the purest hearts our country has produced: "WOULD IT BE WISE IN US TO CHANGE OUR ES-"TABLISHED POLICY UPON THE SUBJECT OF POLITICAL CON-"NEXIONS WITH FOREIGN STATES?" The President has said, that, "to form alliances," is not among the motives of our attendance at the Congress. But what description of alliance does he mean? They are of various kinds, and of different extent. We are, at that Congress, to stipulate in some form, (and I care not in what,) that we will resist any attempt at colonization, by the Powers of Europe, in this hemisphere, (or within our own borders if you please,) and that, in the event of any interference on their part, in the struggle between Spain and the Spanish American States, we will make common cause with the latter in resisting it. To this end we have been invited, and upon these points we have promised that our Ministers shall have *full powers*. We must do this, or the whole affair becomes empty pageantry; which, though it may be the offspring of personal ambition, will assuredly terminate in national disgrace. Call it an "alliance," or whatever name you please, it is a *political connexion*, at war with the established policy of our Government. And is this a light matter? Sir, when it is proposed to subvert a fundamental principle in our foreign policy, in the support of which we stand ALONE among all the nations of the earth—which, commencing with our Government, is endeared to the People, and upon whose deep foundations has been erected the magnificent superstructure of unequalled national prosperity—it surely becomes those entrusted with the management of affairs, to pause, and weigh, with scrupulous exactness, the importance of the step.

In the discussion of this subject, I shall first consider the general principle; then the grounds of the distinction attempted to be made between its application to the Spanish American States, and to those of Europe. At this moment the United States (thanks to the wisdom of their early counsels!) are unfettered. No Government has a right to demand our aid or interference in any of the changes in the condition of the world—come what may, we are now unembarrassed in our choice. Until lately, I had flattered myself that the acknowledged obligation on the part of our Government to maintain that condition, was as firmly fixed as its Republican character. I had the best reason to think so, because I knew it to be a principle in our public policy, which had for its support all that is instructive in experience, all that is venerable in authority. That authority is no less than the parting admonitions of the Father of his Country. The earnest, eloquent, and impressive appeals upon this subject, contained in his Farewell Address, are yet, and will, I trust, long remain, fresh in our recollections; nor were the sentiments he thus avowed mere speculative opinions, founded upon an abstract consideration of the subject. No! they were sentiments matured by reflection, and confirmed by actual experience, of the practical results which had arisen from a connexion of the character he so ardently and so justly deprecated. A reference to the history of that period will illustrate the fact, and is replete with instruction. During the war of our Revolution, we entered into an alliance with France, "the essential and direct end of which was, "to maintain effectually the liberty, sovereignty, and inde-"pendence, of the United States, absolute and unlimited, "as well in matters of Government as of commerce." By the treaty of alliance, we, in consideration of the guarantee by France of the freedom and independence of the United States, undertook, on our part, to guaranty to France the possession she then had in America. The revolution in France involved that country in war with the principal Powers of Europe. Her American possessions were brought in danger; and, among other things, claimed under the treaty of alliance, she called upon us for the fulfilment of our guarantee. At no period of our history has our Government been placed in a more humiliating and embarrassing situation. The signal benefits we had received from France were known to the world, and fully appreciated by our citizens. Upon the terms of the compact there could be no dispute. The consideration upon which we had entered into it, was of the most sacred character. But the danger of compliance was imminent, and prevailed over every other consideration. Reposing itself upon the great principle of *self-preservation*—a principle extending itself as well to nations as individuals—our Government refused to comply with its engagement; and General Washington issued his celebrated proclamation of neutrality. The grounds relied upon to justify the step were, that our alliance was a *defensive* one only; that the war, on the part of France, was an *offensive* war, in which we were not obliged, by the law of nations, to take part; that the contest was, moreover, so unequal, and our means so inadequate, that, upon the principle of self-preservation, we were justified in refusing to take part with our ally. It was not expected that France would acquiesce in the validity of the grounds thus taken. She did not. The loud solemn protests of her Ministers are remembered; as, also, the measures resorted to for the purpose of obtaining, indirectly, some of the advantages claimed from the alliance: such as fitting out vessels of war in our ports, and enlisting our citizens in her service. England remonstrat-

ed, made strong imputations of partiality against our Government—imputations founded on suspicions growing out of the known connexion between us and France—and resorted to similar means to annoy her enemies and commit our neutrality. General Washington found it impossible to satisfy either party of the strict impartiality that governed our conduct. The result was war, in fact, with France, and many of the evils of war with England. She enforced against our commerce new and unjustifiable principles of public law on the subject of blockades and articles contraband of war. The sagacious mind of Washington, and the great men who enjoyed his confidence, traced the multiplied embarrassments of the country at that trying period, *to the treaty of alliance with France.* Had it not been for that, the task of preserving our neutrality would have been comparatively easy. There would then have been wanting those great sources of discord, unsatisfied claims of right on the part of one belligerent, and food for jealousy on the other. It was under a deep conviction of this truth, that that inestimable man was induced to address his countrymen in language like this. I will make no apology for reading it. I hope to God that the time will never arrive when an apology will be necessary for reading any thing to an American Senate, emanating from him, and bearing upon a question before it.

Extracts from the Farewell Address of General Washington.

"The great rule of conduct for us, in regard to foreign "nations, is, in extending our commercial relations, to "have with them as little *political* connection as possible. "So far as we have already formed engagements, let them "be fulfilled with perfect good faith.—Here let us stop.

"Europe has a set of primary interests, which to us "have none, or a very remote relation. Hence, she must "be engaged in frequent controversies, the causes of "which are essentially foreign to our concerns. Hence, "therefore, it must be unwise in us to implicate our-"selves, by artificial ties, in the ordinary vicissitudes of "her politics, or the ordinary combinations of her friend-"ships or enmities.

"Our detached and distant situation invites and enables "us to pursue a different course. If we remain one Peo-"ple, under an efficient Government, the period is not "far off, when we may defy material injury from external "annoyance; when we may take such an attitude as will "cause the neutrality we may at any time resolve upon, to "be scrupulously respected; when belligerent nations, "under the impossibility of making acquisitions upon us, "will not lightly hazard the giving us provocation; when "we may choose peace or war, as our interest, guided by "justice, shall counsel.

"Why forego the advantages of so peculiar a situation? "Why quit our own to stand upon foreign ground? Why, "by interweaving our destiny with that of any part of "Europe, entangle our peace and prosperity in the toils of "European ambition, rivalship, interest, humor, or caprice?

"'Tis our true policy to steer clear of permanent al-"liances with any portion of the foreign world; so far, I "mean, as we are now at liberty to do it: for let me not "be understood as capable of patronizing infidelity to ex-"isting engagements. I hold the maxim no less applicable "to public than to private affairs, that honesty is always "the best policy. I repeat it, therefore, let those engage-"ments be observed in their genuine sense. But, in my "opinion, it it unnecessary, and would be unwise, to ex-"tend them."

"In offering to you, my countrymen, these counsels of "an old and affectionate friend, I dare not hope they will "make the strong and lasting impression I could wish; "that they will control the usual current of the passions, "or prevent our nation from running the course which "has hitherto marked the destiny of nations. But, if I "may even flatter myself that they may be productive of "some partial benefit, some occasional good; that they "may now and then recur, to moderate the fury of party "spirit; to warn against the mischiefs of foreign intrigue; "to guard against the impostures of pretended patriotism; "this hope will be a full recompense for the solicitude for "your welfare, by which they have been dictated."

His language was prophetic. "His admonition did not make the strong and lasting impression he wished." At the extra session of Congress, in May, 1797, his successor, in his message to that body, thus expressed himself:

Extract from the Message of President Adams to Congress, in 1798.

"Although it is very true, that we ought not to involve "ourselves in the political system of Europe, but to keep "ourselves distinct and separate from it, if we can; yet, to "effect this separation, *early, punctual, and continual in-"formation of the current chain of events, and of the politi-"cal projects in contemplation,* is no less necessary than if "we were directly concerned in them. It is necessary, in "order to the discovery of the efforts made to draw us into "the vortex, in season to make preparations against them. "However we may consider ourselves, the maritime and "and commercial Powers of the world will consider the "United States of America *as forming a weight in that "balance of power in Europe, which never can be forgotten "or neglected.* It would not only be against our interest, but "it would be doing wrong to one-half of Europe at least, "if we should voluntarily throw ourselves into either scale. "*It is a natural policy,* for a nation that studies to be neu-"tral, *to consult with other nations engaged in the same "studies and pursuits.* At the same time that *measures "ought to be pursued with this view,* our treaties with "Prussia and Sweden, one of which is expired, and the "other near expiring, might be renewed."

This communication was followed by the nomination of a minister (the present President of the United States,) to Berlin, to carry into effect the avowed object of the mission. This early departure from the principles, and disregard of the precepts of Washington, was met by the united and most vigorous opposition of the Republicans of that day. An attempt was first made in the Senate to defeat the mission, on the ground of its *inexpediency.* That failing, the appropriation was resisted in the House of Representatives, in a debate that lasted for several weeks. It was the direct cause of the first great collision, between the Republicans of that day, and the then President. A singular and extraordinary similarity will be found between the question then agitated, and the one now under discussion. It was then contended that the United States ought to *consult* with other nations engaged in the same studies and *pursuits,* and that *measures ought to be pursued* with that view. Those measures were understood to be the formation of political connections, (beyond the ordinary commercial treaties,) in order to secure co-operation in support of their common interest; and further, that it belonged to the President to decide on the question of the propriety of a mission for that purpose, and that the Senate were only to pass on the fitness of the persons nominated. What is now contended for, and what the policy we resist? That, having a common interest with the Spanish American States, we ought to meet with them in Congress—in the language of the Secretary of State, speaking in the name of the President, for the purpose of "settling "several important questions of public law, and arranging "other matters of deep interest to the American Continent." What those matters are, and how they are to be arranged, has, I hope, been fully developed; and further, that "*this "measure is deemed to be within the Constitutional com-"petency of the Executive;*" that we are only consulted to obtain our opinion on its "expediency," and because it is necessary to come to us for "an appropriation, without which, the measure cannot be carried into effect." Yes, sir, the first blow that was struck in that great contest, which subsequently convulsed the country, and the first

voice that was raised to arrest the current of events then setting in, were on points, to all substantial purposes, identical with the present. Is it not a startling, if not an ominous circumstance, that, so soon, under the present administration, we should have presented to us, in such bold relief, doctrines and principles, which, in the first year of that to which I have referred, laid the foundation of the most bitter and unrelenting feuds? Does the analogy stop here? The men who then opposed the mission to Berlin were denounced as oppositionists; as a faction who sought the gratification of their personal views, at the expense of the public good; they were lampooned, and vilified by all the presses supporting and supported by the Government, and a host of malicious parasites generalled by its patronage. Their weight of character, the purity of their lives, the consistency of their principles, and their force of reasoning, were alike unavailing. It was sufficient that they dared to think for themselves; to prefer what they regarded as the interests of their constituents, to the wishes of the Executive; to refuse a ready acquiescence in what was given them to do; and every puny whipster in the land felt himself at liberty, without in the least understanding the question involved, to misrepresent their acts, and impugn their motives. Respect for this body, and a just contempt for the venal efforts of venal men, restrains me from pushing the parallel farther. Covering themselves with the mantle of Washington, the Republicans of '98 labored manfully to strangle, at its birth, this political hydra, this first attempt, since the establishment of the Government, to subject our political affairs to the terms and conditions of a political connexion, with any foreign nation. I ask the indulgence of the Senate, whilst I read a short extract from a most able speech, made on that occasion by a man whom Mr. Jefferson described as being, in that stormy period, "the main mast of the ship." It shows the striking analogy between the questions.

Extract from the Speech of Albert Gallatin on Foreign Intercourse.

"The President of the United States conceives that it "is a natural policy for us to *consult* with other nations "engaged in the same studies and pursuits, and that *mea*-"*sures* ought to be *pursued* with this view. The late Pre-"sident thinks it unwise, by interweaving our destiny with "Europe, to entangle our peace, unwise to implicate our-"selves by artificial ties, unwise and unnecessary to ex-"tend our engagements. His opinion is emphatically ex-"pressed by these words, 'Here let us stop.'

"But if we adopt the policy to *consult* with other na-"tions—if measures are to be pursued with that view—if "we are to form new foreign political connections; how "can we hope to escape being unavoidably drawn into "the vortex? It was, after having thus communicated his "intention—it was in pursuance of that plan, that the "President thought fit to send a Minister to Berlin. With "Prussia, we have no commerce. Had commerce been "the object of that embassy, Sweden, Denmark, the "Hanse-towns, or Italy, would have been preferred. The "mission is avowedly and evidently of a political nature, "and, if we are to consult and to form connections with "nations, who may, in our opinion, be engaged in similar "pursuits with ourselves—if Prussia is considered as such "—with what nation in Europe may we not, and shall we "not, according to circumstances, consult, concert mea-"sures, and form political arrangements? It is from this "view of the subject that I have been induced, however "reluctantly, fully to state all the reasons which impress "upon my mind a conviction of the importance of the pre-"sent amendment, of the importance of checking at this "time, and in its birth, a system which tends to increase "our political connexions with Europe."

Mr. Gallatin was not alone: Macon, Nicholas, and a host of others, associated with him in defence of principles, in their view vitally important to the future prosperity of the country. Far beyond the reach of Executive patronage, they boldly contended for a principle taught by Washington, and which has since been consecrated by the approving voice of the People. Their labors shared the fate which, in all probability, awaits the exertions of those who, at this day, maintain their doctrines. They were outmustered at roll-call. *They* failed, mark it, by a majority of *four*. The force of Executive patronage, aided by a venal press, was too strong for them. But of what avail was success to their adversaries? A few more such victories, and their ruin was complete. The one party succeeded in the House, but the other out of it. The seed then sown took root. The doctrines of the dominant party, inherently unsound, stood rebuked before the power and eloquence of their adversaries, and speedily received the condemnation of the People; whilst the opposing principle, the principle for which we now contend, was rescued from the attack that was made upon it, and once more registered among the special canons of the American policy. Its advocates lived to see it placed upon a footing which they had every reason to believe would last, at least, the short period of their existence. But how uncertain are all things! "Let no man boast of to-morrow, for he knoweth not what a day may bring forth." The events of the last month form a striking commentary upon the text. It is now twenty-eight years since this transaction took place, and there are yet two persons on this floor who acted and voted together upon that great question. It has been to me a matter of much interest to witness their course at this day. Of the one I cannot speak, but hope for the best. The sentiments of the other (Mr. MACON) are on record. He is yet the same unwavering Republican that he was in '98. The principle now involved is the same as then. When that is ascertained, he exhibits neither trembling nor hesitation. With a mind vigorous, though mellowed by experience, firmly relying on the Republic, he follows the maxims of his early years. The circumstances under which I speak restrains me. But this much I will say: The man who has occupied a seat here and in the other House, during every administration of the Government, from the second year of its institution to the present day, and who has been wise enough to estimate, at their value, the miserable illusions of Executive favor, and who prefers the approbation of his own conscience to the meretricious smile of power; who can look back upon a life thus spent, with an entire consciousness that he never, in a single instance, postponed the interests of his constituents to promote his own; deserves to be regarded as a monument of fidelity and consistency, alike honorable to his State, and beneficial to his country. But to return to the circumstances of that eventful period: The ball of political revolution, which was set in motion by the debate on the Berlin mission, was pressed rapidly forward by successive measures of equally exceptionable character, until finally it effected the total overthrow of the party then in power, and the elevation of Mr. Jefferson to the Presidential chair. The creed of this great Father of our Political Church, was, "Peace, commerce, and honest friendship, with all nations; entangling alliances with none:" In strict conformity to the principle of Washington, advising an "extension of our commercial relations, but as "little political connection as possible. So far as we have "already formed engagements, let them be fulfilled with "perfect good faith; *but here let us stop!*" During the whole of Mr. Jefferson's administration, the whole of Mr. Madison's, and the first four years of Mr. Monroe's, (with a single attempted exception,) the principles avowed by the two great founders of the Republic were respected, and the result was good. The exception to which I allude was this: Influenced by that deep solicitude for the welfare of our Western brethren, which always has, and I trust always will, influence the councils of the country, the Government was, in 1803, induced to offer, through

Mr. Pinckney, our Minister at Madrid, "to guaranty to "the King of Spain, and his successors, his dominions be- "yond the Mississippi," if he would sell to the United States his possession between that and the river Mobile. The desire to obtain the cession, it is well known, grew out of the dispute relative to the navigation of the Mississippi, and the questions connected therewith. In the discussion with our Government, in 1818, relative to the cession of the Floridas, Spain brought forward that offer in 1803, claiming that it proposed a guarantee of her territory as far as the Isthmus of *Panama*, and desiring to make it a condition of the cession. The change of circumstances since produced in Spanish America, had taught her the immense value of the guarantee. Our Minister at Madrid, (Mr. Ervine,) denied that such an offer had ever been made. Mr. Pinckney's letter was produced. A controversy succeeded as to its construction, which resulted in an explicit declaration that, under no circumstances, would the United States make the guarantee in question. The altered state of things had shown that a stipulation, from which no harm was apprehended in 1800, could not, in 1818, be listened to for a moment. By sheer good fortune we escaped from this entangling connexion. What, sir, would have been the probable consequences, if Spain had accepted the guarantee which was claimed to have been offered? Instead of being the great patron of the Spanish American cause, we might, at this moment, have been engaged in a war, either with Mexico, for attempting to fulfil, or with Spain, for violating our guarantee; and yet, with all the lights of experience before our eyes, it is desired to hurry us into similar compacts, the consequences of which we cannot foresee, but which we well know may, by the course of events, compel us either to violate our plighted faith, or act against what may hereafter appear to be our best interests.

Our next attempt to form a foreign connexion, other than commercial, was the negotiation of treaties of concert and co-operation with England and the Republic of Colombia, on the subject of the Slave Trade. A brief sketch of the course and consequences of that ill-judged measure, will not be without instruction upon the subject before us. From 1794 to 1808, when the constitutional inhibition upon Congress in relation to the slave trade expired, a system of wise, and as far as the power of the Government extended, efficient legislation, was adopted for the suppression of that detestable traffic. From the latter period to the year 1819, our legislation assumed a wider range, and still more efficient character, until, finally, the offence was denounced as piracy, the punishment due to that crime prescribed, and the Executive clothed with power and means fully adequate to the execution of the law and the suppression of the trade; so far at least as our citizens were concerned. The measures then adopted, effected the purpose for which they were designed. They did more. They extorted from England, who, next to the United States, has recently been foremost in the adoption of means to this end, the unqualified admission, not only that the United States had been the first, but also the most successful, laborers in the cause of humanity.

Thus matters stood at the period which I have mentioned. Our Government, unfortunately not content with *well*, must seek for *better*, and the negotiations of which I speak were opened. So too with our affairs with the Spanish American States; they stand well; we have done all they expected of us, and more than they had a right to ask. What we have done, has reflected credit upon us, and has been serviceable to them. Not content with this, we are hurrying on in the usual course; partial success is leading us to injurious excess. But to return: the President negotiated a treaty with England, yielding, under certain modifications, the right of search, and authorizing a foreign power to enforce our own laws upon our own citizens. I need not state to this body the fate of that ill advised project. The treaty was defeated by a vote of the Senate. A similar one with the Republic of Colombia shared the same fate; and, although the vote against the English treaty was small, so rapidly did the sentiment of opposition to the principle increase, that the rejection of the latter treaty, at a subsequent session, was nearly unanimous. Who is there now on this floor, that would give his vote in favor of a similar measure? But it seems that the light of experience has been shed in vain upon this obstinate propensity to figure in the diplomacy necessarily growing out of foreign connexion. The results of the particular measures now referred to, were, as we all remember, contention at home, and dissatisfaction abroad; a correspondence with England, of not the most friendly character, in which long explanations were made necessary of the character of our Government, to satisfy other Powers that the President was not responsible for the act of the Senate. Explanations were made with great ability by the then Secretary of State, and subsequently enforced with equal ability by the present Secretary. The matter was understood here, and perhaps by the Governments to whom those explanations were made; but, to a great part of the world, it appeared that the zeal of the United States for the suppression of the slave trade, had abated. The high character we had acquired, for our early and unceasing labors in that great cause, was not indeed destroyed: for that could not be easily effected; but our motives were exposed to misconstruction, and are now misrepresented by those who do not understand the structure of our Government. Such, sir, was the consequence of this third attempt to surrender the control of our conduct, in the support of our rights, or the discharge of our duties, to foreign association: such the penalty of disregarding the warning voice of Washington—"never abandon our own to stand on foreign ground." Such are among the least evils that have, sooner or later, in a greater or less degree, been the consequence of political connexions between different nations, at all times, and in all places. Permit me to refer the Senate to a transaction of the same character between other States. In 1815, the Plenipotentiaries from the five great European Powers, viz: England, France, Russia, Prussia, and Austria, convened at Vienna, declared to the world that they would unite their means for the effectual suppression of the slave trade. The settlement of those means was deferred to a future period. At the conference of the Plenipotentiaries of the same Powers, in 1818, at Aix la Chapelle, an attempt was made to agree upon the means necessary to effect their declared object. Then occurred, what always will occur, except in cases of great emergency—like the recent coalitions among the Powers of Europe against that of Napoleon, when the very existence of several of the Allied Powers was involved—the difficulty of agreeing upon the terms of co-operation among nations having different interests, feelings, prejudices, and views. England proposed the extension of the right of search, as the only means adapted to the end. Negotiation was commenced and continued, until, finally, the measure proposed by England was refused, or evaded, by all the Powers, and the conference dissolved, leaving the celebrated declaration made at Vienna, unexecuted, and producing naught but mutual distrust and dissatisfaction: Thus shewing how easy it is for nations to unite in the avowal of a general principle—how difficult to agree upon the *means* of enforcing it. So will it be with us and our South American friends and neighbors. There may be little difficulty in uniting in avowing as a principle, that these continents are no longer fit subjects for European colonization, or to protest against the interference of Europe in the affairs of Spanish America. But the moment we proceed to stipulate as to the *means* of enforcing it, difficulties will occur that, in all human probability, will impair the friendly re-

lations now existing between us. They will occur first in the negotiation, and, if these are surmounted, certainly in the application of the principles established, when the time for their application unhappily occurs.

But I cannot consent to trespass longer upon the time of the Senate in pushing the discussion of this point further, although various considerations, operating against the measure, press upon my mind. If it were proposed to form a connexion with any European Power, such as now designed with the Spanish American States, it is hoped and believed, that the measure would not meet with one approving voice—shall I say—on this floor? No, not in the country. But it has been supposed that the United States ought to pursue a different policy with respect to the States in this hemisphere. It is true Mr. Monroe, in his message, makes a distinction of this character, although he by no means carries it to the extent proposed. If he did, all that the distinction could derive from that circumstance, would be, the weight of his opinion, always considerable, but never decisive. The question still recurs, is the distinction founded in principle and policy? If it be, it must arise from one of two reasons: either the *character* of the Governments of the Spanish American States, or their *local situation*; or, perhaps, from both. The United States have hailed the emancipation of those States with satisfaction; they have our best wishes for the perpetuity of their freedom. So far as we could go to aid them in the establishment of their independence, without endangering the peace, or embarrassing the relations of our country, we have gone. More than that ought not to be asked. Nor has it. Sensible of the embarrassments which their invitation might produce, they declined to proffer it until advised that we desired to receive it. Next to being right, it is important to Governments, as well as individuals, to be consistent. Has the character of these Governments been the principle upon which we have hitherto acted in relation to those States? It has not.—Mexico and Brazil were the last to shake off their dependence on foreign authority. They were among the first whose independence we acknowledged. Mexico was, at the period of its acknowledgment, under the dominion of the Emperor Iturbide, and Brazil of its Emperor, Don Pedro. As a special compliment to the Emperor of Mexico, we sent, or rather intended to send, to his *Court*, one of the most distinguished men of the nation, (General JACKSON.) At the Court of the Emperor Don Pedro, we have our Minister; whilst in the Republic of Peru—the Power with which the first of the treaties, in virtue of which the Congress of Panama is to be held, was concluded—we have not yet been represented. Do our principles admit that we should adopt the measure proposed with such reference, and upon such grounds? What are those principles? That man is capable of self-government; that the People of every country should be left to the free selection of such form of Government as they think best adapted to their situation, and to change it as their interests, in their own judgments, may seem to require. Wherein consists our objections to the Holy Alliance? Because they confederate to maintain Governments similar to their own, by force of arms, instead of the force of reason, and the will of the governed. If we, too, confederate to sustain, by the same means, Governments similar to our own, wherein consists the difference, except the superiority of our cause? What is their avowed motive? *Self-preservation and the peace of Europe.* What would be ours? *Self-preservation and the peace of America.* I wish to be understood. I detest, as much as any man, the principles of the Holy Alliance. I yield to no man in my anxious wishes for the success of the Spanish American States. I will go as far as I think any American citizen ought to go, to secure to them the blessings of free-government. I commend the solicitude which has been manifested by our Government upon this subject, and have, of course, no desire to discourage it. But I am against all alliances, against all armed confederacies, or confederacies of any sort. I care not how specious, or how disguised; come in what shape they may, I oppose them. The States in question have the power and the means, if united and true to their principles, to resist any force that Europe can send against them. It is only by being recreant to the principles upon which their Revolution is founded; by suffering foreign influence to distract and divide them; that their independence can be endangered. But, happen what may, our course should be left to our choice, whenever occasion for acting shall occur. If, in the course of events, designs shall be manifested, or steps taken in this hemisphere by any foreign Power, which so far affect our interest or our honor, as to make it necessary that we should arm in their defence, it will be done: there is no room to doubt it.

The decision of that question may safely be left to those who come after us. That love of country, and of freedom, which now animates our public councils, is not confined to us, or likely to become extinct. We require neither alliance nor agreement to compel us to perform whatever our duty enjoins. Our national character is our best, and should be our only pledge. Meanwhile, let us bestow upon our neighbors, the young Republics of the South, the moral aid of a good example. To make that example more salutary, let it exhibit our moderation in success, our firmness in adversity, our devotion to our country and its institutions, and, above all, that *sine qua non* to the existence of our Republican Government—*our fidelity to a written Constitution.*

The local situation of the States in question does not alter the principle, but only bears upon the expediency of the measure. What is the reason why foreign connexions were deprecated by Washington, and have, since his day, been avoided by our country? It is because, between foreign Governments and our own, there are diversities in situation, interest, feeling, prejudice, and views, which preclude the probability of preserving the relations we may form with them, and greatly increase the contingencies by which our country may become involved with others. Apply this reason to the Governments of New Spain. Wherein consists the similarity between our condition and theirs, except that we are both in this hemisphere, and that, at this time, most of them have Republican forms of Government, but with powers very different from ours. We are unlike in all other things. The difference between us is infinitely greater, and the intercourse less and more difficult, than between us and several of the States of Europe. Recent circumstances have increased the danger of political connexion, in the form of alliances, of any sort, with them. The supposed pacific views of the Emperor Alexander afforded the strongest security against the interference of the Powers of Europe in their affairs. His death has certainly involved that matter in doubt and difficulty. The commencement of the war between Brazil and Buenos Ayres, ascertained since this subject has been before us, has multiplied greatly the danger of the step, and should induce us to pause while the matter is yet subject to our control. Although we have not before us the treaty between Colombia and Buenos Ayres, it is understood that a similar one to those we have, has been entered into between those Powers. If so, if the Confederation is so far completed, then will the other Spanish American States be bound to make common cause with Buenos Ayres in the war with Brazil. The Emperor Don Pedro is the lawful successor to the throne of Portugal; the territory of Brazil is guarantied by Portugal, and that of Portugal by England. If such is the case—and so, speaking from general recollection, I understand the facts to be—how very probable is it that the *casus fœderis*, the interference of any European Power with the affairs of Spanish America, will soon occur—upon the happening of which, we are to plunge this, now free and happy coun-

try, the object of the envy and the admiration of the world, into war for the protection of the interests of our neighbors, and to *testify, at this late day, our devotion to free principles.* Sir, our good fortune may guide us in safety through these difficulties. I hope it may be so—but my fears are stronger than my hopes. I pray to Heaven that those fears may never be realized; that those who now move Heaven and Earth to press this ill-omened measure to its consummation, may never have occasion to rue the day of its adoption.

[Mr. RANDOLPH here took part in the debate. His speech on this question was never reported by himself, and in secret session, it is known, no reporters are allowed.]

Mr. HOLMES, of Maine, said he never rose on any question, with his mind in greater embarrassment, uncertainty, and doubt, than on this—and he was very far from imagining that he should edify, much less convince, any member of the Senate: for

"He that's convinced against his will,
"Is of the same opinion still."

But I rise, (said Mr. H.) rather to make to you a very humiliating and mortifying confession. It is this—that, though this question has been more than two months before us—though it has undergone an elaborate investigation, and been presented to us in a very able report of the Committee on Foreign Relations—though the message and documents have been fully examined, and we have had a discussion here which, for argument and eloquence, would have done honor to any country, in any age—yet I am still, in a measure, *ignorant of the subject.* It is not pretended, sir, that I don't know that the President has nominated two gentlemen to be Ministers, or something else, to a Congress, or something else, to be held at the Isthmus of Darien—that those nominations have been referred to a committee, who have reported a resolution that it is inexpedient to confirm them, and that this resolution is now under consideration. Were I not to know this I should be stupid indeed. But of the nature, character, or extent of the mission, and the powers and duties of the Deputies to be sent, I am as utterly in the dark as was *Nichodemus* when he was told that, "except a man be born again, he cannot see the kingdom of God." But, sir, there is even some consolation in this state of uncertainty. I have fewer of those alarming fears or ardent hopes which appear to agitate others. Not knowing the nature of the extent of the object, I cannot foresee its consequences—and I could safely repose on the maxim, "if one cannot clearly see where to go, nor what to do, "it is best to stand still and do nothing." And there is a further consolation, in finding that I am *not alone* in this state of comfortable uncertainty, but in very good company.

Two gentlemen, of transcendent talents, and great political experience, have advocated the measure. Wishing for light, I listened to them with intense interest but to my utter disappointment, they, so far from defining the character and objects of this Congress, disagree as to both. With one it was not belligerent, because was *seeking peace by arms* and managing a *defensive* war. With the other, it has no power to touch the political condition of Cuba—the principal subject in which we can have any interest. And yet this gentleman would send Ministers to *prevent* their doing, what, he says, they have no power to do; just as the President would send them to prevent the Spanish American Nations from conceding to Spain any commercial privileges, as the price of their independence, when, by their treaties before us, they have jointly, and severally, and solemnly stipulated that they will *make no such concessions.*

The President, indeed, seems to be involved in the same uncertainty. When the invitation was first given, he, with that wisdom and prudence for which he has been so much celebrated, required, as a preliminary, that "the precise questions" to be discussed, "the powers of the Deputies," the "organization of the Congress," and the effect of its decisions, should be first understood. These conditions, so indispensable, are, however, yielded, and Mr. Clay, in his letter to Mr. Salazar, of the 30th November last, although he thinks "it would have been perhaps "better if there had been a full understanding between all "the American Powers who may assemble by their Repre-"sentatives, of the *precise questions* on which they are to "deliberate, and that some other matters respecting *the* "*powers of the Deputies* and *the organization* of the Con-"gress, should have been distinctly arranged prior to the "opening of its deliberations;" yet, "as the want of "the adjustment of these *preliminaries*, if it would occa-"sion any inconvenience, could only be productive of *de-*"*lay*," tells us that "the President has determined" to accept the invitation. It is worthy of remark, that the *questions* to be discussed, the *powers* of the Deputies, and the *organization* of the Congress are considered only as "preliminary points." Now, if the subject, the authority to act on it, and the manner and effect of the action, are nothing but preliminary, pray what are the main or principal points? It would seem to me, sir, that these embraced the whole matter. Without these, the instructions to our Ministers must be given from *conjecture*, and after they shall arrive, if these should not conform to those of the Deputies assembled, it will "be only productive of delay"—a delay until they can send home for new instructions. Thus will our hurry, as is usually the case, produce nothing but delay and embarrassment.

In this state of uncertainty, it was not very unreasonable that the Senate should require a little more light, before they acted definitively on a measure new and extraordinary, which might affect materially our foreign relations, and change radically our whole course of policy.

For myself, I was particularly desirous that something should be said to dissipate these clouds. All my predilections were in favor of the proposed mission. The Spanish Americans had my early sympathies, and they still have them. In every thing which might promote their independence, they have not only had my sympathies, but my vote. I would do every thing for their interest consistent with our maxims of policy, settled and established in great wisdom. This was, moreover, a measure proposed by a new Administration, "to be tried by its acts," and I felt no disposition to embarrass it.—The President, though not the candidate which I preferred, was elected in the mode prescribed by the Constitution. Of my preference for another gentleman I shall always be proud. That gentleman stood without allies—the alliances were all against him—he had to contend with "principalities and powers"—he failed, and is in retirement.

Mr. Adams is elected, the coalition is dissolved, and I cannot, with any cordiality, unite myself to any *fragment* of that coalition against the Administration. And I had made the determination, long before I had heard that of the distinguished individual to whom I have referred—to "try the Administration by its acts"—to approve where I *could*, but disapprove where I *must;* but, while I accord due respect and confidence to the Chief Magistrate of the Union, I must not forget the duty, nor surrender the independence, of a Senator.

In this state of feeling, I was, on this question, a fair candidate for conversion, and it was not unreasonable to expect that the friends of this mission should give us their arguments in support of it. I know their talents, I have experienced and felt their powers, and I had a right to expect that a measure, so enveloped, should be made plain. I felt grateful, therefore, and I now tender my sincerest thanks to the gentleman from Rhode Island, (Mr. ROBBINS,) and the gentleman from Louisiana, (Mr. JOHN-

STON,) for the *attempt* they have made; still it is *but* an attempt. It seems now, that, as to the powers and duties of this Congress, these gentlemen neither agree with the treaties which establish it, the President, the Ministers of those Powers, nor with each other.

The gentleman from Massachusetts, (Mr. MILLS,) when he insinuated, (somewhat tartly,) that I was attempting to instruct or chatechise him, did me great injustice. *From* him, being a member of the committee who dissented from the report, I was *asking* instruction. No, sir, I shall never *again* attempt to instruct him. Once, when we were members of *another* Senate, I did attempt to inculcate on his mind some wholesome truths, but found him inveterately obstinate and incorrigible. I believe he has since become impressed with the importance of those principles, and is now in a hopeful way. But I was probably wrong in insisting that gentlemen should speak to us. It was not for the want of talents: for theirs are of the highest order; it was not that they wished for no converts: for their strength of numbers, if ascertained, is not very great; it was not from fear that Executive smiles, by being more diffused, would become less intense—the fault was not in *them*, but in their *cause*. They had the best reason in the world for not advocating a measure which even *their* powers could not sustain, and they refused to speak because they had nothing to say. From these remarks, I, of course, exempt the two gentlemen who have supported the measure, and presume that they have said all which can be said. We, the uninspired, must, therefore, amidst these doubts and discrepancies, examine into this matter for ourselves, and see to what result we can come.

The proposition is to send Deputies of some character to a Congress at Panama. The questions I shall put, and in which I have, in substance, been preceded by the gentleman from South Carolina (Mr. HAYNE) are these: What *is* this Congress? What are its objects and powers? Have we any coincident objects and powers which render a mission *necessary* and *proper?* In these questions is involved the whole inquiry; they embrace the whole subject, and yet they have been deemed but "preliminary points."

Instead of recurring to the opinion of the President, or of the Spanish American Ministers, it is safest to go to the foundation, the *constitution* of this Congress. Whatever we might suppose, or their Ministers might imagine, it is very certain that the Deputies there must be limited in the exercise of their powers to the compacts which gave birth to the Congress. We have before us four treaties, in all which the Republic of Colombia is a party: one of the 6th July, 1822, with Peru; one of the 12th July, 1823, with Chili; another of the 15th March last, with Guatemala; and the other of 20th September following, with Mexico. They are termed "compacts of perpetual union, league, and Confederation." In some respects they differ from each other. In that with Peru, the *quota* or contingent of troops for mutual defence is stipulated, and they are to "maintain in common the cause of independence." In one, they are to "identify their principles in peace and in war;" and in another, their agreement is against "whatever may menace the security of their independence and "liberty, affect their interests, and disturb their peace;" and they unite in whatever will "assure the mutual prosperity, harmony, and good intelligence," with each other; and there is in some, a provision in regard to boundaries. Excepting these discrepancies, they concur. Their compacts are *perpetual*—they are offensive and defensive; each may repel an invasion of the other, observing the laws of the invaded territory; insurrections are to be mutually suppressed; privileges and immunities of commerce and citizenship are to be equal, and State sovereignty is secured; indemnity to Spain, as the price of independence, and a separate peace, are prohibited, and the Confederation is limited to the American nations "formerly Spanish."

To secure these objects, a *Congress* is instituted, to consist of two Deputies from each of the parties, with certain delegated and defined powers; to ordain and establish the proportion or contingent to be furnished for the common defence; to be a council on great occasions or in great conflicts; to form a rallying point in case of danger; to be an interpreter of treaties; to act as umpires in case of disputes; and to establish intimate relations between the parties. Now, sir, whether these grants confer Legislative, Executive, Judicial, or Diplomatic powers, any, or all, it is certain that this Congress is made as *perpetual* as any Government *can* be made. Its model is our articles of Confederation of 1778; and the slightest comparison will convince any one that this was the identical instrument from which this Congress was constituted. They have, as near as possible, taken the *words*. Theirs are compacts of "perpetual union, league, and Confederation;" ours, "articles of Confederation and perpetual union;" but, by recurring to the third article, you will see ours are called "a firm *league* of friendship"—each, then, is perpetual, both secure State sovereignty, provide equal privileges and immunities of commerce and citizenship, fix the quota or contingent for the common defence, are offensive and defensive, umpires in case of differences, prohibit a separate peace, and establish the rule by which new parties are to be admitted into the league.

But, sir, there are two important points in which they differ: our Confederation is by *articles*, theirs by *compact*. By ours, the power is expressly delegated to appoint and receive Ambassadors and other public Ministers; by theirs, it is as expressly withheld.

If it be, indeed, as the gentleman from Rhode Island (Mr. ROBBINS) contends, a Diplomatic tribunal, it is presented in a serious, if not an alarming aspect. From the nature and character of the powers granted, the duties to be performed will never terminate. It is *perpetual*. This point has not been controverted, and argument would be thrown away to prove it. If *words* can convey to the human mind an idea of perpetuity—if a perpetual Confederation can be created by terms—a "compact of perpetual union, league, and Confederation," are the best and strongest which can be selected or invented. In this view of it, we may perceive why the Spanish Americans have created it by treaty. We, at the formation of our Confederation, being simple Republics, having all the powers of sovereignty, could grant a portion of our sovereignty by *articles* of Confederation; but the parties to this Confederation are, themselves, Confederated Republics, with limited powers. Mexico, for example, at the time of the adoption of her Constitution, consisted of fifteen States. She took for her model our Federal Constitution, of which her's is nearly a transcript. In some things, to be sure, she has deviated for the worse, as in an established church; in others, for the better, as in guarding against consolidation, by providing that the Federal Judges should be nominated by the States; but the treaty-making power is the same as our own, and, like ours, is *undefined*.

The President, with the advice and consent of the Senate, two-thirds concurring, can make treaties, which, when made, become the supreme law of the land. The United States of Mexico could cede no sovereignty, but by virtue of the treaty-making power, and, consequently, this Congress could be created only by compact. If, then, it is only by this, that the power of Diplomacy can be surrendered to a Foreign tribunal, we may well pause, and inquire to what *objects* the treaty-making power extends. Not being defined by the Constitution, the reasonable inference is, that it extends to all the ordinary subjects of negotiation. If this be so, you may, by treaty, obtain and *dispose* of territory and population—transfer protection and allegiance—change the law of contract in a State—barter away its territory, and, unless you have violated the Constitution, this very session, not only change State laws but repeal them. If, then, this power be so transcendant, is

it prudent to confide it, if you can, to a Foreign tribunal, in which your voice will be not more than one to six, or perhaps one to ten?

It is but poor consolation to be answered, that nothing definitive can be done there, and treaties made cannot become the supreme law of the land, until ratified by the President and Senate. How many questions may be determined by negotiation which the House of Representatives can never reach?—where no appropriation is necessary? Find a nation whose views of legislation are coincident with yours, and almost every municipal law, whether federal or local, may be modified by the President and Senate, in spite of Congress or the State Governments. The laws of devises, primogeniture, entailments, &c. may be established by treaty, made by the *Executive* power, which are to be the supreme law of the land, and to ride over and trample down all laws of Congress, and of the States.

To become parties to a treaty-making, or treaty-originating Congress, of unlimited duration, is a new and extraordinary step. It becomes more dangerous from our practice under the Constitution, which, in my view, is a perversion of its spirit. The President, with the advice and consent of two-thirds of the Senate, is to *make* treaties. The power of *making* is taken away, and nothing but that of *ratifying* is left to the Senate. A new power, unknown to the Constitution, is sprung up, termed a "Cabinet"—instructions to Ministers, the first step of negotiation, are never submitted to us; these are discussed and agreed on in "the Cabinet," and, with these, and probably with the project or draft of a treaty, the Minister is despatched to *make* "supreme laws of the land," which it is extremely embarrassing and invidious for the Senate to reject. If it be true, as the gentleman from Rhode Island has told us, that this is a Diplomatic Congress, and is of perpetual duration, it is alarming indeed.

But I hope and trust the case is not quite so bad as he makes it. It seems to me that no power of Diplomacy can be exercised—no such power is granted—"National sovereignty" is reserved and is not to be interrupted "with respect to their relations with other Foreign nations," and making treaties is specially reserved to such Power by its Constitution. And it is, moreover, inconsistent with every principle of free government, that the makers of treaties should be the expounders or "interpreters"—that Legislatures should interpret the laws which they shall have enacted. The powers granted are, therefore, of another order, and they are Legislative, Executive, and Judicial. In the exercise of any of these can we, or ought we, to participate? As *Ministers*, they have no power to receive our Delegates—as *Ministers*, you have no power to send them. An Ambassador, or public Minister, carries your sovereignty with him. He is your Representative near the Government to which he is sent, and is under the protection of that Government, and to be protected according to your own laws. Here you send him to no Government authorized to receive him, or having the power to protect him. Besides, the powers granted to that Congress are to be exercised exclusively by the American nations "formerly," or "*cidevant* Spanish." To admit us to vote, or even deliberate, would be as much a violation of the compact or Constitution, as for us to have admitted the Dutch or French Minister to take a part in the deliberations of Congress, under our Confederation. Neither can they be permitted to *hear* the discussions. From the nature of the powers granted, this Congress must be an organized body, governed by a presiding officer, and subjected to *rules*. Many of their deliberations must be of a belligerent character, and therefore secret. They must have the authority, and it would often become their duty, to impose secrecy, even by oath. Now can your members take such an oath? Suppose (a case most likely to occur,) an invasion of Cuba should be there discussed—this measure your Ministers must oppose. Could they, without a violation of duty to their own Government, give an obligation of secrecy, and could they be admitted without that obligation? Your Ministers *Plenipotentiary*, then, are to be nothing but lookers on, or listeners, and in that in which your interest is most concerned, cannot be permitted to act in those characters. If the United States intend seriously to oppose an invasion of Cuba, they ought long since to have made known their determination, fully and definitely, to the Spanish American Ministers here.

But we will suppose these obstacles surmounted, and your Deputies admitted in full communion. We are then first to discuss the contingent to be provided by each for the common defence. On this subject, Mr. Obregon is very explicit. We are to fulfil our *pledges* against European colonization, and interference of any of the Powers of Europe, except Spain, against the independence of the Spanish Americans. This subject of colonization, which seems to be so involved in mystery that no mortal can clearly perceive its meaning, has been so well disposed of by other gentlemen, that it would be indeed fruitless to bestow on it any further observations. The other *pledge* is more explicit. But, sir, as to pledges, allow me to say, once for all, that the President of these United States has no power whatever to pledge the People of this Union to any nation in any thing. And every declaration of his, made to the world, must be understood by other nations, not as a *pledge* of what we *must* do, but as an *opinion* of what we *will* do. Until Congress concur, or assent to a measure affecting our foreign relations, nothing is binding. Still, the Mexican Minister understands it differently, and intimates that, to fulfil the obligation, there must be "a previous concert as to the mode in which each shall lend its co-operation." And Mr. Salazar recommends "an eventual alliance," to be kept *secret* until the *casus fœderis* occurs. If these ministers are correct, we are already entangled, and, whether by "our own means," or by "previous concert" with them, we are bound to fulfil stipulations made by the late administration: and however we might, at this time, deny the force of the late President's pledge, still, if we give our assent to this mission, for the purposes thus avowed, we are ever after foreclosed. One of the "precise questions" disclosed, then, is the *means* to be furnished by the United States, to prevent European colonization, or interference in American affairs, and the *manner* of furnishing the means, whether by *secret treaty*, or otherwise. Yet the Executive informs us that we are "not to deliberate on any thing of a belligerent character, contract alliances, nor undertake with them any thing hostile to other nations." Now, these things are not to be done, and yet, if we accept the invitation to this Congress, we are bound to concur in the avowed objects. How will gentlemen reconcile these conflicting opinions?

The next grant of power is that of a council, on great occasions, or, as in one of the treaties, "in great conflicts." The parties to these compacts are at war with Spain, and they are to counsel and concert with each other the means to terminate successfully this "conflict." Yet the gentleman from Louisiana maintains, that this is not a belligerent Congress; and for reasons which are to me somewhat singular and extraordinary. He advances some principles of international law, which, to say the least, are novel. The *objects* are defensive and to obtain peace, and therefore the *purposes* are not belligerent! Upon these hypotheses, few nations have ever been belligerent: for scarcely one can be found, that will acknowledge itself the aggressor. Each is fighting in defence of its rights, and the professed object of every one is *peace*. And, although thousands, nay, millions, have been slain in battle, there was no war; this was only a very peaceable kind of killing. Does the President mean the same when

he says, that "we are not to deliberate on any thing of a *belligerent* character?" If he does, his views may be easily reconciled with those of the Spanish American Ministers. If, therefore, our Ministers are to discuss any question relating to the colonization or interference of any European Power on this continent—if we are to settle there the mode in which they are to be resisted, or to deliberate as to the contingent to be furnished, and the manner of the resistance—if, indeed, we take any course in regard to Cuba and Porto Rico, our attitude must be hostile, and our neutrality is violated. "A council in great conflicts," is, emphatically, a belligerent council. Yet the gentleman from Louisiana consoles himself, that our neutrality will not be violated, if we dissuade them from invading these Spanish Islands. Sir, upon this point I shall have something to say, in another branch of my argument.

But the greatest lure to us, is the thought of participating in "A COUNCIL ON GREAT OCCASIONS!" You know, sir, that Republics are never ambitious—they are always humble, forbearing, unassuming—their leading politicians are always as meek as Moses. Yet it seems, in this case, we are fascinated and inflated with this "great occasion." My life for it, this is no scheme of the President—he is a cool, deliberate, calculating, penetrating, discriminating, reasoning sort of politician. It is a toy, yielded to the importunity of the Secretary of State. The President has no strong partialities for the Spanish Americans—Mr. Clay wanted a plaything, and the President, probably with reluctance, consented so far to gratify him, as to present the proposition to the Senate, hoping no doubt that we would reject it. Sir, who has been the leader of this crusade, in favor of Spanish American liberty? Who, more than seven years ago, became their chief advocate, in the House of Representatives? Whose speeches have been translated and retranslated, and circulated throughout their vast dominions? Who has been toasted as the champion, and canonized as the Saint? Who, in fine, is to reap the reward? The Secretary well knows, that public opinion has already made him their grand advocate and intercessor, and he will so manage it that, if there is to be any glory, it is to be his inheritance—if any disgrace, it is to be entailed on the President. No, sir, this is the magnificent scheme of the favorite—the genius, the master spirit of the *West*. I intend nothing invidious to my freinds here, from that interesting section of the Union. I respect them much, I admire their frankness, intelligence, and liberality; and even their extravagance has its apology. They occupy a vast, interesting country—they have aspiring forests, majestic rivers, sublime mountains. They look upon the scene, and contemplate the prospect before them; and the mind is enlarged, expanded, elevated, sublimated. But this scheme of the Secretary, in point of extravagance, transcends all imagination. All the nations of this vast continent are to be arrayed. Buenos Ayres, the Banda Oriental, Chili, and Peru, are to form the right; Colombia, Guatemala, and Mexico, the centre; the United States the left, and Maine the extreme left. The *little* empire of Brazil, and the hordes of Canada and Nova Scotia, are probably to be disposed of; and then we can present one undivided front to Europe and Africa, and another to Asia and the Isles of India. And the conception and contemplation of this mighty achievement, posterity is to ascribe to the matchless spirit of the West!

But, the next power granted to this Congress, and in which we are to participate, is this: It is to be a *rallying point* in danger. The United States, in case of danger, are to fix their rallying point at the Isthmus of Darien! Sir, I would as soon fix it in Symmes' cavity. When *we* shall be in danger, *our* rallying point must be at *home*. I do not mean in Fortress Monroe, or in any other of your useless and extravagant fortifications. You have already twice as many as you can ever man, by any disposable force you can ever have in any war in which you will ever be engaged; and the one half is consequently to be occupied by your enemy. This is very magnanimous. Your enemy will be able to strike you with effect on the ocean, and you give him an equal chance with you on the land—thereby converting a religious precept into a political maxim: "If thine enemy smite thee on thy right cheek, turn to him the other also." No, sir, I don't mean these—I mean the Congress of the United States; if you are wise and prudent—the State Governments, if any shall remain—every man's fireside will be his rallying point. And who, in case of danger, will rally round these, and how can you induce them to rally? It is by not attempting too much. Do as little as possible for the People, and leave them as much as you can to do for themselves. Engage in no wild and extravagant schemes and speculations, to pick their pockets, and "eat out their substance." Stay at home, and mind your own affairs. "Peace, commerce, and honest friendship, with all nations, entangling alliances with none"—preserve the Constitution in its purity—keep a vigilant eye, that no encroachments are made on your State Governments—build no more fortifications than you can effectually man—increase your navy just so fast, and no faster, than that every additional ship shall not only be a nominal, but a real addition to your strength—give your militia arms, and instruction too—practice economy, not talk about it, but *practice* it—pay your debt—relieve your People from all unnecessary burdens—and then, in case of danger, you will find strong arms, stout hearts, and high, disinterested, independent, and patriotic minds, which will rally under "your star-spangled banner," wherever it *ought* to float, and you may defy a world in arms.

The next substantive power of this Congress in which we are to be represented, is *judicial*—the interpretation of treaties. I know it has become unfashionable to recur to this little book—its use is nearly exploded—yet, I am unwilling to surrender it entirely; I would nourish it as a sick friend, and not bury it until it should be surely dead; and when it must be consigned to the tomb, I would cherish its remembrance, and cling to its precepts. One of these precepts is, that treaties made under its (legitimate) authority, are the supreme laws of the land, and another, that the judicial power extends to *all cases* arising under such treaties. Now, Sir, though I would regard the exercise of our own judicial power with a vigilant, and ever jealous eye, I would not transfer it, if I could, to any Spaniard on earth—even to the Washington of the Southern hemisphere.

An umpirage, in case of disputes, is of the same judicial character, and subject to the same objections. "Sufficient unto the day is the evil thereof." You have no disputes to settle with these nations, which cannot be adjusted by ordinary negotiations. The adjustment of your boundary with Mexico was provided for in your treaty with Spain, before the Mexican Revolution; the obligations of that treaty falls upon the new State; no impediment has been thrown in the way; and it is understood that this point is settled. Nations, not parties, will never submit to the decisions of this Congress, and questions between the parties will be determined in a Congress, where these whose views and feelings will be coincident, are *five*, and, perhaps, will be, *ten* to *one* against you. Such a tribunal I would never create—to its decisions, I would never submit.

Whether, to establish intimate relations between the parties, is a distinct grant of power, or merely the *purpose*, or reason of the grants, is not certain. It may be nothing more than was intended in our Constitution, by providing "for the general welfare." For the purpose of doing this our Congress was to exercise certain powers, and for the purpose of establishing "intimate relations," this Congress is to exercise those specifically defined. In the treaty between Colombia and Guatemala, this is the

expression—"for the *purpose* of establishing, on a more solid basis, the intimate relations which *exist* between them all, individually, and collectively," a general Congress was to be assembled, &c. to exercise the powers delegated, and no others.

If, in the examination into the nature and character of this Congress, and the extent of its powers as granted by these compacts, I do not much mistake, we necessarily come to the following results: It is perpetual; and it is expressly prohibited to receive and accredit our Ministers. It has no power of diplomacy or negotiation; or, if it has, it would be a departure from our established policy, a perversion of the Constitution, and a dangerous innovation of legislation, to confer, on a foreign permanent tribunal, even the power to originate treaties. It is essentially belligerent; *legislative*, in providing means to annoy its enemies, and *judicial*, in determining international differences, and settling international law as interpreters of treaties; and, by its institution, it is limited to "the American nations formerly Spanish." As, therefore, we could send no Ministers to such a Congress, or could authorize them to do no individual act, consistent with our neutrality; and they could not be permitted to participate in any thing consistent with the constitutional compacts which establish this Congress, it seems to me the height of absurdity to appoint Ministers Plenipotentiary. If we have any interest at all in the result of their deliberations, it would have been better served by an agent, appointed by the President to ascertain their objects, attend to the progress of their proceedings, and communicate the information to our Government.

Here I might stop, had not the President in his message, and the Spanish American Ministers, in their correspondence with us, pointed out other objects, not embraced within the limits of their constitutional compacts. As it appears to be the opinion of each, that objects, other than those confided to this Congress by these compacts, may be matters of consideration and decision, it is proper to examine them. The President, in his Message, is of opinion that we may aid them by our experience, and instruct them in principles of religious freedom; and the gentleman from Louisiana speaks of the moral effect to be produced, and the dignity to be conferred. Thus, we are to depute Mr. Sergeant and Mr. Anderson, in the double capacity of Ministers and Missionaries. Whether they are to have double outfits and salaries, we are not yet informed. Indeed, Sir, I apprehend, from recent disclosures, they will think less of our "experience" than they have done, if not of our *sincerity;* and if we would send Ministers at all, it should be to relieve us from the thraldom in regard to the mediation of Russia. When the documents communicated were in reading, and I perceived from the letters of Mr. Middleton and Mr. Clay, that the Emperor Alexander had agreed to mediate with Spain for the *recognition* of her colonies, I was inspired with admiration at, and gratitude for, such magnanimity—that the head of the Holy Alliance, the defender and protector of the rights of Kings, should become a mediator in favor of Republics, was extraordinary and unexpected, and an indication of real greatness. I listened, therefore, with intense interest for his declaration to that effect. The letter of Count Nesselrode was read—this was a polite, but frank refusal. From the next despatch we expected to hear that the Emperor had changed his mind—but, this was all. [Here Mr. H. read Count Nesselrode's letter of 20th August, 1825.] I had previously learned that the condition, not the independence of the Spanish Americas, had been discused in the European Congress; that the Mexican Legation had been ordered to leave Spain—that Government refusing to hear the subject of their independence even discussed; and with this information and this letter before him, how any man could have been led to believe that this document was an agreement of the Emperor to mediate for this recognition by Spain, was to me utterly astonishing. But it is more extraordinary still, if we suppose that the Secretary had, at the time of the first message, the papers from Mr. Everett, afterwards sent us. These go to establish, unequivocally, the determination of Russia not to mediate, and of Spain not to recognize the independence of her colonies, on any consideration. That Mr. Middleton should have been deceived, I could readily suppose; he is much more distinguished for his honesty and goodness of heart, than for his political or diplomatic wisdom, or experience; and it is not singular that *his* wishes should get the better of his judgment. But how the adroit Secretary could have thus deluded himself, is past conjecture. The stupid and infatuated Spanish Monarch is firmly and confidently relying on Divine Providence to give him back his colonies, without any exertion of his own—that Providence who cares, probably, less for him than for the "sparrow that falls to the ground," and who will interfere, if at all, "to break the rod of the oppressor and let the oppressed go free."

I need only call the recollection of gentlemen to Spanish history to prove that this obstinacy and perseverance is characteristic of that nation. Portugal, after having been sixty years subject to Spain, in 1640, revolted, and, under the Braganzas, drove the Spaniards from their country. You well recollect how long Spain struggled to reconquer that then gallant People; she persevered against reason, and hoped against hope. The united provinces were subject to Spain. They were the carriers for all Europe; from Lisbon, the depot of the wealth of the East, and Cadiz, the depot of that of the West, they transported to, and supplied, all the North of Europe. Antwerp was the most commercial city in the world. In 1570, the Hollanders revolted. Spain was then to Europe what Russia is now. The power established by Charles the Fifth, was in its strength and vigor. These revolted provinces, however, maintained the struggle, under every disadvantage, but with wonderful success. In ten years after the first revolt, they were excluded from Lisbon by the subjugation of Portugal to Spain, and in five years after, their beautiful Antwerp was sacked and ruined by that monster the Duke of Parma; but amid these reverses and misfortunes, they maintained the war. Amsterdam rose on the ruins of Antwerp. Driven from Lisbon and Cadiz, they sought the commerce of the East and West Indies at its sources; and the colonies of Spain and Portugal, in the remotest parts of the world, felt their power, and were subjected by their arms. After a vindictive and cruel war of near forty years, Spain was compelled to agree to a truce for twelve years. The truce was violated before it had expired; the war was renewed; and Spain again experienced every where, disaster and defeat. Her rich galleons were captured; her fleets were defeated in repeated conflicts; her Armada was destroyed, even in the Downs; and, though beaten, weakened, humbled, and on the brink of ruin, it was not until the peace of Westphalia, in 1648, that she consented to acknowledge the Independence of these Provinces. The character of Spain is not changed, and in modern times you have witnessed the same persevering obstinacy against one of the most powerful and successful conquerors the world ever saw. And with these facts before us, how comes it to pass, that we are encouraging these Americans, that Spain is disposed to acknowledge their Independence, and that, when her infatuated monarch says, emphatically, *No*, he undoubtedly means *Yes!* And what has been the effect of this delusive hope which we have inspired? The Spanish Americans have been deterred from striking Spain in her most vulnerable part, and the only one within striking distance, and Cuba and Porto Rico are so strengthened that they may probably now bid defiance to the united efforts of the Spanish American nations. This is one of the blessed effects of officiously intermeddling in affairs of

our neighbors. But this is not the only effect of this officious friendship. In pressing this hopeless intermediation of the Emperor Alexander we have dropped a word, which, if fairly understood by the crafty Nesselrode, may justly give great offence to these *our friends*. We are, it seems, to use our influence "in defeating, *as far as "may be in our power*, every interference against those islands in securing the rights of his Catholic Majesty constant and proper respect, and in maintaining the only "state of things that can preserve a just balance of power "in the sea of the Antilles."

Add to this, that we are to intermeddle with their *religion*. On this subject the President is very explicit—"There is" (he says) "another subject, upon which, "without entering into any treaty, the moral influence of "the United States may, perhaps, be exerted with beneficial consequence at such a meeting—*the advancement "of religious liberty*. Some of the Southern Nations are "even yet so far under the dominion of prejudice that "they have incorporated, *with their political constitutions*, "an *exclusive church*, without toleration of any other than "the dominant sect. The abandonment of this last badge "of religious bigotry and oppression may be pressed "more effectually, by the united exertions of those who "concur in the principles of freedom of conscience, upon "those who are yet to be convinced of their justice and "wisdom, than by the solitary efforts of a Minister to any "one of the separate Governments." We then are to exert our influence there to induce an abandonment of this last badge of religious bigotry and oppression—an exclusive and intolerant church, which some have incorporated with their political institutions. How any one could suppose, or even dream that such an object could be accomplished, when these nations have expressly stipulated that this Congress shall do nothing which shall "interrupt the *establishment and form of their respective Governments*," is, indeed, difficult to conceive. It is true that Mexico has incorporated these obnoxious principles in her Federal Constitution, and it is equally true, that her Government cannot, and much less can this Congress, alter that Constitution and expunge them.

An interference in this most delicate of all subjects, would be as impolitic as unfriendly. The intelligent men of Mexico would have gladly rejected this constitutional provision, but they were obliged to concede it as the *price* of their independence. No People on earth are more devoted to their religion than Catholics—none are under more absolute control of their priests. Without conciliating the People and their priests, their revolution could never have been effected. The smallest attempt to touch them in this tender point might even produce a counter-Revolution. If we look at home, we may learn that *we* were obliged to countenance the same intolerant spirit to effect *our* Revolution. In an address of Congress we urged as one of our complaints against the British King, his toleration of the French Catholics in Canada, and, by the Constitution of Massachusetts, an oath of abjuration was required, which went to exclude Catholics from every office. When a People is struggling for Independence, politicians are obliged to yield to narrow, illiberal, popular prejudices, which they condemn, and leave it to time and the progress of intelligence to work the cure.

Our dear friends, the Spanish Americans, might well expostulate and complain thus: "You advised us to refrain from an invasion of Cuba, lest it should prevent the "mediation of Russia. We did refrain; Spain has gained "time and recovered strength, and the mediation is all a "delusion." What would be your answer? "Mr. Clay "is the champion of your cause, and he believed as he "wished. Like a gentleman in love—he pressed his suit "with all the eagerness of a distracted lover; the lady "could not encourage his addresses, but she was too good "and too candid to deceive or coquette him. She determined to give him a frank, unequivocal refusal; but in "such a manner, having respect for his merits, as not to "wound his feelings. She did so, and the refusal was "so kind, that the fond foolish lover thought she had relented, and would not take *no* for an answer." This apology *might* satisfy them. "But how does it happen that your Government is to defeat, *as far as in its power*, every enterprise of ours against Cuba and Porto Rico?" "Oh, we mean no such thing; the cunning Russian has misquoted and circumvented us." "But you, it seems, "have come to modify our religion. This is the unkindest cut of all. Our People consider you as heretics, dissenters, and apostates from the true faith. Let this part "of your mission be known, let it be understood that our "holy religion is in danger; a storm will be raised that no "thing can withstand, and we who invited you will be "the first victims of its fury. The priests will sound the "alarm; it will reach the ears of every pious man: the "standard of Ferdinand, "his Most Faithful Majesty," will "be raised, and a counter-revolution be achieved in not "so many months, as we were years in accomplishing our "independence." I suppose their answer to this expostulation would be, that this was only a bait to catch the pious, and make the measure popular here.

The course we *have* pursued, and ought to pursue, in regard to Cuba, is matter of much perplexity. A dark cloud hangs over that Island, and bears a threatening aspect. Which way it will pass over, where it will burst, or whether it will burst at all, no mortal can predict. Suppose the worst—an insurrection of the slaves, a servile war—can you, ought you to interfere? Which side would you take? Against the insurgents? My life for it, you could not maintain such a war—public opinion would not sustain you. A war out of the limits of the United States, a foreign war, to reduce men to servitude! Not an arm and scarcely a voice North of the Potomac, would be raised in your behalf. An administration who should attempt it, would seal its own destruction. No, sir, the liberal and discreet politicians of the North, sympathise with their brethren of the slave-holding States. Our maxim is, that it is an evil, which *we* cannot remedy. The only relief we can give them, is to let them manage it *themselves*, and that any interference on our part will make it worse. But beyond this we will not go. To send our troops, the sons of freemen, to a foreign country, to be the victims of the sword and the pestilence, for the purpose of suppressing an insurrection of the slaves, is a measure against which we shall ever protest—to which we shall never submit. We could not if we would—the apostles of liberty, the advocates of universal emancipation would cry aloud, and denounce this war in favor of slavery! Their voices would be heard, even in the humble habitation of the slave, and you would soon find it necessary to withdraw your army to preserve peace at home. So much for the North. I now ask the gentlemen of the South whether, if it is only intended to *discuss* the condition of Cuba, Panama is the proper place. You have already said too much against emancipation. By provoking a discussion you increase the evil you attempt to remedy. On this subject your wisest policy is to say but little. But if you will speak, let it not be on the house top. To this extraordinary Congress the eyes of the world are turned. Its objects, its deliberations, its determinations, are matters of universal interest. Let it be known that the rights of the slaves of Cuba are to be discussed there, and every philanthropist and fanatic in Europe will be on the alert—their voices will be responded from the American continent—the blacks will take fire, and the scenes of St. Domingo will be re-acted at home. No, let me repeat, when you cannot see where to go, nor what to do, stand still and do nothing. And wherein is the justice of your interference? You go there as invited friends, and on a subject most of all important, you oppose them. So far as regards Spa-

nish America, leave Cuba to its fate. These nations will, as they have told you, go in aid of the Creole population, and surely it would be a miserable aid indeed to let loose the slave upon his master. Your interference, in any way, will be an injury to them, if not a curse to your country.

And what good reason can induce you to unite in settling the political condition of Hayti? Are you not now satisfied with its condition? If your political relations are not sufficiently close, it is your own fault: for Hayti has always been solicitous for a closer union. You need not surely send to Panama to determine what are your own wishes. Nor need you fear what will be the determination of that Congress, in regard to that Island. When France, as you had supposed, acknowledged its independence, you felt no alarm; and why should you fear if the Spanish Americans should do the same? But the gentleman from Louisiana insinuates, that, if the Haytiens should ever be represented at Washington, their Minister or Agent must be a *white* man. Now, if it is really a question of sufficient importance, to determine whether he should be black, yellow, or white, Panama is the last place in the world where I should go to settle it. When our fresh and fair Ministers shall enter the hall of that Congress, and look round it on their associates, I apprehend that they will deem it invidious and indelicate to talk about *color*. If you or I, sir, had been selected for this mission, or some of my friends who sit around me, or some of those on the other side of the way, we might have discussed a question of *complexion* with a much better grace. But as it is, I am inclined to believe we had better leave it to the United States and Hayti to determine it themselves.

But, it seems, the law of nations is to be re-enacted, or modified; the list of contraband is to be limited; blockades are to be defined, and free ships are to make free goods—and to do all this, we must be represented at this Congress. Are these doctrines of ours, at this time, in peculiar jeopardy? Are we any where threatened with a resistance to the principles which we have endeavored to maintain? Do any of these nations object to our maxims of policy on any of these subjects? With France, Holland, Spain, Prussia, Denmark, and Sweden, we have, by treaty, adjusted these points to our own satisfaction. With Russia we have no treaty, yet we know her views to be coincident with ours, in regard to them all. You well recollect that, in 1780 or 1781, while France, Holland, Spain, and the United States, were at war with England, Russia was principal in forming what I think was called by some "the quadruple alliance," but generally, the "armed neutrality." Look at the manifesto of those Powers on that occasion, and you will find their doctrines of contraband, blockade, and giving the character of the goods to the ship, in perfect agreement with our own. And is there the least ground of fear that these Spanish Americans will resist these principles? Our marine strength is far superior to all theirs combined, and these principles for which we contend, are always concessions of the stronger to the weaker State. This is the reason why England will never yield them. These nations, now at war with Spain, might be disposed to search for enemies' goods, on board the ships of a weak or inconsiderable neutral, but knowing the strength of our navy, they never would venture on such an experiment upon us, and they never have done it. The reason is manifest. By our treaty with Spain, we can carry the goods of a Spanish American, without molestation from Spanish cruisers; and, consequently, these Spanish Americans ought not to molest us, if we do the same for a subject of Spain—and they do not molest us. In the treaties with them already made, this has never been a point of difficulty, and never will be; they will always consider it as a concession made to *them*.

As to a reciprocity in commerce, that, when we have negotiated, has been conceded without difficulty, except with Mexico, and it is understood that, with her, the point is at length adjusted; and, if we were to encounter a question of that sort, it had much better be done with each, individually, without danger of a combination of interests against us.

The Slave Trade has been mentioned as a subject to come under the deliberations of this Congress, and we have had a pretty smart rebuke from Mr. Salazar for not ratifying the Colombian convention. This subject I think I understand, and I might occupy a day in its discussion; yet, from the limits I have prescribed to myself, I can scarcely afford it five minutes. Suffice it, then, to say, that however I detest this traffic, whatever force I would employ to suppress it, and at whatever expense, I never would concede the *right of search* to any nation under Heaven; nor would I, for any consideration, whether of humanity or policy, permit an officer of a foreign Government to arrest and hold for trial a citizen of the United States, on *his* suspicion that such citizen had committed a crime against our own laws. If, however, this Congress is, by declaration or manifesto, to declare this traffic piracy *by the law of nations*, and such declaration or manifesto, not being a treaty, could not be submitted to the determination of the Senate, the result, as to *us*, will be the same as if we had established the principle by treaty. If the other parties receive it as law, and act upon it as international law, your citizens will be subject to search, arrest, trial, and punishment, by foreigners, for a crime strictly municipal, without trial by jury, or any of the securities guarantied by the Constitution. In this way, municipal may be converted into national law, not only by the treaty-making power, but by the President alone, without the intervention even of the Senate, and the Executive of this country would acquire a legislative power without limit and above control. However upright he may be, the genius of the Government will not permit any man to wield such a power. Was I not, then, right, in stating that we were *acting in the dark?* And is it not equally true, that we are taking a step which we can never retrace? Sir, you are on dangerous, untrodden ground—you are approaching the brink of a precipice—the ground trembles beneath your feet—advance one step, and you may plunge into the abyss, and be lost forever.

Mr. BERRIEN, of Georgia, addressed the Senate as follows: I have a hope, Mr. President, (said Mr. B.) perhaps it is a vain one, that I may have strength enough to state to the Senate the views which I entertain on this subject. I cannot consent to give a silent vote, on a question so deeply interesting to this Union, and especially, and in some of its aspects, to my immediate constituents. Nor am willing, pressed as we have been, by the steadily moving phalanx of our opponents, to the final decision of this controversy, to ask from their courtesy an indulgence, which they would be unwilling to accord. No, Sir—I prefer, even in my weakness, at once to mingle in the strife, and struggling with the debility arising from bodily indisposition, and with the difficulties which belong to the subject, I will seek support, and I will find it, in the strength of the feeling which animates me.

I am, moreover, entirely sensible of the disadvantage at which I must necessarily address the Senate, at this late stage of the discussion, when the attention has been wearied, not merely by the continued contemplation of the same subject, but by views and illustrations of that subject, for the most part, necessarily similar, and tending to conduct the hearer to the same result. With two exceptions, for which I take this occasion to offer my individual acknowledgments, it has seemed good to those who differ from us, to preserve the dignity of silence. We have conjured them to give to us the benefit of those profound and comprehensive views, which have trained their minds to a conclusion, in which they repose, alike free from apprehensions, and inaccessible to argument. By all those

considerations which bind us to each other, we have entreated them to mingle their counsels with ours, on this interesting occasion—to impart to us a portion of that light, by the brightness of which they can tread, fearlessly, a path, that, to our less enlightened view, seems beset with danger. They have been deaf to our supplications. Our entreaties have passsed by them as the idle wind, which they regard not. Walking, themselves, by the light of faith, which is the evidence of things unseen, they will not stretch forth a hand to withdraw us from the ways of the error which they impute to us. Sir, we might imitate this example. We, too, might advance in silence to the destiny which seems to await us, in the consummation of this ill-fated project. For myself, I will not do it. "Whether men will hear, or whether they will not hear, is not "strictly my personal concern: but my intention no man "taketh from me." Repressing the suggestions of pride, I will remember only that we have a common interest in the result of our common counsels, and even in the little interval that separates the moment which *is* from that which shall mark the registry, to which we are summoned, I will still expostulate with our opponents, in a spirit alike free from arrogance and from servility—in the spirit of truth, and of soberness.

Sir, the measure to which we are called, is distinguished by a novelty, which induces me to pause. So far as the project is disclosed, it is plainly injurious to the best interests of this People, while much of it is veiled from the view of the most scrutinizing inquiry. Clouds and darkness rest upon it. It comes, sir, in such a questionable shape, that I will speak to it. Under the guise of a just sensibility to the interests of the Spanish American Republics, it proposes to change the whole system of our foreign relations, by the mere exercise of the appointing power—to involve the interests of this Union in a foreign association, composed of States with whom we have no natural connection, and over whose councils we can exercise no efficient control.

More distinctly, sir—and in the first place. In a season of unexampled prosperity, which we have attained by a rapidity of march, to which history affords no parallel, which invites to no change in the general system of our foreign relations, "and least of all to such change as this would bring us," we are required to abandon the wise and salutary policy which has hitherto conducted us in safety, to form a political association with the Republics of Spanish America.

I should waste the time of the Senate, if I were to detain you by the formal proof of the fact, that the United States are at this moment in the enjoyment of an unexampled prosperity. I appeal to the Message of the President at the opening of the session, for the evidences of our prosperous and happy condition, of the flourishing state of our finances, of the increase of our commerce, our wealth, our population, and the extent of our territory; and for the proof that we are permitted to enjoy these bounties of Providence in peace and tranquillity; in peace with all the nations of the earth, in tranquillity among ourselves.

What are the duties which these considerations inculcate? I propose the question in sober sadness to the majority of this House. Thus situated, what is it that we owe to the Republic? Is it to embark in quest of novelty on the ocean of experiment—to yield ourselves to the visionary and fantastic schemes of polital projectors—to the splendid but delusive suggestions of a wild and reckless ambition? Is it not rather to preserve, to cherish, to guard with more than vestal vigilance, that enlarged and liberal, but stable and self-dependent system of policy, which, by the blessing of God, has conducted us to our present happy and prosperous condition? What is that policy? Sir, it is the policy which guided the councils of WASHINGTON—which produced the celebrated proclamation of neutrality, a measure which saved us from the vortex of European contention—to which each successive administration has adhered with fidelity—which Washington himself thus emphatically announced—"The great rule of conduct for "us, in regard to foreign nations, is, in extending our "*commercial* relations, to have with them as little *political* "connection as possible. So far as we have already "formed engagements, let them be fulfilled with perfect "good faith. *Here let us stop.*"

The proposition which I am endeavoring to illustrate, asserts merely, that the proposed mission to Panama involves an abandonment of the policy by which this Confederation has hitherto been governed, at a time when, by a steady adherence to that policy, we are prosperous and happy. It is of the character of the measure in this view alone, that I speak at this moment. To the motives which are urged to induce its adoption, it will be my duty hereafter to advert. Here it is sufficient to recognize these facts, that the proposed association of American nations at Panama, is a *political* one, and that such an association is a departure from the settled policy of this Government. That such is the character of the Association, is not denied by those who advocate the measure, is proclaimed in every page of the documents before us; and if to the brief remark which I have made, it is necessary to add anything to prove, that the policy of this Government is such as I have represented it, I refer myself to the argument of the gentleman from New York, with whom I concur generally, in the view which he has taken of this distinctive feature, in the political history of this Union.

Standing on an elevated position, in an attitude which has secured to us the respect and admiration of the world—having attained this elevation, by preserving an entire freedom of action, and by the rapid development of our own resources, what is it that should tempt us to descend from our high estate, to mingle in diplomatic intrigues, and to make ourselves parties to international Confederacies, on this or the other side of the Atlantic? Especially it is most obvious to inquire, what is the character of that association, of which we are about to become a part, by approving this nomination? Sir, it is not a mere Diplomatic Council. It is an international assembly, created by treaties, and invested with powers, which are efficient for the purposes of its institution, some and the principal of which are belligerent. An association with such a Congress, must necessarily commit our neutrality.

The general argument on these propositions, has been pressed with so much perspicuity and force, by gentlemen who have preceded me; they have gone into such fulness of detail, that I do not propose to tax the patience of the Senate, by a renewed discussion of the whole question. There are two points connected with it, however, on which I desire to be heard.

In the first place, I ask the attention of the Senate to this remark.

Whatever declarations may be made to the contrary, however foreign it may be from the intention of the President, it will be the *necessary consequence* of this mission, that we shall become parties to the Congress of Panama, to the extent of what is denominated the pledge of Mr. Monroe, or we must disappoint the expectations, and excite the resentments, of the Spanish American States. This proposition includes these ideas:

That the Spanish American States consider this Government as pledged to them to resist the interference of any European Power in the war which they are waging for their independence, by force of the official declarations of Mr. Monroe, and the subsequent acts of our administration.

That it is one and a principal and distinctly avowed object of the proposed Congress at Panama, to concert the means by which effect is to be given to this *our* system of policy.

That the assent of the Senate, the remaining branch of the treaty-making power, is alone wanting to *commit the national faith*, however the forms of the Constitution may require other agencies for its *redemption*.

That a failure to realize these expectations, must be productive of feelings of coldness and ill-will.

Let us examine the two first in connexion. Does any gentleman doubt what is the view taken of this declaration by the Republics of Spanish America, or that they consider it to be one of the subjects of the deliberations of the Congress at Panama, in which we are to participate? On both these points, the Minister of the United States of Mexico is clear and explicit. He expresses himself thus: "The Government of the subscriber never supposed nor "desired that the United States of America would take part "in the Congress about to be held, in *other* matters *than* "*those* which, from their nature and importance, *the late* "*administration pointed out and characterized* as being *of* "*general interest to this Continent.*" This is the strongest mode of expressing both the expectation and the desire of the Mexican Government, that the United States would take part in the Congress, *in those matters which had been so characterized and pointed out*. The Minister proceeds: "*For which reason*, (that is, because the late administration had pointed it out as of general interest to the Con- "tinent,) one of the subjects which will occupy the at- "tention of the Congress, will be the resistance or oppo- "sition to the interference of any neutral nation, in the "question and war of independence, between the new "Powers of the continent and Spain." Here is the idea in bold relief, a distinct assertion, that resistance to the interference of any European Power, in the war between Spain and those States, is a question of general interest to the continent, this Government included; that it has been expressly so characterized by the late administration, and that it is one of those subjects to be discussed in that Congress, *in which we are expected to participate*. But how participate? By our counsels merely? No sir. Being, as this Minister asserts we are, "of accord (with them) as to resistance," we are, in that Congress, to "*discuss the means of giving to that resistance all possible force*," which, he adds, is only to be accomplished "by a previous concert as to the mode in which *each shall lend its co-operation.*" The Minister of Colombia is equally decisive on this point. He speaks of this subject as one to be discussed in the Congress, and one of great importance; suggests the propriety of a treaty in relation to it, to remain secret until the *casus fœderis* should happen, and adds, "This "is a matter of immediate utility to the American States "that are at war with Spain, and is *in accordance with the* "*repeated declarations and protests of the Cabinet at Wash-* "*ington.*" To this discussion, and this treaty, he manifestly expects that we are to become parties.

Is it not then obvious, that these invitations have been given by the Ministers of the Spanish American States, under a perfect conviction, which is plainly and frankly expressed in the very letters of invitation, that we would participate in the deliberations of the Congress at Panama, in the resistance to be made to the interference of any neutral nation, in the question and war of independence between these States and Spain? And that, *conceding the principle*, that we are bound to such resistance and opposition, *by our own previous and repeated declarations and protests*, we would proceed to *concert with them in that Congress*, the means of giving to that resistance the greatest possible force?

Shall we realize these expectations? We are, then, to take our seats in an international assembly, composed of Deputies from five belligerent States, with instructions, I care not how restricted, to stipulate with them the terms of an eventual alliance, in the prosecution of the very war in which they are now engaged; to arrange the means of giving to our joint efforts the greatest possible force. Are gentlemen prepared to do this? Sir, this wretched bantling must one day breathe the upper air. However darkly nurtured in this political dungeon, to which the sign manual of the President, and our own too easy confidence have consigned us, it must see the light. It must stand before the majesty of the American People. Do gentlemen believe that *they* are prepared to do this thing? To stake the fair and goodly heritage, to which they have succeeded, on the issue of a contest with the Powers of Europe, in defence of these new Republics? In defence of any other rights but their own?

If this inquiry cannot be met, will it be evaded, by suggesting that the contingency is remote; that the Powers of Europe will not interfere; that our association with the Spanish American States will prevent their interference? What more decisive proof can be offered, that the act proposed to us by these Ministers, will be a violation of our neutrality? A wrong done to Spain? We are to deliberate with her enemies; to give them the benefit of our councils; nay, to play the bravado in their behalf; to threaten the Powers of Europe with the vengeance that awaits them, if one of them shall dare to draw a sword for Spain—and this *is consistent with our "professed principles of neutrality."* Sir, if this be true, what are our principles? Are not our professions without principle?

But is the contingency remote? Will not our interference tend to accelerate it? Will no restlessness be excited in Europe, when we shall avow ourselves to be the champions of the new States? And even England, liberal as her course has been towards these States—who doubts that it has been regulated by her commercial interests? Will she consider those interests safe, under the direction of a Confederation, to the guidance of which we make pretensions? We are her rivals in the competition for the commerce of these States. Can she deal with them in the same spirit, when we take a seat in their councils?

Give to our adversaries, *argumenti gratia*, the benefit of the suggestion. Be the contingency remote or near, it is still a contingency; on the happening of which, this Government is pledged in the view of those States to an alliance with them, for hostile purposes. What intelligent statesman would found such a pledge on the notion of the remoteness of the contingency, which should call for its redemption? Take the instance referred to by the gentleman from New York—who would have expected, at the time the contract was entered into, that we should have been called to the fulfilment of our guarantee to France?

Pause, to consider for a moment, the question of the remoteness or propinquity of this contingency. Brazil yet bows beneath imperial sway. The glitter of her diadem is offensive to the Spanish American Republics. The Liberator pants to finish the great work, to which he thinks he is called—the emancipation of a Continent. Ere long, the arms of the Confederacy will press upon Brazil. Will Portugal slumber? Will she not be forced by circumstances to become the ally of Spain? Will not the contingency then have arrived? And Great Britain, always the friend and guardian of Portugal, will she be indifferent to the cries of her ancient and faithful ally? Hitherto, the Spanish American Republics have been contending for the right of self-government, and mankind have been forced to feel the justice of their cause. The war against Brazil will have a different character. The object will be to impose their own form of government on a neighboring People. In this state of things, will the united claims of Spain and of Portugal find no allowance from the other nations of Europe? If these contingencies should happen, will the People of these States be willing to embark in the contest?

Will it be said, that, whatever might have been the character of this "celebrated pledge," it has become inoperative, by the force of intervening circumstances'

That Spain is in a state of exhaustion—that the war for Spanish American independence no longer exists in fact? I answer, in its original terms, it did not contemplate opposition to Spain acting alone, but to Spain acting by the aid of an European ally. Her exhausted condition does not, therefore, remove the pledge. But do the Spanish American States consider it at an end? Why then have they called upon us, to stipulate the terms of its redemption, in the Congress of Panama? Does our own Government consider it at an end? Why then have they, so recently, acted upon it, at the call of the United States of Mexico?

If this difficulty can neither be met nor evaded, will gentlemen resort to the universal nostrum, the great political panacea, *confidence in the Executive?* Sir, on this subject of confidence, I am willing to deal justly—nay, as far as I am personally concerned, liberally. But I stand here as one of the Representatives of a sovereign State, charged to watch over her interests, and to the best of my poor ability, to defend them—enjoined to decide according to the rule of evidence, and not the rule of faith. Besides, I protest that the concession of confidence here, is purely gratuitous—absolutely without consideration. There is an entire want of reciprocal confidence. What is the evidence on which you were called to decide one of the most important questions ever presented to an American Senate? Did it consist in a frank disclosure of the facts necessary to inform your judgment? Was it that evidence on which your judgment was ultimately founded? And how was the evidence extorted, but by repeated calls of this House? As the constitutional advisers of the President, were we deemed unworthy of his whole confidence? If so, are we prepared to yield ours?

But, sir, this concession of confidence would not only be gratuitous—it would be also against the plainest and most palpable evidence.

We have seen what is the view entertained by the Spanish American Ministers, of this "celebrated pledge" of resistance to European interference, in the question and war of their independence. Now, if we are required to confide implicitly in the President, to protect us against these pretensions, we must look to his declarations, *not merely to us*, but *to those Ministers*—not merely to what he *has said*, but to what he has *omitted to say* when the *occasion required him to speak*—not *to his* acts and declarations alone, but to the acts and declarations of his *authorized agents*, either *expressly or tacitly approved*, to ascertain if there is a sufficient basis on which to rest this confidence.

I grant you, sir, the President has told us, that the motive of the attendance of our Ministers, at the Congress of Panama, is neither to contract alliances, nor to engage in any undertaking or project, importing hostility to any nation. But is this the plain import of the invitation given to him? Is this the obvious result of his acceptance of that invitation? These Ministers, too, tell us, that we are not to be required to do any thing which may commit our neutrality. But they tell us, in the same breath, that we are expected to do that which *must* commit our neutrality.

We are not to be required to commit our neutrality. No, sir. But we are expected to stipulate a contingent alliance with these States, against Spain, and any other European Power, which may interfere in the pending war. *Is not this to commit our neutrality?* How has the President met this pretension? Has he repelled it? No, sir. The Ministers of those States assert, that the stipulation of the terms of this contingent alliance, is a subject of "common interest"—that it is of "*immediate* utility" to those States: that it is expected our Representatives will have "*express instructions in their credentials*" on this point. These assertions called upon the President to speak out. Did he meet and repel this pretension? Sir, this would have justified our confidence. Was he silent? Then he abandoned us. There is a silence, which is as impressive and as binding as any language. He has been little observant of diplomatic correspondence, who has not perceived with what studied care, pretensions which it is not intended to admit, even although they may relate to subjects entirely collateral, are stated and repelled.

But the President was not silent, and he did not repel this pretension. On the contrary, the Secretary of State, acting under his immediate eye, distinctly affirmed it. The Ministers of those Republics tell him that this question, of the mode of resistance to European interference, *will arise before this Congress*—that *it is* a question of *common interest to the Nations of America*—that it is *expected*, that our Ministers will have *express instructions* on this point in their credentials—and, without *denying*, and *thereby admitting* the truth of these assertions, and the reasonableness of this expectation, the Secretary answers, that our Commissioners "will be *fully* empowered and instructed on all questions, *likely to arise in the Congress*, on subjects in which the Nations of America have a *common interest*." Can it be doubted, then, *that the Spanish American States have a right to expect* that our Ministers will be instructed to act upon the subject of resistance to European interference, and to concert with them the means of giving to our combined resistance, the utmost possible force?

When, therefore, I am required to act upon faith, in the spirit of unlimited confidence, I say the occasion does not authorize it—the evidence forbids it: When I am told that the President will not commit our neutrality, I answer that he has already manifested his determination to put it to the hazard of events. I appeal *from* the President *to* the President—*from* what he has said to us *to* what he has said to these Ministers, and to what he has *omitted to say*, when the occasion *required him to speak*, and to *speak plainly*. But this is not the whole case.

The declarations of our Minister to Mexico place this subject beyond all controversy. He asserts it, even more broadly than the Spanish American Ministers themselves; more strongly than, consistently with a just pride, with a proper degree of self-respect, they could have asserted it. According to these declarations, if any European Power shall interfere in the pending war between Spain and these States, we are not only to fly to their aid, to make common cause with them in the struggle, but we are, yes, sir, *we* are *to bear the brunt of the contest*. Now, I ask you, sir, do you, does any man believe, that the American People understand this thing, or that, understanding, they will submit to it? If this be true, the blood and treasure of this People, aye, our own blood and treasure, are to be freely spent in defence of Spanish American liberty. We are to be their champions, if need be, against Europe in arms.

Under what circumstances is this declaration made? Is it to manifest our "profound sensibility" to the welfare of these new Republics? No, sir. It is made in the spirit of a cold and calculating policy, for the advancement of our own interests, with little idea that we should be called to fulfil it—a huckstering bargain, to secure certain advantages in a commercial treaty.

Does any one pretend, I have not heard it suggested here, that these declarations of our Minister at Mexico were unauthorized by the President? The answer is obvious. Such an assertion would itself be unauthorized. Whether we look to the character of the Minister, or to the evidence before us, the same conclusion is forced upon us. I deny the title of any man to credit, who shall assert the contrary, on the documents before us. The fact that such a declaration had been made, was distinctly communicated to the Secretary of State. Was the Minister rebuked for it? Was the pledge disavowed? Was he instructed to recall it? No, sir. His conduct was approved. He remains at this moment in the same important station, enjoying the full confidence of the Government.

Will any profound examiner of dates assert, that there

is no evidence of this approbation—that the letter of Mr. Clay to Mr. Poinsett, of the 9th of November, 1825, is not an answer to that from Mr. Poinsett, in which he informs the Secretary, that he had made this declaration to the Mexican Government? Sir, I concede the fact; but how will it avail our opponents? Certainly this letter was answered before the 16th of January, 1826, when the documents referred to were communicated to the Senate. If, in that answer, the conduct of Mr. Poinsett was disapproved, why has it not been produced to us? If the President has not given to it his sanction, why has he not told us so? It would be quite as easy as to make the general declaration, that the proposed mission is not intended to commit our neutrality, in the face of evidence which, in our view, incontestibly proves the reverse. But could the conduct of Mr. Poinsett have been disapproved? In the letter from Mr. Clay, of which I have just spoken, after inveighing against the inconsistency of the Mexican Government, in a spirit of indignation, he exclaims: "No "longer than about three months ago, when an invasion "by France, of the Island of Cuba, was believed at Mex-"ico, the United Mexican Government promptly called "upon the Government of the United States, *through you*, "to fulfil the memorable *pledge* of the President of the "United States, in his message to Congress of December, "1823. What they would have done had the contingency "happened, may be inferred from a despatch to the Ame-"rican Minister at Paris, a copy of which is herewith sent, "which you are authorized to read to the Plenipotentia-"ries of the United Mexican States." Here, then, is a distinct avowal, by the Secretary himself, of the existence of a *pledge* on the part of this Government, which authorized the assertion of Mr. Poinsett—not of a *mere declaration of policy*, which the United States were free to pursue or to abandon, but of a *pledge*, which they were bound to redeem; which the Mexican Government had recently, through that very Minister, called upon them to redeem; and which they had been willing, if the occasion had required it, to redeem; and, to prove to the Mexican Government their willingness to have done so, Mr. Poinsett was furnished with the necessary evidence, which he was authorized to exhibit to the Plenipotentiaries of that Government. This chronological discovery cannot, therefore, avail.

But, perhaps, it will be said this was only an argument made use of by our Minister, a mere diplomatic movement, in the progress of the negotiation. Before we yield to this profound suggestion, let us consider *that the value of the argument depends on the truth of the fact which it asserts.* Let us remark, too, to what a condition our Cabinet would be reduced by the indiscreet zeal of its friends. If, in their view, the fact be untrue, the assertion of it, as the foundation of an argument to induce the Mexican Government to do the act required of them, *was an imposture*, which the Executive of the United States has not disavowed, and which he has, therefore, adopted. But he is not liable to this imputation. If there be truth in evidence, he admits the existence of this pledge, so far as a President of the United States is competent to give it.

With what reason, then, do gentlemen call upon us to give our sanction to this nomination, in faith and confidence that the Executive will not commit our neutrality, in the face of this manifest determination on his part, to say the least of it, to commit that neutrality to the hazard of events; to chain our destinies to the car of Spanish American fortune; to make the peace and quiet of this People to depend on the councils of any single Cabinet in Europe, whose chief may think fit to draw his sword in the assertion of the divine right of Spain?

But, does this pledge exist? Is this Government bound by a contract so disastrous? If it be so—*fides servanda est.* But, I deny the fact. I deny that this celebrated pledge, as the Secretary has denominated it, has any existence but in the imagination of the visionary. Let us, for a moment, examine it. If genuine, it will bear inspection. It is described by the Secretary, as the memorable pledge of the President of the United States, in his message to Congress of December, 1823. Now, the President had no authority, by his own act alone, to pledge the United States to a foreign Power. He did not intend to do so. It was a mere declaration of the policy, which, under given circumstances, he believed it proper for the United States to pursue. It did not bind him. It did not bind Congress. They declined to respond to it. No foreign Power could demand the enforcement of it, because no foreign Power was party to it. If, when the crisis arrived, the President and Congress, for the time being, should take the same view of the policy of the United States, the principle of this declaration would be acted upon. If otherwise, it would be abandoned. The notion of a *pledge* is visionary. That implies a contract, an agreement, on consideration. Here was a mere gratuitous declaration to Congress, of one of the public functionaries of this Government, which never received the sanction of that body.

Last year I was told, in the Court below, that the United States had given a pledge to the Nations of the world, for the suppression of the Slave Trade. I denied the existence of such a pledge, and the doctrine was not acknowledged by that tribunal. The answer was obvious. That could not be a pledge, which the United States might capriciously withdraw. It was a rule prescribed for the conduct of our own citizens, under the solemnity of an act of Congress, indeed, but which another act of Congress might repeal, and the pledge was gone. The pledge of which we are now speaking, had not even the sanction of an act of Congress, nor of either branch of the Legislature. Hitherto, then, we are free to act. We are bound by no pledge. But the President of the United States has proclaimed a principle of policy, on the basis of which the new Powers have given us an invitation to this Congress, the chief and avowed object of which is to concert the means of giving effect to this principle, by the combined exertions of the American States, this Government included. If the Senate advise its acceptance, is not the faith of the U. States committed? The power to give effect to the principle, will indeed depend on the ratification of a treaty by two-thirds of the Senate, and the provisions of that treaty can only be called into active operation by the whole force of the legislative power. But if either be withheld, will not the public faith be violated? If yielded, will not the peace of this Union be put in jeopardy, and made to depend on events, with which it has no natural connection, and over which it can exercise no efficient control? Can you refuse, without disappointing the just expectations of the Spanish American States?—expectations which this Government has created, and which it has distinctly and expressly recognized in its negotiations with these States? Of such a conduct, the inevitable result must be feelings of resentment and indignation, which will not be the less strong, because, peradventure, in obedience to the suggestions of policy, they may for a time be suppressed.

Sir, this is not the only belligerent question which we must discuss in the Congress of Panama. The second remark which I have to make on this branch of the subject, is this: If we do go there, our own interests will imperiously demand, that we should share in those deliberations which are to determine the fate of Cuba and Puerto Rico; and *this is a question which we cannot safely commit to negotiation.*

The original message of the President, which called us to the exercise of our advisory duties, left us wholly without information on this subject. When the additional documents, for which we had asked, were furnished, it became obvious, that the fate of these Islands was to be decided in the Congress of Panama, so far as the Spanish

American States had power to decide it. This state of things at once demanded our most earnest and serious attention.

When we look to the situation of those Islands—to the commanding position which they occupy, with reference to the commerce of the West Indies—we cannot be indifferent to the change of their condition. But when we reflect that they are in *juxtaposition to a portion of this Union, where slavery exists;* that the proposed change is to be effected by a People, whose fundamental maxim it is, that he who would tolerate slavery is unworthy to be free; that the principle of universal emancipation must march in the van of the invading force; and that all the horrors of a servile war will too surely follow in its train—these *merely commercial* considerations, sink into insignificance—they are all swallowed up, in the magnitude of the danger with which we are menaced.

Sir, under such circumstances, the question to be determined is this: *With a due regard to the safety of the Southern States, can you suffer these Islands to pass into the hands of bucaniers, drunk with their new born liberty?*

I repeat the question—Can you *suffer* this thing, consistently with the duty which you owe to Maryland, to Virginia, to Kentucky, to Missouri, to Tennessee, to North and South Carolina, to Georgia, to Alabama, to Mississippi, to Louisiana, and to Florida? Nay, sir, New England, securely as she feels on this subject, is not without interest in the result. A numerous colony of her sons, are, at this moment, toiling in temporary exile, beneath the fervid sun of Cuba. If the horrors of St. Domingo are to be re-acted in that beautiful island, *they* will be its first victims.

What, then, is our obvious policy? Cuba and Puerto Rico *must remain as they are.* To Europe, the President has distinctly said, "We cannot allow a transfer of Cuba to any European Power." We must hold a language equally decisive to the Spanish American States. We cannot allow their principle of universal emancipation to be called into activity, in a situation where its contagion, "from our neighborhood, would be dangerous to our quiet and safety." The President would brave the power of England, to prevent *her* acquisition of Cuba—and why, sir? To keep the receipts of our custom house at their maximum—to preserve our commerce and navigation. Will he quail before the new Republics of the South, when a dearer interest is at stake?

I know, sir—the documents before us prove it—that we have been exhibiting the character of a *political busybody,* in the Cabinets of Europe and America. I know, sir—the documents before us prove it—that, in the progress of this splendid diplomatic campaign, certain declarations have been made to the different Powers, cis-Atlantic and trans-Atlantic, which it may be difficult to reconcile. But, so far as they conflict with the duty which we owe to ourselves, they must be reconciled. *The safety of the Southern portion of this Union must not be sacrificed to a passion for diplomacy.*

The United States are yet free from these diplomatic fetters. *They* are not pledged. *We* have entered into no bonds. If it shall consist with our interest that Cuba should pass into the hands of England or of France, rather than to see another Haytien Republic erected there, *we* are free to permit it. If our interests and our safety shall require us to say to these new Republics—*Cuba and Puerto Rico must remain as they are,* we are free to say it. Yes, sir, and, by the blessing of God, and the strength of our own arms, to enforce the declaration. And let me say to gentlemen, these high considerations do require it. The vital interests of the South demand it—and the United States will be recreant from its duty, faithless to the protection which it owes to the fairest portion of this Union, if it does not make this declaration, and enforce it.

Shall we go to Panama to do this? It is one of the thick-coming fancies, which bewilder the minds of the advocates of this measure, that it will tend to protect the interests of the Southern States; that their interests require that we should send Ministers to Panama, to discuss this question concerning Cuba and Puerto Rico; yes, sir, *enfettered as our Cabinet is by its pledges and declarations,* that we should commit to the hazard of negotiation, a question of *vital* interest to us, in relation to which *we have nothing to yield.*

The Deputies of the Spanish American Republics go to Panama, with the settled conviction that they have the right to strike at Spain, by inciting and aiding Cuba and Puerto Pico to revolt; and, although they will not ask us to join in the operation, they will expect us to consult with them, as to the relations to be maintained with this new Power. Unless we are faithless to ourselves, our Deputies must be instructed, that *no change* in the condition of these islands *can be permitted.* What benefit can you expect from such negotiations?

Our Deputies will be told—The Cabinet of Washington have recognized our right to strike our enemy wherever we can reach him. They have expressly disclaimed *their* right to interfere, to prevent us from attacking Cuba. At their instance, we have suspended this movement, until the result of their mediation with Russia was ascertained. In requesting a mere *suspension,* they have reiterated the admission of our right. We have performed an act of courtesy in yielding to this request, but the period of suspension has passed. We return to our original purpose, and you cannot consistently interfere with its execution.

Sir, we must cut this Gordian knot. We must relieve ourselves from these diplomatic fetters. We must *pledge* ourselves, not to foreign nations, but to that portion of our own citizens who have a deep and vital interest in this question, that the condition of Cuba and Puerto Rico shall remain unchanged. To the Spanish American States, we must *notify our determination,* in terms of perfect respect and good will, but still as our fixed determination. Shall we go to Panama to do this? To expose our Deputies to their reproaches for our imputed inconsistency? Or to insult them by a studied mockery in opening a negotiation, with a fixed determination to dictate the terms—with an entire conviction that we have nothing to yield to them? Sir, on such a subject, the will of the People of the United States should be expressed, through their Representatives in both Houses of Congress, by an act to invest the President with the powers, which will be adequate to the crisis.

These, sir, are the reflections which occur to me on this branch of the subject. To my mind it is obvious, however we may protest against any intention to violate our neutrality, that, *as a necessary consequence of this mission,* we must become parties to the Congress of Panama, to the extent of what is denominated the pledge given by Mr. Monroe—a pledge which the People of the United States are not prepared to admit, and to redeem—a pledge, the redemption of which would most distinctly commit our neutrality; *or,* refusing to do so, that we shall disappoint the expectations which we ourselves will have created, and that feelings of ill will, and of eventual hostility, must be the necessary result.

And that, if we do go to Panama, we must share in their deliberations concerning Cuba and Puerto Rico—deliberations involving interests which we cannot commit to negotiation—in relation to which we have nothing to yield—concerning which, the obvious course of our policy, is simply to notify the determination, which a just regard to our own vital interests, has compelled us to adopt, and, having notified it, if need be, to prepare to enforce it.

Sir, these considerations press upon me with a force which is not to be resisted. But they are not the only ob-

jections to this measure. The *character* of the proposed Congress is *undefined*. Before we commit our destinies to its influence, we ought to understand it. Its objects are understood differently, by those who have given, and by those who have accepted, this invitation. Instructions which will conform to the views of the former, will be dangerous to the best interests of this Republic. Restricted within the limits suggested by the latter, they will be deficient in good faith—will disappoint the just expectations of those with whom we are about to associate, and cannot fail to substitute feelings of coldness and ill will, tending to hostility, for those which now connect us, with the Republics of Spanish America. Thus, *even in its peaceful aspect*, this Congress tends to controversy rather than to conciliation.

It is not my purpose to dwell in detail on these latter suggestions. Unquestionably it is our duty to understand the character of the Congress with which we are about to associate. From the chaos of discordant ideas presented to us, it is necessary to extract some definite conceptions, on which the mind can repose—not with the assurance of certainty, for that is hopeless, (the President and Secretary have vainly endeavored to obtain it,) but in the belief that we have reached a reasonable probability. Before we become parties to this Congress, it is manifestly proper that we should understand—

Its constituents and the principles of its organization;

Its forms of proceeding, and modes of action;

The effect and obligation of its decisions, and the process of enforcing them;

The objects of its power;

Its duration and the means of dissolving it, or those by which any member may retire from the confederacy.

I do not intend to discuss these various subjects. They would furnish materials for a volume, and cannot be examined, within the limits necessarily prescribed to this debate. I propose merely to touch them—briefly to explain the difficulties which oppress me, in the hope, perhaps it is a vain one, that gentlemen who see their way clearly, will deign to assist us in their solution. Will they allow me to ask these questions?

Are the Ministers to this Congress, to negotiate separately and successively with each other, or collectively, and contemporaneously in one General Assembly?

If in one General Assembly, what will be the principle of its organization? Are all the members to deliberate on a footing of exact equality, or under the Presidency of one or more, and of whom?

Are the Ministers of the United States to become members of this General Assembly, or is it to be composed exclusively of the Spanish American States, and are our Ministers to go, not as members, but merely as legates, to this Congress?

If they are not members, will they be allowed to take part in the deliberations of the Congress? If they are members, will they be bound by its decisions, to the extent that other States—to the extent that the Spanish American States are bound? Is each member to be allowed to originate subjects for deliberation, or are they to be fixed by treaty, or to grow out of events? Will any one of these subjects have precedence? Or will this depend on the will of the whole Congress, or of a majority, and of what majority? Is the sense of the Congress to be expressed by resolutions or compacts? In either case is unanimity required, or is a majority, and what majority, to govern?

It is a more fearful inquiry, to ascertain the effect and obligation of the decisions of this Congress, and the process of enforcing them. Are these decisions to be *recommendatory* merely, or are they to have any other, and what force and effect? Do they become obligatory by the mere act of this assembly, *proprio vigore*, or are they to be transmitted to the several Powers, by their Agents, for the assent and ratification of such Powers? If the former, whence do we derive the right to commit the interests of the People of the United States, to such guardianship? If the latter, if they are to be considered as a body of diplomatists, whose acts are inefficient, until they have received the sanction of their respective Cabinets, in what but to our disadvantage, will the Congress of Panama differ from the Congress of diplomatists here, who negotiate separately, but immediately with our Cabinet? What are those questions affecting our interests, which can be more conveniently adjusted at Panama, than at Washington?

If there is a middle term—if the decisions of this Congress, though not binding, are yet to come, as they must come to us with the high authority imparted to them by this Assembly of Nations—with the special sanction of our own Ministers, will no danger result from the refusal to ratify them, by the Senate of the United States? Shall we be considered as fit members of an association, whose views are so dissimilar from our own? Sir, I ask gentlemen to consider how extremely probable it is, that this diversity will occur, when they advert to the condition and character of these States, and compare them with our own. I ask them to look a little further.

When the pacts or resolutions of this Congress, establishing, for example, any principle of international law, shall have received the sanction of the respective Powers, how are they to be enforced? If one of the Members of the Confederacy shall fall off from the rule, is the force of the remaining Members to be employed to coerce the return of the delinquent? Is this force to be moral or physical? Is it to be *moral*—is the delinquent to be put under the ban of the Confederacy—to lose caste—to be excommunicated—to be the object of a political anathema? Is it to be *physical*, supported by fleets and armies, and all the pomp and circumstance of glorious war?

Or, (it is the only remaining alternative,) is the Confederacy to acknowledge the impotency of its stipulations, by passively witnessing this delinquency?

But what are the objects, on which the powers of this Congress are to be exercised—in the exercise of which we are expected to participate? I have spoken of the great and chief object—that which the Ministers of those States have placed in the front rank—the redemption of what our own Cabinet has denominated the celebrated pledge of Mr. Monroe. I have spoken also of Cuba. I pass over the proposed resistance to colonization. The absurdity of going to Panama for the purpose of entering into stipulations on this subject, has, I think, been sufficiently exposed. But this Congress is to be a Council in great conflicts, a rallying point in common dangers, a faithful interpreter of public treaties, an umpire, an arbitrator, a conciliator in all disputes and differences.

Is the exercise of these high powers to be confined to the Spanish American States? It is provided for, by treaties, to which we are not parties. But can we become parties to the Congress, without, in effect, submitting to the jurisdiction which it asserts over the other Members of the Confederacy? Let us consider this question briefly, but with care.

The Minister of Colombia tells us, the subjects for discussion in the Congress, "constitute two classes:

"1st. Matters peculiarly and exclusively concerning "the belligerents.

"2d. Matters between the belligerents and neutrals."

An expectation that we should join in the last, is distinctly expressed. Among the matters which belong to the second class, are enumerated, those of which I have already spoken, and some others. The Minister from Mexico adds, that, after these subjects shall have been disposed of, our Representatives are to "be occupied upon others, to which the existence of the new States will give rise," by which is to be understood, those principles of in-

ternational law, adverted to by the President of the United States.

Now let us suppose that, on any one of these subjects, the Congress shall come to a determination, which shall receive the sanction of the respective States who are represented there. The result will be a treaty made in the Congress of Panama, and ratified by the respective Cabinets. If, then, in consequence of any stipulation in that treaty, a controversy should arise between the Confederated States and any Foreign Power, is not the United States necessarily a party to such controversy? The Congress is to be a Council in great conflicts. Has not the *casus fœderis* occurred? It is to be a rallying point in common dangers. Is not this a common danger?

Suppose the Confederated States to differ as to the interpretation of the treaty—is not the jurisdiction of the Congress undeniable? It is the faithful interpreter of treaties. If Mexico and Colombia are the disputants, will it not decide between them? Who will decide? The Congress. We are parties to the Congress, parties to the treaty; shall we not partake in the decision? Will the case be varied by changing the parties? If the dispute be between the United States of America and the United States of Mexico, will not the jurisdiction of the Congress be equally clear? We are both Members of the Congress, both parties to the treaty—what shall exempt us from its authority? I do not speak of the obligation of its decision, but of its right to interpret.

Say that we are nominally exempt. Can we be substantially so? Admit, for the purpose of the argument, that, not being parties to the Conventions by which this Congress was called into existence, we can successfully plead to its jurisdiction, as an interpreter of treaties, made by its agency, so far as we are parties. What then? The Spanish American States are parties to the treaty concerning the interpretation of which we differ. *They* are entitled, under their Conventions, to resort to the Congress in which it was made, as its faithful interpreter. They claim the decision, and it is rendered. Shall we respect the decision of our associates, although not bound to do so by treaty? Shall we yield to it? Then the authority of the Congress is acknowledged. Shall we resist it? Shall we insist on a different rule of interpretation? And what then is the attitude in which we stand to this Confederacy of Nations? Can we continue to be represented in a Congress, whose authority we have spurned? Will we—ought we to be permitted to be parties in negotiations resulting in treaties, which we reserve to ourselves an independent right to interpret, while our associates submit them to the decision of a common tribunal?

Sir, we too must submit to the decisions of this Congress, if we are represented there. Can this arrangement be advantageous to us? Will it be tolerated by the People of the United States? What is there common to us, and to those new Republics, but the mere form of our Governments? For the rest, do they not differ from us in every particular, in language, religion, laws, manners, customs, habits, as a mass, and as individuals? Are not their interests, in many respects, different from ours?

As, between the several Spanish American States, all these things are in common; they have, moreover, a common origin. They have escaped from a common oppression. They are struggling against a common danger, and have, necessarily, in many respects, a common interest. By negotiating with them jointly, we increase their comparative strength, and diminish our own. In submitting any dispute which we may have with one of these States, to the arbitrament of the remainder, are we tried by our *peers?* Have we even the benefit of a jury, *de medietate linguæ?*

I would advert, only for a moment, to the power proposed to be exercised in this Congress for the suppression of the Slave Trade, in reference to which I make this remark: If the deliberate opinion expressed by a very large majority of the Senate at the last session of Congress, in the rejection of a treaty with Colombia, having for its object the inhibition of this traffic, by the joint exertions of the two Republics—a treaty, too, which had been negotiated in precise conformity with the instructions of our own Cabinet, could have availed aught with the President of the United States; he would, so far as we are concerned, have distinctly excluded this from the subjects of consideration by the Congress of Panama. I know not how gentlemen who voted against that treaty can recommend the unqualified acceptance of this invitation, when one of its avowed objects is the suppression of the Slave Trade, by the energetic, general, and uniform *co-operation* of all the American States. That, however, is a subject for their consideration. For myself, I abhor the Slave Trade. It is abhorred by my constituents. Even at the moment when it was tolerated by our laws, it was not in the Southern portion of this Union that its *practical* advocates were found. But I cannot admit, so far as I have the power to avert it, *the interference of any foreign nation in the action of this Government on its own citizens.*

The proposal to submit to the determination of this Congress, the question on what basis the relations of *Hayti*, and other parts of our hemisphere that shall hereafter be in like circumstances, are to be placed, is one of the most odious features in the invitation which we are considering. It *assumes the fact*—I beg you to remark it, sir—*that these relations are to exist.* The Congress to which we are invited, is only to *determine their basis*, to *define their character.*

The revolted slaves of St. Domingo, who, although years have passed away since they broke their fetters, have recently afforded the most decisive evidence of their incapacity for freedom, in the servility of the tenure, by which they have agreed to hold, from their ancient taskmasters; the slaves of Cuba and Puerto Rico, who are to be stimulated to revolt, by our Spanish American brethren, in the prosecution of their war against Spain; aye, and the slaves of the British West India Islands, if, with the aid of their own Abolition Society, they can be tempted to successful insurrection—(Sir, the idea is no creature of *my* imagination)—and "other parts of our hemisphere that may be in like circumstances"—that is, under the Government of revolted slaves—are to hold certain relations to us, the People of the United States, especially to us, *the People of the Southern United States*, the basis of which is to be determined, the character of which is to be defined, by the Congress of Panama. Yes, sir, and so far from repudiating from this project this odious and alarming feature, our own Cabinet has accepted this invitation, in the spirit of diplomatic courtesy, "to manifest the sen- "sibility of the United States to whatever concerns the "prosperity of the American hemisphere," but in utter recklessness of the condition of a portion of the People of this Union. To that People, sir, I speak, in the sadness of my heart, indeed, but in the calm and deliberate exercise of my judgment, the intercourse which would result from such relations, would be productive of the most awful calamity—would introduce a moral contagion, compared with which, physical pestilence, in the utmost imaginable degree of its horrors, would be light and insignificant. I will not trust myself on this subject. It is too intimately associated with feelings which I cannot, which I do not desire to control.

Shall we go to Panama to avert these evils? The affirmative of this proposition, asserted on this floor, is entitled to grave consideration, because of the source from which it emanates. It may, however, be briefly disposed of. Why go to Panama for this purpose? Is the policy which duty and interest prescribe to us, of a doubtful character, and do we invoke the counsels of the Congress to enable us to discover it? Is it beyond the scope of our

unassisted resources, and do we ask the aid of the new Republics to sustain us in our efforts to accomplish it? Sir, it is a *mere question of intercourse*, which, as it regards Hayti and the Spanish American States, we are free to allow, or to refuse; but in relation to which, unless we are faithless to our own brethren, to the People of the South, *we have no option. Their interests, their safety, demand its unqualified rejection.*

Do our brethren of the North differ from us, as to the danger of this intercourse? Do they abstain from sympathising with us, because they cannot enter into our feelings of apprehension? Sir, *ours* is the *post of danger. They* are in comparative *safety.* Who, then, should decide this question? Consistently with their own safety, can the People of the South permit the intercourse which would result, from establishing relations of any sort with Hayti, or other portions of our hemisphere, in like circumstances? Is the emancipated slave, his hands yet reeking in the blood of his murdered master, to be admitted into their ports, to spread the doctrines of insurrection, and to strengthen and invigorate them, by exhibiting in his own person an example of successful revolt? *Gentlemen must be sensible that this cannot be.* The great principle of self-preservation will be arrayed against it. I have been educated in sentiments of habitual reverence for the Constitution of the United States. I have been taught to consider the Union of these States as essential to their safety. The feeling is no where more universal, or more strong, than among the People of the South. But they have a stronger feeling. Need I name it? Is there any one who hears, and does not understand me? Let me implore gentlemen not to call that feeling into action by this disastrous policy.

If the mission, as its objects are stated to us by the Spanish American Ministers, is thus liable to objection, the charm of the picture is not heightened by the additional touches which it has received from the Message before us. I will not detain the Senate, by a detailed examination of the several subjects, which are there suggested, as proper for the consideration of the Congress at Panama. If it is to be resorted to for the purpose of establishing principles of maritime neutrality, and principles favorable to the navigation of peace, and to commerce in time of war, it has been already shewn that, so far as we have thought proper to propose these principles, they have been readily acquiesced in, by the States, with whom we have separately negotiated, or are in such a train, as to promise a successful issue. It cannot, then, be necessary to resort to the Congress of Panama for the *establishment* of these principles; and, if the motive of being represented there, is, to devise means for *their enforcement*—if, borrowing the example of the armed association of 1780, it is intended to proclaim to the world a new code of international law, which is to be enforced by the power of the Confederacy, *I am not willing to enter into these bonds.* Such an association might put two continents in a blaze.

Nor am I willing to send Ministers to Panama, as the apostles of religious toleration—to intermeddle with the principles of their faith—or the fundamental laws which they have deemed it wise to ordain, for the preservation of the Roman Catholic Church. Whatever interpretation may be given to it, this is the substance of the proposition before us. You abjure the idea of interfering to instruct the men of other countries how to govern themselves—will you consider less absurd the attempt to teach them in what manner to worship their God?

The establishment of the Roman Catholic Religion as exclusive in those States, is essential to their safety. Look to the character of the population—to the influence of the priests—to the noble part which they have performed in the struggle for Independence. Above all, consider that this is the only remaining link which connects these new States to continental Europe. Against the doctrines of legitimacy and the divine right of kings, they have committed the inexpiable crime. They have been guilty of the sin of Republicanism. One only tie still connects them. It is the Roman Catholic Religion. It is their acknowledgment, in the person of the Sovereign Pontiff, of the common Head of the visible Church. Outcasts from the Courts of Kings, they are still within the pale of his protection. Who will say that his authority, or his counsels, may not avail, to control the obstinacy of Ferdinand, and thus to give repose to Spanish America? Is this, then, a subject on which the moral influence of our example can be justly exerted? Will it, ought it to be tolerated?

But what is to be the duration of this Confederacy? It is indefinite in its terms, and its objects would render it coexistent with the States which compose it. Admit the right of any one Nation to retire at will from the Congress—what will be the situation of the Nation so retiring? New relations must be formed with the other States of the Confederacy. Will the season be propitious to their formation? We are well with these People now. Affection may be chilled by indifference—but it is destroyed in the conflict of opposing interests. We cannot realize the expectations of the Spanish American States, in the Congress of Panama. Why should we go there, merely to disappoint them?

Sir, the manner in which this mission has been got up, is very liable to objection. To me it appears that we ourselves have invited this invitation. Having obtained it, we were a little prudish in the outset. We asked, from our intended associates, a few plain questions, to the answers to which we were certainly entitled. We did not get them, however, and, in our anxiety for the connexion, we determined to waive them. Now we were wrong (which we certainly were not) in making this demand originally, or we were wrong in its subsequent abandonment. Whence arose this overweening anxiety?

Sir, it is the last, certainly not the least of the objections which I have to this measure, that it is, in my view, an attempt to change the foreign relations of this Government, in a mode not contemplated by the Constitution—by the mere exercise of the ordinary appointing power. The same authority which is exerted to create a Collector of the Customs, or a Register of the Land Office, is considered sufficient to change the whole system of our foreign relations. Nay, a higher extent of prerogative is asserted. The President claims it to be *exclusively* within his "constitutional competency" to send Deputies to the Congress of Panama; and it is merely in consequence of an act of grace and courtesy on his part, that we are consulted in this matter. Sir, this is a lofty pretension. I am no advocate of changes in the fundamental law, but, if this claim be well-founded, it behooves us to look to our charter.

By the Constitution, the President is authorized to nominate, and, by and with the advice and consent of the Senate, to appoint, Ambassadors, and other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not therein otherwise provided for, and which shall be established by law. Now, it is plain that the appointing power does not include the power to create the office; in other words, that the office, to which the appointee is nominated, must be previously created by law. If an appointment be to an office, to be exercised within the limits of the United States, or its territories, it must be to one which exists, and has been created, by the municipal laws of the United States. If to an office which is to be exercised without the limits of the United States, within the dominions of a foreign Sovereign, it must be to one which exists, and is recognized, by the general principles of international law, or which is specially created by positive and particular pacts and conventions. The limita-

tion in the latter case results not only from the fundamental law of this Government; but from the exclusive dominion, within his own territories, of the Sovereign within whose territories this Minister is to exercise his functions. That Sovereign is bound, as a member of the great family of Nations, to recognize as legitimate, an appointment which is consonant to the code of international law; and, of course, to acknowledge one which, by express convention, he has stipulated; but this is the extent of his obligation, and consequently the limit of the appointing power, under our Constitution.

Let us look to the first of these propositions. Is it within the "constitutional competency" of the President to appoint to an office, the functions of which are to be exercised within the limits of the United States, which office has not been created by the laws of the United States? Take an example. The President deems it expedient to establish a Home Department. Is there any one sufficiently absurd to assert, that he has a right *ex mero motu*, or even with the assent of a majority of the Senate, to appoint a Secretary for that Department—to assign to him certain specific duties, and then to call on Congress for the requisite appropriation, to compensate his services?—to imagine that the acts of such an officer would be valid, or that his attestations would be respected by our judicial tribunals?

Before the passing of an act of Congress for the organization of a newly acquired territory, and the creation by that act of the Legislative, Executive, and Judicial Officers deemed necessary for its Government, is it within the "constitutional competency" of the President, aided even as before, by a majority of the Senate, to appoint an officer or officers to exercise all or either of these functions? The proposition is believed to be too clear for argument.

Within the United States the office *must be created by law*, before the appointing power can be called into action. Why should a different rule prevail *without?* The Law of Nations operates on this Government in its intercourse with other Sovereignties, as the Municipal Law does, in its action on its own citizens. In this case, then, the Law of Nations, as in the other, the Municipal Law, must have created the office, before the power of appointment can exist. Now, the Law of Nations does recognize Ambassadors and other Ministers, in the intercourse between Sovereigns. But this law does no where recognize the right of a Congress of Ministers to receive an Embassy. The right to receive, and the right to send, a Minister, are co-relative. The one does not exist without the other. A Congress of Ministers is not authorized to receive an Ambassador, unless it is authorized to send one. Who will assert for the Congress of Panama, the right to exercise the latter power?

A Sovereign cannot, then, be represented in a Congress of Ministers, otherwise than by a Deputy, who becomes a Member of that Congress. He is not an Ambassador to that Congress, but is himself a *constituent part of it*. He is not accredited to any particular Power, but is commissioned as one of a number of Deputies who are collectively to compose the Congress. How are these Deputies created? The answer is obvious. From *the necessity of the thing*, it must be, by conventions or treaties between the respective Powers who are to be represented by those Deputies. In this manner, the Congress at Verona was created by the treaty of Paris. The Deputies who appeared there were called into existence by the express stipulations of that treaty. So, too, in the Congress of Panama, the office of Deputy to that Congress is created by the special provisions of the treaties between the several Powers who are to be represented there.

The result of what has been said is this: The office of a Deputy to an international Congress, does not exist permanently under the Law of Nations, but is the offspring of particular convention; and this, of necessity, because the Congress itself is not pre-existing, but is the creature of treaty—and the treaty which creates the Congress, stipulates also for the appointment of the Deputies, of whom it is to be composed. Then the clause of the Constitution which authorizes the Appointment of Ambassadors, or other Ministers, cannot be invoked to sustain this nomination, because a Deputy to a Congress is not a Minister existing by force of the Law of Nations, but created by particular conventions between the Powers represented in that Congress; and we have no such conventions with the Powers represented in the Congress of Panama. Consequently, as to us, the office of Minister or Deputy to that Congress, does not exist, not being derived from the Law of Nations, nor provided for by any convention. A very simple view of the subject seems to be decisive: Could the President have sent Ministers to the Congress of Panama, *uninvited* by the Powers represented there? Could he, without such invitation, have required such Ministers to be accredited by that Congress? Would a refusal to receive them have furnished just ground of complaint? If these questions are answered in the negative, as I presume they must be, the conclusion is obvious, the office *exists only by force of the invitation*.

Unless, then, the *mere invitation of a foreign nation* is competent to *create an office*, and thus to call into action the appointing power of the President, or unless this appointing power includes the power to create the office, which we have seen that it does not, the appointment by the President of Ministers to the Congress of Panama cannot be valid, nor can it be rendered so by the advice and consent of a majority of the Senate, nor by any power short of that which is competent to create the office, and that we have seen is the treaty-making power. The President can appoint a Minister to the Republic of Colombia, because such an office exists under the Law of Nations, and is, therefore, a legitimate object of the appointing power; and he may instruct such Minister to communicate with the Congress of Panama—but he cannot appoint a Minister to take a seat *in* that Congress, because we have no conventions with the Powers represented there, by which, as to us, the office is created; nor can he send a Minister, as an Ambassador or Legate, to that Congress; because the Congress, as such, has not the rights of embassy. If it be said that this is mere form, the answer is obvious—form becomes substance in this case, by force of the constitutional provision, which requires the assent *of two-thirds of the Senate* to the ratification of a treaty, while *a bare majority* is sufficient to give effect to an exercise of the appointing power.

Let us consider this question for a moment, freed from the prejudices which operate in favor of the Spanish American Republics. If the States represented in the Congress of Vienna or Verona, or the Holy Alliance, had given us an invitation to be represented there, apart from the expediency of the measure, could it have been within the "constitutional competency" of the President to have sent Ministers to take their seats in either of those Assemblies? If the Nations of Europe should, by treaties, provide for a Congress to devise the means of abolishing the Slave Trade, of resisting the extortions of the Barbary Powers, or of suppressing the Piracies of the West Indian Seas, could the President, the United States not being parties to those treaties, of his own mere will, make us Members of that Congress, by sending Deputies to represent us there? The question is proposed in this form, because our Ministers would, of necessity, if received at all, be Members, and not Ambassadors, since such a Congress is neither competent to send or to receive an Embassy.

Why, then, in the creation of this office of Deputy or Minister to the Congress of Panama, was not the constitutional organ, the treaty-making power, resorted to? What would have been the result of such a course is obvious, I

think, in the recorded votes of the Senate, on the preliminary questions which have arisen. *The object could not have been effected. Two-thirds of the Senate could not have been obtained.* The office would not have had existence, or the Senate, in the exercise of their legitimate powers, would have so modified the treaty, as to have limited the functions of the Ministers to those objects of which they would have approved.

Such, sir, are some of the views which I have taken of this very interesting question. I will not fatigue the Senate by a recapitulation of them. They are, perhaps, erroneous. If this measure is to be adopted, I sincerely hope they may be so. Such as they are, however, they are respectfully submitted to the Senate, as the result of patient inquiry, and a sincere disposition to arrive at truth. It has not been my purpose to arraign the motives which have produced this nomination; but of the measure itself, I have spoken with the freedom which I thought became me. All that remains is, that I should record my vote, and that duty I am now ready to perform.

Mr. DICKERSON, of New Jersey, rose, and said, it was his intention, when this subject was first brought before the Senate, to take no part in the discussion; but, on the final question as to the expediency of the measure, to call for the yeas and nays, and record his negative. The extraordinary course, however, adopted within, as well as without these walls, had put those opposed to the mission upon the defensive.

I am not willing, (said Mr. D.) to be considered as belonging to an organized opposition to the administration—if, indeed, there is such an opposition. On the contrary, yielding to the administration, I have, on more occasions than one, voted in favor of nominations by no means agreeable to me, and have no doubt I shall often do so, in future; others act with me, most probably, from similar motives. But, we must not be taxed too heavily. We must sometimes be allowed to think and act for ourselves—and if, for the exercise of this right, the Government papers are to be let loose upon us, we must defend ourselves as well as we can.

We, who are opposed to this mission to Panama, are accused in papers that receive the patronage of the Government, of being conspirators, who seek to conceal our views; and, by closing our doors, to seal up every avenue to information. Here, at least, it is known, that, in discussing this question with closed doors, we have yielded, reluctantly, to the injunctions of the Executive. Under these circumstances, I must be permitted briefly to state the reasons for the vote I shall give, and to convince my associates within these walls—for we are denied an appeal to our constituents without—that I am no conspirator; that I am not governed by motives of faction, or a desire unnecessarily to embarrass the administration.

I am, from principle, opposed to all unnecessary extension of our diplomatic concerns—next to a passion for war on the part of our Government, I most dread a passion for diplomacy—a stronger symptom of which I have never seen, than in the case now before us.

I consider it a serious misfortune that any of the new States of Spanish America have been induced to invite the Government of the United States to send deputies to their great Congress at Panama; and more so, that the President of the United States has felt himself authorized to accept the invitation. The invitation itself was of a character so extraordinary, that the Ministers of Colombia and Mexico would not present it, until, by inquiry, they ascertained a point, on which they certainly had strong doubts, that it would be well received. And the President at first perceived, and stated, so many difficulties, to be obviated before the invitation could be accepted, that, unless they had been removed, by some process which we are utterly incapable of comprehending, the invitation must have been declined. The explanations given by the Ministers of the new States, were calculated to increase, rather than obviate, the difficulties that had suggested themselves to the President, and we find those explanations were not satisfactory, when he determined to accept the invitations. Mr. Clay, in his letter to Mr. Obregon, of the 30th November, five days before the meeting of Congress, says, "in your note there is not recognized so "exact a compliance with the conditions on which the "President expressed his willingness that the United "States should be represented at Panama, as could have "been desired;"—yet, "the President has determined, "*at once*, to manifest the sensibility of the United States to "whatever concerns the prosperity of the American Hem-"isphere." The President has not condescended to inform us of the circumstances which induced him to abandon the cautious policy which he first adopted, but seems to presume upon some sympathetic movement in this body, which shall induce an acquiescence in his views on our part, without the light which has shed its influence over his mind; and, no doubt, it is considered as an extraordinary circumstance that we do not, also, determine, *at once*, to manifest the sensibility of the United States to whatever concerns the prosperity of the American Hemisphere.

This body, however, is not in the habit, and I hope never will be, of determining, *at once*, upon questions of doubtful policy, as this was certainly considered to be, on the first impression, by the President himself. Deliberation is the peculiar characteristic of the Senate of the United States; such has been its character, heretofore, and the present case affords abundant proof that such will continue to be its character. We are not governed by sudden impulses—no course pursued within or without these walls, can force us into a hasty decision, upon this, or any other important measure.

The United States have, at all times, manifested the utmost sensibility, as to what concerns the Republic of Mexico, and those of South America, by being the first to acknowledge their independence—by sending Ministers to their respective Courts, and by adopting treaties with them of the most friendly character, upon terms of perfect reciprocity. We shall, no doubt, keep Ministers at their Courts, to cultivate and preserve the most friendly relations between them and us; to go farther than this, will lead to embarrassments—a system of fraternization must end in dissension.

It is not the interest of these Republics that we should embark in their cause, and surely there is no reason for their embarking in ours; with them, there is a sense of common danger, which alone can bind and keep them together. In that danger, we need not, and it is to be hoped, will not, participate.

It was long after these new States had made their arrangements for holding their Congress at Panama, before they thought of inviting the United States to take any part in their union, league, and confederation; nor is it probable it would have occurred to them at all, but, for what Mr. Clay calls, "the memorable pledge of the Pre-"sident of the United States, in his message to Congress "of December, 1823," that the allied Powers of Europe could not extend their political system to any portion of either continent of America, without endangering our happiness; that we could not believe that our Southern brethren, if left to themselves, would adopt it of their own accord; and that we could not behold such interposition, in any form, with indifference. And the still more memorable pledge, in the same message, that the American continents are, henceforth, not to be considered as subjects for any future colonization by any of the European Powers.

As to the first, we may see the light in which it was viewed by the Government of Mexico, when they called upon the United States to redeem this pledge, by inter-

fering to prevent, what they supposed an attempt to invade Cuba, by a French force last summer.

If these new Governments suppose we are to redeem this pledge, any farther than to promote our own views in preventing a change, as to the possession of the Islands of Cuba and Porto Rico, they deceive themselves—and it is very certain they have deceived themselves. As to the other pledge, that the nations of Europe shall not plant colonies on either of the continents of North or South America; these new States ought to know, that the President had no power to give such a pledge. If the powers of Europe possess, by right, any portion of either of these continents, they may colonize such possessions, and this Government will not prevent them—the pledge of the late President to the contrary, notwithstanding.

These pledges, which the Senator from Louisiana, (Mr. JOHNSTON,) thinks produced an electric shock in Europe, and brought the Holy Alliance to a pause, in my humble opinion produced but little effect, except to induce the new Republics to give this invitation to join the Congress at Panama, and will produce but little effect, except to embarrass our Government hereafter.

What is the nature and character of the Congress to be assembled at Panama?

It is to be composed, in the first place, of Delegates, called Plenipotentiaries, from five new States, formerly Spanish, and still claimed by Spain as Colonies, but whose independence has been acknowledged by the United States and by Great Britain. From the novelty of their situation, and exposure to danger from internal as well as external enemies, they have thought proper to strengthen themselves by compacts of union, league, and confederation, to be consummated by this Congress at Panama. The powers of this Congress are regulated by the treaties of union, league, and confederation, upon which it is founded—and no doubt, is to be as lasting as those treaties themselves.

The Congress at Panama will be brought together, and can only be kept together, by a sense of common danger amongst the States represented; and, in all particulars, it will more nearly resemble the Amphictyonic Council, than any other assembly we read of.

This Council was founded on compacts of union, league, and confederation, among the States represented, for the protection of their liberty and independence against powerful enemies, who, but for such union, would have subjugated them in detail. It was instituted principally with a view of uniting in a sacred bond of amity, the several States of Greece that were admitted into it, and of obliging them, by that union, to undertake the defence of each other, and to be mutually vigilant for the tranquillity and happiness of the country. They were, also, created to be protectors of the oracle of Delphos.

The powers of the Congress at Panama have been accurately delineated by gentlemen who have preceded me. I shall endeavor to be more explicit as to powers which are denied them.

This Congress is not to be considered as a sovereign Power—as by the treaties on which it is founded, they must in no wise interrupt the exercise of the national sovereignty of the contracting parties; nor can they interfere, in whatever regards the relations of the States represented, with foreign nations. There will, therefore, be no court at Panama to receive Ministers from sovereign States or Powers. It will be observed that the Deputies to be sent to this Congress by the new States, are no where called Envoys or Ministers, but Plenipotentiaries; the plenitude of their power, however, is limited by treaties to specific objects. They are not considered in the character of Ministers entitled to protection by the law of nations: for the States respectively have taken care to secure to their Representatives this protection by express treaty. No provision, however, of this kind, is made in behalf of the Deputies of the United States, and clothing them with the titles of Envoys Extraordinary to the Assembly of American nations at Panama, which is not a court or sovereign Power, will not ensure to them the protection due to Ministers under the law of nations. But, as Colombia has joined in the invitation, and as Panama is within its territories, if our Ministers shall not be treated with the hospitality due to their characters as Deputies—and more they are not entitled to, as they were only invited as such—we shall have just cause of complaint against that Government, and that is all we have to rely upon in this particular. The Congress at Panama is confined strictly to the States formerly Spanish, by all the treaties between them, for holding the same. The President nominates our Envoys to the Congress of *American nations* at Panama—which would embrace the United States—a name which it will be proper to assume, if our Delegates take seats in this Congress, and not otherwise. This proves, if other evidence were wanting, that it is intended our Ministers shall take their seats in this Congress.

What is to be the character of our Commissioners to Panama?

They are to be sent in conformity with the invitation of three of the States to be represented at this Congress; their characters, therefore, must conform to the terms of the invitation.

Mr. Obregon invites us to send *Representatives* to the Congress at Panama. Mr. Clay, in his letter to Mr. Obregon, speaks of them as Deputies and Commissioners to this Congress—the most appropriate terms that could be used. Mr. Salazar invites us to send a *person* or *persons* to *represent* the United States at the General Assembly at Panama.

Mr. Canaz invites us to send *a Representative* to the Congress at Panama.

The first invites us to send more than one Representative; the second to send one or more; the third to send but one. Mr. Canaz thought that one Representative on the part of the United States, to the Congress at Panama, was sufficient, and in that opinion I fully concur.

Then, with whatever pompous titles we may clothe these Representatives, they are delegates with restricted powers; they may also have other undefined powers as Envoys Extraordinary; they are called, in the nomination to us, Envoys Extraordinary and Ministers Plenipotentiary to the Assembly of American nations at Panama.

An *Envoy Extraordinary* is a Minister from a sovereign Prince or State, appointed to the Court of, or sent to meet the Minister or Ministers of, another sovereign Prince or State, to perform some particular and important purpose, which, when performed, the Minister retires. In this particular he is distinguished from an *Envoy Ordinary*, who resides permanently at the Court to which he is sent—and whose duties are of general, and not of an extraordinary and particular character.

The President, in the nomination before us, has not designated the particular and important subjects to be given in charge to these Ministers. Mr. Anderson and Mr. Sergeant are nominated as Envoys Extraordinary and Ministers Plenipotentiary to the Assembly of American nations at Panama. What they are to do there as Envoys Extraordinary, is not stated in the nomination. In the message accompanying the nomination, a variety of subjects are stated, that may come under the consideration of this Congress, in which our Ministers, if they are to be considered as members, may take a part; but nothing that can, with propriety, be referred to them as Envoys Extraordinary. If there are not important subjects to be referred to these Envoys Extraordinary, and not detailed in that message, the nomination itself must be a novelty in the diplomatic history of this country.

At Courts where we have once had Envoys Extraordinary, we send Ministers of the same character, without a

particular designation, in their nominations, at least, of the important subjects committed to their charge. But I do not believe that there has been made to the Senate a nomination of an Envoy Extraordinary to a foreign Court for the first time, from the commencement of our Government to the present day, in which there is not a designation of the particular object or objects to be effected by the mission. Such a nomination could not be satisfactory to the Senate.

In 1813, the President nominated Messrs. Gallatin, Adams, and Bayard, Envoys Extraordinary and Ministers Plenipotentiary, to negotiate and sign a treaty of peace with Great Britain, under the mediation of the Emperor of Russia; to negotiate and sign a treaty of commerce with Great Britain; and to negotiate and sign a treaty with Russia.

If Mr. Madison had nominated these gentlemen as Envoys Extraordinary to the Court of St. Petersburg, without a designation of the particular objects of the mission, would not the Senate have demanded information as to the extraordinary subjects with which these Ministers were to be charged, before they would have consented to confirm the nomination? And if the President should have manifested so little confidence in the Senate, as to have refused such information, would they not have justly manifested an equal want of confidence in him, by withholding, or at least suspending, their act of confirmation?*

I have great confidence in the honor, integrity, extensive knowledge, and learning, of the President. Every motive which can actuate the human breast, must urge him to promote, what he conceives to be, the interest of his country. But of his discretion we have many reasons to doubt; and the correspondence of our Minister at Mexico, with that Government, are by no means calculated to remove those doubts. And many of his views of the policy of this Government, although perfectly honest, are in my opinion incorrect; more particularly his disposition to yield the right of search as a means of suppressing the slave trade, as yielded in our treaties with Great Britain and Colombia upon that subject—and as to the policy of abolishing the right and practice of privateering in time of war—now a subject of negotiation with Great Britain.

If the President had nominated these Envoys Extraordinary to make treaties for either of these purposes, with Ministers having powers to agree to the same at Panama, would the Senate confirm the nomination? It is to be hoped they would not.†

In the present case, the Senate will not observe a proper respect for their own power, if they confirm this nomination of Envoys Extraordinary, without a more explicit designation of the subjects with which they are to be charged. We ought not to grant this commission in blank, to be filled up on the responsibility of the President alone. Although we must place great confidence in him—yet this is a degree of confidence which it is not necessary to place in any man. It ought not to be expected of us; confidence should be free—it cannot be extorted. We do not give our confidence upon compulsion. If pertinaciously required, it is pertinaciously refused. If asked, it should be given. Between the President and the Senate, confidence should be mutual, particularly in a case like this, where the Senate is a co-ordinate power in the appointment, acting under a responsibility equal to that of the President.

If we confirm the nomination of these Ministers, with their multifarious character of Envoys Extraordinary, Ministers Plenipotentiary, Commissioners, Representatives, Delegates, and Deputies, to the Congress of American nations at Panama, and they take seats in that Congress, and vote upon questions deeply affecting the interest of this country—or if, as Envoys Extraordinary, they make treaties under their instructions, with Ministers that may be there for that purpose, upon either of the subjects just mentioned—What would be our apology to our constituents? We gave as large a charter as the wind—but relied upon the discretion of the Executive and of our Envoys and Delegates—on them be the responsibility. Such must be the answer of the body constitutionally created as a check upon the Executive power.

By whatever name we may choose to distinguish these persons to be sent to Panama,—whether as Envoys Extraordinary and Ministers Plenipotentiary, to a Congress not being a sovereign power, and without authority to receive or send Ministers;—or as Commissioners, Representatives, Delegates, or Deputies, to take part in the deliberations of this Congress; or Diplomatic Agents to advise them; they are something totally distinct from any thing heretofore presented to the consideration of the Senate. They are of a character not known to the Constitution—not foreseen nor provided for by our Federal Convention—except under general powers. If they are to take their seats as Deputies forming a constituent part of this Congress, their appointment is not provided for in any way under the Constitution—and under any other point of view, the power of the President, by and with the advice and consent of the Senate, to appoint Ambassadors, other public Ministers, and Consuls, does not apply to them. The words Ambassadors and other public Ministers, must

* John Jay was nominated, in 1794, Envoy Extraordinary to his Britannic Majesty, to vindicate our rights with firmness, and to cultivate peace with sincerity.

In the same year, Thomas Pinckney was nominated Envoy Extraordinary to his Catholic Majesty, for the purpose of negotiating of and concerning the navigation of the Mississippi.

In 1797, Messrs. C. C. Pinckney, Francis Dana, and John Marshall, were nominated Envoys Extraordinary to the French Republic, to dissipate umbrages, remove prejudices, rectify errors, and adjust differences by treaty.

In 1799, O. Elsworth, Patrick Henry, and William Vans Murray, were nominated Envoys Extraordinary to the French Republic, to discuss and settle, by a treaty, all controversies between the United States and France.

These cases are cited to show that it is usual and proper, on the nomination of Envoys Extraordinary to any foreign Courts, particularly for the first time, to designate the important objects with which the Envoys were to be charged. If there could be a case where an omission to do so could be excusable, it would be, in that of Envoy Extraordinary to the Sublime Porte, in which there would be much difficulty in assigning any plausible object; yet, in 1799, when William Smith was nominated Envoy Extraordinary to the Sublime Ottoman Porte, the duty assigned him, was, to negotiate a treaty of amity and commerce between the United States and the Sublime Porte.

† In the year 1785, a treaty was made by our Ministers with the King of Prussia, by the 12th article of which it was agreed, that free ships should make free goods: and, by the 23d article, it was agreed, that in case of war between the parties, no privateers should be commissioned, by either party, to destroy the trade of vessels, or interrupt the commerce of the other.

In 1799, this treaty was, in part, renewed, but those important provisions were lost sight of. The first, it is feared, can never be regained—the last, it is to be hoped, never will.

Mr. Adams, our present Chief Magistrate, was the Minister on the part of the United States in making this last treaty. Whatever might have been his reasons for abandoning the principle adopted against privateering—he is now very anxious to re-establish it.—*Note, by Mr. D.*

be taken in their common acceptation, as recognized by the law of nations. We employ abroad Diplomatic Agents, who do not come under this description, but they are provided for by law, before the appointments can be made. Such agents, if any, should be sent to Panama—or what, perhaps, would be better—Mr. Anderson or Mr. Poinsett should be directed to repair thither, without the character of Deputies, or of Ministers, at that place.

There is no such office as Minister or Delegate to the Congres at Panama. The President and Senate cannot appoint to such an office. They cannot create such an office. It was never intended they should have the power to do so. And, if exercised on this occasion, it will prove that the Executive is gaining strength at the expense of the Legislative department of our Government, of which we have other manifest proofs.

To create new officers, with new and undefined functions, by calling them Ministers or Envoys, is an evasion of the Constitution. If we are to have Diplomatic Agents of this new character, let them be provided for by act of both Houses of Congress. In an affair of such novelty and importance, it is due to the nation that their immediate agents should be consulted—not merely as to the appropriations to pay the expense of such agents—but as to the expediency of sending them.

Heretofore the House of Representatives has been consulted as to the propriety or expediency of sending Ministers to these new Republics, and they have voted the appropriations necessary for such missions, before the nominations have been made to the Senate; and this was very proper, although not absolutely necessary—as these Ministers were sent to the Courts of Sovereign States, under the protection of the law of nations. But such should be the course, if it is intended that the House of Representatives shall have any share in deciding as to the expediency of the measure. How are they free to decide this point, when they are simply asked for an appropriation for Ministers already appointed by the President and Senate?

The President accepts the invitation to send Ministers or Representatives to Panama, without consulting the Senate, and that acceptance is urged as a most weighty consideration in favor of confirming the nomination: and, if the nomination is confirmed, under this pressure, the acceptance of the President, in the first place, and the confirmation of the nomination by the Senate in the second, will be considered as imposing an obligation upon the House of Representatives to make the necessary appropriations, which cannot, or will not, be resisted. If we confirm this nomination, without restriction, the calamitous consequences which have been pourtrayed, in the most glowing colors, may, but I hope will not, happen. If they do not, however, that circumstance cannot be attributed to the caution or prudence of the Senate.

We are told that there is no reason to fear the consequences that have been predicted from this mission, as our Ministers will be so completely restrained—by their instructions, which we are not to see, but to take upon trust—that no injury can possibly be done to the United States: that, indeed, their chief business will be, to manifest the sensibility of our Government to whatever concerns the new States. Even in this point of view, I have strong objections to the measure. At best, it will be an useless parade—an expensive exhibition of pompous pageantry, very fit for the splendor of monarchies, but little suited to the simplicity of Republics. And the very explanations our Ministers must give, cannot, but in some degree, embarrass our Government. All the benefits we have a right to anticipate, may be attained with much less expense and parade, and without exciting any of the Powers of Europe to counteract and defeat our views.

We will suppose the nomination confirmed; appropriations made; our Ministers, with their outfit and one year's salary, at the Congress of Panama: they present themselves—the first step to be taken would be the verification of their powers; and the first question, on the part of the Deputies of the new States, would be—What are you, gentlemen? The Ministers of the United States would answer—We are Envoys Extraordinary from the Government of the United States, to the Congress of American nations at Panama—here are our credentials.

Deputies of the new States—Then you have some particular important object to attend to on the part of your Government; will you be so good as to inform us what this object is, as we do not find it in your credentials?

Ministers of the United States—That is a great secret, which was not even communicated to the Senate of the United States; but it is in our instructions, and will be made known in due time.

Deputies of the new States—It is not necessary to make any communication on the subject of your instructions, as the Congress at this place is not a sovereign Power, and has no Court to receive Envoys Extraordinary, or other Ministers.

Ministers of the United States—You invited us here.

Deputies of the new States—The Ministers of Colombia, Mexico, and Guatemala, invited the United States to send Representatives to this Congress; if you come in that character, we are happy to receive you as such.

Ministers of the United States—Then we come as Representatives to this Congress, agreeably to the terms, modifications, and restrictions, of the invitation and its acceptance.

Deputies of the new States—You are not expected to take part in any deliberations of a belligerent character. It is expected, however, that you will take a lead in the measures necessary to redeem the pledges of your Government, and, in consequence of which, you have been invited here; and in the first place, that you will assist in devising ways and means to prevent the Allied Powers of Europe from extending their political system, to any portion of this hemisphere.—There can be no misunderstanding as to this pledge, as it is explained by your Minister at Mexico. To the new Republics, "the United States "had pledged themselves not to permit any other Power "to interfere with their independence or form of Govern-"ment; and that, in the event of such an attempt being "made by the Powers of Europe, they would be com-"pelled to take the most active and efficient part, and to "bear the brunt of the contest."

Ministers of the United States—We must inform you the President had no right to make such a pledge. The United States are not bound to redeem it; and it is not intended to do any thing further under it, than to prevent the transfer of Cuba and Porto Rico from Spain, to any of the Powers of Europe.

Deputies from Colombia—We fear something more is meant. There is a mystery in the case. It has been of the greatest importance to the Republic of Colombia, more particularly to strike their enemy, the Government of Spain, in her only vulnerable points, these islands, where, by the aid of her friends, she keeps up a force from which we have suffered repeated invasions. This renders it necessary, on our part, to keep up forces at an enormous expense, which we might otherwise dismiss. Independence is as ardently desired by the inhabitants of these islands, as by the inhabitants of the Continent; and that the sacred principles which we enjoy may be extended to them, they have frequently implored our aid. We have suspended our intended expedition by the friendly advice of the Government of the United States, until the meeting of this Congress, by the assurance that the Emperor of Russia was exerting his influence to induce the King of Spain to give peace to these new Republics, by acknowledging their independence, provided he should be left in the peaceable possession of Cuba and Porto Rico. We have now given sufficient time to receive positive accounts

of the final result of the good offices of his Majesty the Emperor of all the Russias. As yet, we have received no evidence of the exercise of these good offices. Perhaps you can give us some information upon the subject.

Ministers from the United States—O, yes, the most satisfactory. Here are the letters between Mr. Middleton, our Minister at St. Petersburg, and Count Nesselrode, and the conversations between Mr. Everett, our Minister to Spain, and Mr. Zea.

Deputies from Colombia—If your Government has been amused with this correspondence and these conversations into a belief that the Emperor of Russia was using his influence to persuade the King of Spain, under any circumstances, to acknowledge the independence of the new Republics, we are sorry to be made the dupes of their credulity; and we hope we shall not be favored with any further advice upon this subject, but be left, by our own means, to extend to those islands the blessings we enjoy ourselves; and to destroy the only means of annoyance which our old enemy, Spain, can now bring to bear upon us.

Ministers from the United States—In this you are again mistaken. We must protest against your disturbing those islands for the present. The continental system of Europe must prevail, as to these islands, for a season. Liberty and independence are very proper for the inhabitants of the American Continent—but not for the islanders.

Deputies from the new States—It is unnecessary to say any thing further upon this subject, as it is impossible we can agree. But, there is another pledge on the part of your Government, in redeeming which we trust there will be no difficulty: You, no doubt, are instructed to adopt measures effectually to prevent the forming of Colonies on either of the American Continents, by any of the Powers of Europe, agreeably to the pledge of the President of the United States, of December, 1823.

Ministers from the United States—Here again you are mistaken. The President had no right to make such a pledge; but we are authorized to consent that each of the American States may "guard, by its own means, against "the establishment of any European Colony within its "borders." This is the extent to which the present Administration is willing to go upon this subject.

Deputies of the new States—If this is all, your consent is not wanted; we shall take care of our own borders by our own means, and by our own advice. But we are glad to be undeceived upon this point; and, as it is apparent we are not to be favored with your co-operation in the important concerns which induced us to invite you to this Congress, will you have the goodness to state what it is you propose to do here.

Ministers from the United States—We propose to join you "in the advancement of religious liberty." You "are, "even yet, so far under the dominion of prejudice, that "you have incorporated with your political constitutions "an exclusive church, without toleration of any other "than the dominant sect." We mean to press upon you "the abandonment of this last badge of religious bigotry "and oppression."

Deputies of the new States—You need give yourselves no trouble about our religion. Upon that subject, we shall suffer no discussion, and shall take no advice.

Ministers from the United States—There seems very little, then, for us to do here. The chief inducement, however, on the part of our Chief Magistrate for sending us to this place was, to show, by this token of respect to the Southern Republics, the interest the United States take in their welfare. In discharge, therefore, of this last and very important object of our mission, "we congratulate "you most sincerely upon your having thrown off the "yoke of Spain, and having established your indepen-"dence."

The Deputies of the new States—"We take this con-"gratulation, though somewhat late, in good part; and "we most sincerely congratulate the United States on "their having thrown off the yoke of Great Britain, and "having established their independence."

This might be considered as a very fortunate issue of the mission.

Suetonius informs us, that the Ilienses, coming after a considerable interval, with compliments of condolence to the Emperor Tiberius, for the loss of his son Drusus, the Emperor answered them, "And I heartily condole with you for the loss of your excellent countryman, Hector." This was an embassy considered at the time as of great importance; and, as we are governed much by precedents, I would recommend it to the notice of our Envoys Extraordinary and Ministers Plenipotentiary at Panama.

Mr. BENTON, of Missouri, said he had not expected to speak in this debate; and, if he had spoken among the first, it would have been on a different side from that on which he now appeared. Before I had examined this question, (said Mr. B.) I was willing to have voted for this mission, such as I saw it represented to be in the President's message, and in the publications of the day. But time and reflection have done their office. The report of our Committee on Foreign Relations, when read at the Secretary's table, set me a thinking, and the subsequent study of the report, and of the treaties which create this Congress, have wrought a decided change in my mind. I am now ready to vote against the mission, but do not wish to vote upon the Resolution reported by the Committee, because a vote upon *that* will not express my exact opinion, and because it contains a word, strictly correct I admit, but calculated to lead undisciplined minds, in this age of loose talking, to an erroneous and false conclusion. Thus, I am laid under a sort of necessity to submit an amendment. The submitting of this, lays me under an absolute necessity of exposing my reasons for doing so; and the exposition of these reasons presents me as a speaker in a case in which I had expected to act no other part than that of a juror in his box. But the Senate need not to be alarmed. I do not premeditate a speech of formal parts against them; for it is no time now for exordium and peroration. In this last hour of a long debate, nothing can be tolerated but a straight forward argument of facts and conclusions, reasons and authorities. The politeness even of this Senate, can endure no more: and, with this conception of my duty, I proceed immediately to the discharge of it.

The Senate is called upon, as the Constitutional adviser of the President, to give its opinion to him upon his proposition to send Ministers to the Congress of the Spanish American States assembled upon the Isthmus of Panama.

The circumstances out of which this proposition has grown, as disclosed to us in the President's communications, are these: A conditional invitation to send Representatives to this Congress was made to this Government last Spring, and conditionally accepted by it. The Ministers of Colombia and Mexico, two out of the five Powers which compose the Congress, made known to our Secretary of State, in an unofficial conversation, the wishes of their Governments that the United States should be represented in that Assembly of the States of the two Americas; and the President, upon receiving the Secretary's report, expressed his willingness to send the Representatives requested, upon condition of receiving satisfactory information upon four preliminary points, which he designated. This might be in the months of April or May last, for they are both Spring months, and the time is not otherwise indicated than by a reference to the season. The Summer then passed away, and the Autumn also, without hearing more upon this subject; but the commencement of Winter, the month of November, brought up the Ministers again, reinforced by the Envoy from Guatemala, with an invitation, in form, to send the Representatives

which had been conditionally invited in the Spring, and without having complied with the conditions stipulated for by the President. This took place on the 2d, 3d, and 14th of November; and, on the 30th of the same month, six days before the meeting of the Senate, the President accepted, unconditionally, the invitation which he had accepted on condition in the month of April or May preceding, and without a compliance with his own stipulated terms, or an excuse for a non-compliance with them. The annual message, of the 6th of December, made known to the two Houses of Congress the fact of the invitation, of the acceptance, and of the President's intention to commission and send forth the Ministers. The announciation of this design arrested the public attention, set people to thinking and to talking, and in the same identical time in which a thousand heads were at work to make "*reconciliation and peace,*" between this declared intention of the President, on one hand, and the Constitution of his country, on the other, another message was received by the Senate in secret sitting, in which the President directly and unequivocally asserted his "Constitutional competency" to institute the mission, without the advice and consent of this body.

The further declaration, in the same message, that he had not "*thought proper*" to take any step in this business, without ascertaining the Senate's opinion of its "*expediency,*" expressed upon the "*nominations,*" contains no qualification of the asserted right; and to suppose that the Senate would not take the distinction between the assertion of a right, and the effect of a condescending temper, would be to suppose them intellectually incompetent to pass judgment upon that claim to "*constitutional competency,*" which the President had so openly and boldly set up. The message, thus communicated, has given rise in this Chamber to two resolutions; the one submitted by the Senator from North Carolina, (Mr. BRANCH,) the other being the one reported by our Committee on Foreign Relations. These two resolutions confront the double aspect which the message wears. The first is not at this time before us; the second *is*: and to the consideration of this resolution I will now proceed.

[*Here Mr. B. took up the resolution and read it.*]

"*Resolved,* That it is not expedient, at this time, for the United States to send any Ministers to the Congress of American Nations, assembled at Panama."

To the terms of this resolution I have two objections: *first,* to the words "*at this time,*" which seem to imply that it may be expedient to send Representatives to this Congress at some future time, but without indicating when, or upon what contingency. I think it probable that the committee and myself are of accord in the belief, that this time and contingency will never arrive; but, as the contrary is possible, I prefer to make *that* certain which they have left to implication, and to specify the conditions on which I might hereafter give my advice and consent to the institution of the mission.

The *second* objection is to the adjective "*any,*" preceding the word "*Ministers.*" It is a small objection, and apparently not worth taking, and if the resolution was to be read by none but those who drew it, and those who hear me, I should not take it. But the reading of it will not be confined to such as these. It will spread through the two Americas, and fall under the eyes of many who will not understand the difference between Ministers and Commissioners, and who may suppose that the committee, and those who support their resolution, have set their faces against sending *any* description of agents to the Congress of Panama. This is not the fact; and to prevent an erroneous conclusion from being drawn by those who are not accurate in the use of language, I have thought it best to object to the use of this little adjective "*any,*" and to drop it in the proposition of amendment, which I now submit.

THE AMENDMENT.

Resolved, That the Senate cannot advise that it is expedient for the Government of the United States to send Ministers to the Congress of American States at Panama, before it shall have received satisfactory information upon the following points: *First,* The subjects to which the attention of the Congress will be directed. *Secondly,* The substance and the form of the powers to be given to the respective Representatives. *Thirdly,* The mode of organizing the Congress. *Fourthly,* The mode of action in deciding the questions which may be submitted to it.

The terms of this amendment, Mr. President, pre-suppose the fact, that the Senate is without satisfactory information upon the points indicated; and this pre-supposition I hold to be true. For the establishment of this truth, I refer to the President's message; the letters of the Secretary of State; those of the Ministers from Colombia, Mexico, and Guatemala; and the speeches of all the gentlemen who have spoken in this debate. All these differ among themselves, more or less, upon every essential attribute of the Panama Congress, and upon every leading point in the character and duties of our proposed Ministers to it. The character of the Congress itself, whether diplomatic, legislative, judicial, or merely "advisory;" the character of the Representatives to it, whether Ministers, Deputies, or Judges; the subjects upon which they are to deliberate; the mode of acting, whether as a Council merely, a Congress of Deputies, or an Assembly of diplomatic Ministers; all are fruitful sources of inconsistent and contradictory opinions, running foul of each other, and differing, more or less, from the treaties which would govern and control all. The report of the Committee points out many of these differences; the labor of gentlemen who have preceded me, have detected many others; and enough yet remain for my enumeration to exhaust your patience, in listening, and my strength, in detailing. The task will not be undertaken, but a few of the most glaring and prominent differences, omitted by others, will be seized upon and presented by me. First, upon the character of the Congress. The President treats it as a diplomatic Assembly for the negotiation of treaties in the ordinary form; the Colombian Minister considers it a Congress which is to "*fix*" principles and "*determine*" questions of national law. The Mexican Minister treats it as a Council of War, which is to give the greatest effect to the military operations of the Confederates; the Senator from Rhode Island, (Mr. ROBBINS,) declares it to be a mere advising Council, without power to negotiate a treaty, or to enforce obedience to its advice; and the Senator from Louisiana, (Mr. JOHNSTON,) looks upon it as a Committee of Public Safety, in which questions of common interest may be discussed, but nothing decided, nor any treaty negotiated. Next, as to the subjects of deliberation in the Congress. Upon this point, the greatest discordance prevails in the enumeration given by each. The Senator from South Carolina, (Mr. HAYNE,) has clearly exposed these inconsistent and contradictory catalogues; and I will not impair the force of his statement by a lame and imperfect recapitulation. Then, as to the powers of the Ministers. These would seem to result, of course, from the subjects upon which they are to act, and as these are unknown, so are the powers undefined and undefinable. The Ministers from Colombia and Mexico entreat us to clothe our Envoys with "*full powers—ample powers.*" The President invests our Envoys, and presumes the Envoys of the other States to be invested, with power to negotiate treaties; while the Senators from Rhode Island and Louisiana, who support the President, utterly deny any such authority to any of the Ministers. Upon the organization of the Congress, its mode of acting, and of deciding questions, there is no contrariety, because no information has been given or opinions expressed. The Ministers of Colombia, Mexico, and Guatemala, after taking

from May till November to answer the President's interrogatories, return him no answer upon these three points, nor any excuse for not doing so. I refer to all these contrarieties, at this time, Mr. President, not for the purpose of showing them to be erroneous—that will be done when I shall come to the analysis of the treaties themselves—but for the purpose of showing the CONTRARIETY itself, and of proving, by this single fact, the truth of my position, that we are without "*satisfactory information*" upon the character, powers, and duties of this Congress. Having done this, I proceed to inquire:

Is this information necessary to us?

The affirmative of this inquiry, it does seem to me, results from the nature of the thing which we are required to do. The President has called upon us for advice; the Constitution makes it our duty to give it. But, to give it in the spirit of the Constitution, we must first be informed ourselves upon all the circumstances of the case concerning which the advice is required. This is the natural course and order of things, even in the ordinary transactions of life. No prudent man gives advice to his neighbor, without first acquiring exact information of that neighbor's situation. No honest lawyer will give advice to his client without the exercise of a like precaution. And shall we, the Senators of the United States, required by the Constitution to be thirty years of age, to ensure our arrival at years of discretion, and vested with a tenure in office longer, by one-third, than that of the President, to inspire us with independence—shall we, the Senators of four and twenty States—act without discretion and without independence, in giving advice upon the affairs of ten millions of People? Reason would say, no! But we are not left to reason and argument, even upon a point so plain. We have authority, and that of the highest order, for insisting on the justice and reasonableness of our request. It is the authority of the President himself, acting upon the identical case now before us, and communicated to the Senate by himself, in his confidential message of December 26th.

[Here Mr. B. read a passage from Mr. Clay's report, in which the Secretary informs the Ministers from Colombia and Mexico, that the President held it to be "necessary, before" he could accept the invitation to send Representatives to Panama, to arrange "several preliminary points, such as the subjects to which the attention of the Congress would be directed, the substance and form of the powers to be given to the respective Representatives; the mode of organizing the Congress, and its mode of action."]

Compare the terms of my amendment, Mr. President, with the terms of the report just read, and you will find them to be identically the same, to a word, and even to a letter. One is a fac-simile of the other. My amendment is a mere re-occupation of the ground which the President took, as I conceive, with judgment, in May, and which he abandoned, without any reason that he has seen fit to assign to the Senate, in November following; and I must be permitted to argue, that the same "*satisfactory information*" which was necessary to him, before he would accept the invitation to send Ministers, is equally necessary to the Senate, before it can advise him to send them.

But, sir, we are placed in a strait. The President exacts our advice, and refuses us further information. The gentlemen in support of the Administration, back the President in this course of conduct, and even deny us the short respite of an adjournment. We are in the condition of a petty jury in a case of homicide or larceny, locked up, sir, night and day, restricted to the enjoyment of candle and water, and not permitted to separate until the verdict shall be rendered. This is a new way of getting advice from the Senate. The oldest members say they never saw the like of it before, not even during the war, when the dangers of the country required the most arduous sittings; but, after what we have seen, we are all prepared for any extremity.

The fact being established, that the Senate has not satisfactory information upon which to act, and being nevertheless forced to act, I shall proceed to examine what we have got, and prove from this that the United States ought not to entangle itself with the Congress of the Confederated States of Spanish America.

The most innocent character in which this Congress has been presented to us, is that for which we are indebted to the ingenious speech of the Senator from Rhode Island, (Mr. ROBBINS)—that of a mere advising Council. Taken in that sense, and it is a Council of War, deliberating upon the plan of a campaign—meditating the invasions of Cuba, Porto Rico, the Philippine Islands, and the Canaries. Its essential character is belligerent, and to go into it as an "*associate*," is to partake of that character. I take a distinction between going, in the ordinary diplomatic form, to the sovereignty of a country which is at war with another, and going into a Council of War for directing military operations, such as this is. The one may be consistent with the neutral position, the other is utterly incompatible with it. Gentlemen betray their sensibility to this fact, when they allege, in mitigation of our conduct, that we go to dissuade the Confederates from invading the possessions of Spain. If, in reality, they go for that purpose, they will be very unwelcome counsellors to those who are determined upon that invasion, and who are collecting all possible means to give it the greatest possible effect. And Spain—what will she say to our excuses and apologies? She may disbelieve them, and, in that case, she will consider us as the "*associate*" of her enemy; or, she may affect to credit them, and make them the ostensible ground-work of a gracious act of amnesty and oblivion of our offence. They cannot be received in justification: for associates in any illegal purpose are guilty in equal degrees, without regard to the particular part which each may have acted. A plea, that part of the associates did not concur in the criminal act, rises no higher than to establish a claim for pardon—a claim which, the Senator from South Carolina, (Mr. HAYNE,) has shown you, a King of Great Britain refused to recognize in a Peer of the realm.

The advising power is a high one. It cannot be assumed by nations or individuals. Between them, consent alone can give it; between functionaries, the law alone can confer it; but, wherever it is given by consent, or conferred by law, a high moral and honorary obligation is contracted by all the parties concerned, to conform to such advice. Nothing but fraud, imposition, or change of circumstances, can justify a want of conformity; all of which are grounds of extreme delicacy to be assumed between nations, and yet the only ones which the dissentient party can plead with honor. If we go into council with these nations, we must either follow the advice given, or reject it. If we follow it, then the free deliberations of our Congress here are trammelled and controlled by the Congress at Panama. If we reject it, we must either dissent in silence, and incur the imputation of perfidy, or come out with reasons which may impeach the honor of our associates, and draw upon us the serious consequences of their resentment. Upon this subject, we already have some experience with one of these Powers. A convention for the suppression of the slave trade was negotiated with Colombia in 1825, sent home for ratification, and rejected by the Senate in the undisputed exercise of its constitutional power. Yet, Colombia is dissatisfied at this rejection. Her Minister here has adverted to it in terms which cannot be misunderstood, and has even proposed it for the consultation and advice of the Congress at Panama! The decision of the American Senate to be overhauled by

the Congress at Panama![*] Suppose we agree to this proposition. The result is easily foreseen. The decision will go against us, five to one. Then we must submit; the American Senate must conform; the resentment of the Confederate Powers will be held up to alarm us; and if we do not yield to that argument, the effect of the resentment itself will surely be incurred.

The maxims of prudence are the same among individuals and nations. Neither can become too intimate with the other, without danger of breaking up all friendship between them. The sweetest wine makes the sourest vinegar; the best of friends become the worst of enemies! No feuds so bitter as those of families; no cause of quarrelling so common as intimacy over-much! No peacemaker half so powerful as distance, independence, and complete separation of interests! and, to my mind, there is infinitely more danger of making enemies than there is chance for gaining friends, in this project of going into this "*advising council*," to mix up our affairs with those of half a dozen foreign nations.

I say, Mr. President, the advising power is a high one: it is little less than a power to control and govern the event. The President has no power to advise *this* Congress; he can only recommend; and, little as a recommendation was intended to influence our deliberations, we all know and see its potent and almost irresistible effect. Shall we take advice then, from abroad? May the President go abroad for that advice which he cannot obtain from this Senate—his constitutional advisers—and then deliver it to this Congress, with the option, on our part, of following this foreign advice, or of incurring the resentment of all these Powers, in addition to his own, if we do not act as desired? The States of this Union have a right to send us their opinions; but have we a right to send Ministers abroad to get other opinions to overrule, or even to confirm *their* instructions?

But, Mr. President, this is a council for something more than consultation and advice: it is for deliberation and action; it is a council in the sense of the Amphyctionic—that council which Bolivar had in his eye when he declared that the *Isthmus* of Panama would become more celebrated in history than that of Corinth. The only place in the treaties in which the Congress is mentioned as a council, announces it to be a tribunal for the decision of questions in the last resort, and without the power of appeal. It is to be an *arbitrator* of differences among the States; an *interpreter* of their treaties; a *rallying* point in common dangers; a *council* in great events; a council of war in time of war—of peace, in time of peace. What else can this imply but a power to decide, and to enforce obedience? The power to enforce the decision results from the right to decide. So said the *Federalist*, speaking of our Congress of 1778. But our Congress was restrained from putting refractory States to the *Ban* because it was limited to the exercise of powers "*expressly*" granted. This restriction upon the exercise of a power resulting from the nature of the Confederation, and held by some to be necessary to its preservation, (*General Hamilton, in the Federalist*) was given as the illustration of the necessity of omitting the words "EXPRESSLY *delegated*" in our Constitution. The treaties of the Spanish American States contain no such restriction, and the *Ban* of the Confederates will be as naturally resorted to by the majority in the Panama Congress, as it always has been by the majority in the Diet of Ratisbon or Frankfort.

Keeping steadily in view the double aspect under which this Congress has been presented to us, we have next to inquire, whether it constitutes a "Diplomatic Assembly" with power to negotiate treaties in the ordinary form? The President, in his Message, evidently holds the affirmative of this inquiry: the two Senators who support him with their voice on this floor (Messrs. ROBBINS, of R. I. and JOHNSTON, of Lou.) maintain the negative. These gentlemen call it, sometimes, a Diplomatic Assembly, but deny its power to negotiate a treaty. Strange diplomatists indeed, who cannot do the only thing which confers the title of diplomatic! For complimentary embassies are unknown to these United States; they belong to the crowned heads of the Old World; and with us, the power to negotiate treaties is the essential and indispensable attribute of the diplomatic character. I hold these gentlemen to be in error upon this point, and the President also. The respect which I owe to him and to them requires me to state the grounds of their opinions with all possible candor, and to advance my own arguments in opposition, with all the diffidence which is compatible with a firm reliance upon their truth.

The articles in the treaties which are relied upon to establish the diplomatic character of this assembly, are 12th and 15th, in the treaty between Colombia and Mexico; 15th and 19th, in that of Colombia and Guatemala; 1st and 3d in that of Colombia and Peru, and 12th and 15th in that of Colombia and Chili. These treaties were drawn in the Spanish language; the originals are not sent us; and some variations may be detected in the translated versions of the articles referred to. But the variations are the evident effect of loose and inaccurate translation; and in selecting two articles for the groundwork of the opinions which I combat, I shall take those which the gentlemen themselves would be most apt to select.

[Mr. B. then read Articles 12th and 15th in the treaty between Colombia and Guatemala.]

"ARTICLE 12.—To strengthen the bonds of future union "between the two States, and to prevent every interrup- "tion of their friendship and good intelligence, a Con- "gress shall be formed, to which each party shall send "two Plenipotentiaries, commissioned in the same form "and manner as are observed towards Ministers of equal "grade to foreign nations."

"ARTICLE 15.—The Isthmus of Panama being an inte- "gral part of Colombia, and the most suitable point for "the meeting of the Congress, this Republic promises to "furnish all the facilities demanded by hospitality among "a kindred People, and by the sacred and inviolable cha- "racter of Ambassadors."

Upon the first of these articles, it is insisted that the Representatives in this Congress have the name and commission of Plenipotentiaries; and in the second, that they have the privileges of Ambassadors. Upon these expressions have been erected the claim of this Congress to the character of diplomatic. I deny, on the contrary, that the "names," "commission," or "privilege," decide the character of the Ministers which may wear them. Names are arbitrary, and imposed at will; but the duties to be performed, announce the real officer, and define his character. The name of Consul is known to our Constitution, but it gives no right to the *lictors* and *fasces;* and the person who wears this proudest of the Roman titles, is condemned, by the nature of his duties, to remain in the humble condition of a commercial agent. But to come to the point at once, and to meet the gentlemen with an authority more potent than reason.

Martens lays it down expressly (book 7, chap. 2. sec. 6.) that there are "Ambassadors and other Ministers who "are at the same time Deputies, and also *simple Deputies*, "who cannot claim the *rights* of embassy, because they "are not vested with the rights of Ministers." "That "many towns in Spain and Italy have a right to send De- "puties to their own Sovereigns, to which Deputies they "give the title of Ambassadors: but they have the title

[*] The President, in his Message to the House of Representatives, declares the fact, that this question, although decided by the Senate, is to be made the subject of fresh deliberation at Panama!—*Note by Mr. B.*

"only; they can claim none of the rights of embassy." "That Ministers sent to a Congress are sometimes called "Deputies; but this name neither adds to, nor takes from, "the quality of Minister, with which they may be vested "at the same time."

Thus it is shown, Mr. President, that *Deputies* in Spain frequently wore the title of *Ambassadors*, without having any pretension to diplomatic character; that *Ministers* to Congresses might be nothing but *Deputies*, or *vice versa*; that the name of *Minister* would add nothing to the *Deputy*, nor the name of *Deputy* detract any thing from the *Minister*. Then, we may conclude that these Spanish American States, in giving the name of *Plenipotentiaries* to their *Deputies*, were acting upon a usage with which they were familiar in Old Spain; and I will very soon show you, that in giving this name, they neither gave, nor intended to give, diplomatic functions or character.

For this purpose I take up the second of the articles which I have read, article 15th of the treaty last referred to. This article stipulates for the rights of hospitality, and for the inviolability of person due to the character of Ambassadors. Now, sir, why stipulate for Ambassadorial privileges if they were already possessed? And if these Plenipotentiaries are Ambassadors, they have all the privileges of the character, without the officious help of treaty stipulations. They derive them from the law of nations, which covers with the rights, privileges, and immunities of the diplomatic character, every Minister, the instant that he is appointed, just as readily and as naturally as the municipal law throws its protection over every child the instant it is born. To suppose that a treaty stipulation would be necessary in one case, would be just as absurd as to suppose that a special act of assembly would be wanting in the other. Why then these treaty stipulations? I answer, because inviolability of person is necessary to all legislators, to enable them to do the public business. We have it ourselves, not under the law of nations, but under an article in the Federal Constitution. The members of Congress in Colombia, Mexico, Guatemala, and the other Federate States, have it likewise, and in like manner, under articles in the constitutions of their respective countries. Why then this treaty stipulation in behalf of these gentlemen of Panama? Because, exemption from arrest and imprisonment was necessary to the free and regular transaction of their business, and their official character being unknown to the constitution of their respective countries, or to the law of nations, a treaty stipulation became necessary in their behalf; and the inviolability of the ambassadorial character was adopted as a criterion, because it presented the two-fold advantage of furnishing an adequate measure of protection, and a rule of measurement known to all the parties.

How will gentlemen escape from this difficulty? The facts are undeniable, and the conclusions irresistible. It will not do to set down these treaty-stipulations to the account of Spanish American ignorance. The writings, proclamations, and state papers of the new Powers, place them above the reach of such an insinuation. Besides, they have given us practical proof that they know just as well when treaty stipulations are unnecessary, as when they are not. They have Ministers now here, no less than three of them, and no treaties with us for the rights of hospitality or for the protection of their persons. I repeat it, sir, the conclusion is irresistible! They have protected their Plenipotentiaries at Panama with treaty stipulations, because they are not a diplomatic body, and not entitled to diplomatic privileges under the law of nations; and they have not protected them by like stipulations at this place, because they bear the diplomatic character, and are protected by the law of nations.

This is decisive; I challenge gentlemen to meet it; but a further view yet remains to be taken. These confederates stipulate for *less* in behalf of their Plenipotentiaries, than public Ministers receive without stipulation. They stipulate for nothing but hospitality and inviolability for the persons of their Plenipotentiaries; whereas, under the law of nations, this inviolability extends to the Minister's wife, his children, and his servants; to his house and his coaches; it makes him independent of the jurisdiction of the country, both civil and criminal, in which he resides; in fine, it gives him the privilege of diplomatic ex-territoriality, and thus makes him, in legal contemplation, *out* of the country in which he is, and *in* the country from which he came. What an immeasurable distance between these rights and privileges, and a claim for food and bodily protection. Yet even this miserable modicum of ambassadorial privilege is limited in its application to the particular spot in which the Plenipotentiary Congress may chance to sit for the time being. While at Panama, Colombia is to give it to them. If forced by the current of events to remove to Guatemala, or to Mexico, Colombia is released from her obligation, and these States assume it. But Ministers, with diplomatic character and privilege, are not only protected in the country to which they are sent, but in every country through which they pass. The sovereign, indeed, to whom they go, is under a more particular obligation to respect and protect them; but they are entitled every where to the rights of hospitality, and to an entire exemption from bodily hurt or harm. If injured or murdered in such passage, the outrage ceases to be an offence against the municipal law of the country; it swells into a crime against the law of nations; it becomes a justifiable cause for war; and the whole civilized world are bound to condemn, if not to avenge it.

[Mr. B. here referred to several historical examples, to illustrate the truth and force of what he advanced. He mentioned the case of the ambassadors of Francis I. to Venice and Constantinople, who were assassinated on the river Po by the orders of the Governor of Milan, acting under the countenance of the Emperor Charles V.; and that of the French Ambassadors, in the time of the Directory, returning from the Congress of Rastadt, and way-laid on the road by a detachment of Austrian hussars, pulled out of their carriages, and cut to pieces with sabres, in the arms of their wives. The first of these events, he said, had given new allies to Francis in his wars with the Emperor; and the second had arrested the current of public indignation, counterpoised the crimes of the Revolution, and, for a while, turned the sympathies of the civilized world in favor of those who were themselves red with the blood of the human race. But he did not mention these examples from any apprehension that our gentlemen of Panama would be murdered on the way, but to show the immeasurable difference between Ministers invested with diplomatic privilege, and these Plenipotentiaries with their treaty-stipulation for food and bodily protection.]

Having made good this point, Mr. President—having shown, upon indisputable facts, clear reason, and undeniable authority, that this Congress at Panama is *not a Diplomatic Assembly for the negotiation of treaties*—I will proceed, without now stopping to show what it really is, to the great constitutional question, which results from this position—the competency, not of the President alone, but of the President and Senate united, to send Envoys Extraordinary, and Ministers Plenipotentiary, to such an assemblage.

The power of the President and Senate to send Ministers abroad, is derived from the 2d section of article 2d of the Constitution of the United States. The section is in these words:

"The President shall nominate, and, by and with the "advice and consent of the Senate, shall appoint, Ambas- "sadors, other public Ministers, Consuls," &c.

The Ambassadors and Ministers here intended, are such only as are known to the law of nations. Their names,

grades, rights, privileges, and immunities, are perfectly defined in the books which treat of them, and were thoroughly understood by the framers of our Constitution. They are, Ambassadors—Envoys—Envoys Extraordinary—Ministers—Ministers Plenipotentiary—Ministers Resident.

The honors due to each of these orders of public Ministers, differ with their respective ranks and degrees; but the essential character of each is the same, and the rights of all are equal. In the *first* place, they must all be accredited from sovereign to sovereign. So say all the books, without a solitary exception. In the *next* place, they all possess the diplomatic privilege of ex-territoriality; and this includes exemption from the payment of duties, exemption from local jurisdiction, and the right of inviolability for themselves and families, the houses in which they live, and the carriages in which they ride. In the *third* place, they derive all this from the law of nations; no part of it from treaties and conventions. In the *fourth* place, they usually carry letters of credence, always letters patent, containing full powers, which are to be exchanged with those of the Ministers who may treat with them; and, *finally*, they are governed by instructions, and send home the treaties they sign for ratification or rejection.

Now, let us try our intended Ministers by these tests. Let us see whether they possess the attributes, the characteristics, and the essential features of *Ministers*, such as are known to the law of nations and to the Constitution of this Confederation. Are they to be sent from sovereign to sovereign? No, Mr. President! They go to an "advisory council," a "committee of public safety." They set out, indeed, from a sovereign; but, instead of moving upon a horizontal line, upon that elevated level which knows no descent, they run down an inclined plane, and land themselves in a Congress of Deputies* upon the Isthmus of Panama. Have they the rights, privileges, and immunities, of public Ministers? Far from it: for, after yielding to them all that their fellow deputies, fellow counsellors, or fellow committee men (as the case may be) can take, they will still have nothing but the rights of hospitality, and of personal inviolability. Have they even this under the law of nations? Not at all: but under certain treaties, to which we are not parties, and which can only include our Ministers by help of a most liberal construction. Will they carry letters of credence? I presume not: for they will find no sovereign Powers on the Isthmus to whom to deliver them. Will they exchange full powers with the Plenipotentiaries of the other Powers? I should think not: for these Plenipotentiaries will be acting under treaties, and our Ministers under a Constitution and the law of nations. Will they negotiate treaties, and send them home for rejection or ratification? I maintain that they will not; all the Senators who have spoken before me, both friends and foes to the mission, agree with me that they will not; I maintain that they will not and cannot; the President alone seems to think otherwise; probably because he has not had time to study the treaties as we have done. But the fact is remarkable, that no gentleman upon this floor, friend or foe to the measure, supports him in that opinion; and I feel myself justified in dwelling upon the circumstance, and pointing it out to the renewed and continued attention of the Senate.

Tried by these tests, and the diplomatic qualities of our intended Ministers fail at every attribute of the character. Spite of the names which are imposed upon them, they turn out to be a sort of Deputies with full powers for undefinable objects. They are unknown to the law of nations, unknown to our Constitution; and the combined powers of the Federal Government are incompetent to create them. Nothing less than an original act, from the People of the States, in their sovereign capacity, is equal to the task. Had these gentlemen been nominated to us as DEPUTIES to a CONGRESS, would not the nominations have been instantly and unanimously rejected? And shall their fate be different under a different name? The delicacy of this position was seen and felt by the Administration. The terms "Deputy," and "Commissioner," were used in the official correspondence up to near the date of the nomination, but as these names could not pass the Senate, a resort to others became indispensable. The invitations and acceptance were in express terms, for "*Deputies and Representatives to a* CONGRESS." The nominations to the Senate are wholly different.

[*Mr. B. here called for the reading of the nominations.*]

The Secretary read—

"*To the Senate of the United States:*

"WASHINGTON, 26th Dec. 1825.

——"In confidence that these sentiments will meet the approbation of the Senate, I NOMINATE *Richard C. Anderson*, of Kentucky, and *John Sergeant*, of Pennsylvania, to be Envoys Extraordinary and Ministers Plenipotentiary to the *Assembly of American* NATIONS *at Panama*, and *William B. Rochester*, of New York, to be Secretary to the Mission.

"JOHN QUINCY ADAMS."

Assembly of American Nations! Is this the fact? Are the Nations there? I do not mean to inquire, Mr. President, whether the men, women, and children, who compose the Republics of Colombia, Guatemala, Mexico, Chili, and Peru, have collected themselves in masses upon the Isthmus of Panama—that, sir, would be a vile and contemptible play upon words; but I do mean to inquire and, "*these cerements being burst*," I do mean to go before the American People for the answer, whether the sovereignty of these nations, in fact, or by representation, is at the Isthmus of Panama? For, unless it is so present, the institution of this mission is, and must be, a breach of our Constitution.

Is, then, the sovereignty of these nations present in fact? I answer, it is not—the thing is impossible: for these States are Republican, and Republics are incapable of exercising the right of sovereign ex-territoriality. That quality belongs alone to Kings and Emperors, who bear about with them, whithersoever they go, the sovereignty of their respective empires. Ministers can be accredited to the sovereignty of a State, wheresoever it may be; and, hence the resort, in this nomination, to the word *Nations*. They can be accredited to nothing below the sovereignty, and hence the necessity of dropping the word *Congress*. A nomination to the *Congress* would have been void, upon its face—the Journal would have shown it; and, peradventure, we, the People, might have got it into the Supreme Court, "*as a case arising under the Constitution*," and had it reversed for manifest error. The error would then have been patent, instead of being, as it now is, latent. Gentlemen have evinced their sensibility to this difficulty—they have felt the necessity of support, and have gone to Ghent and Utrecht for precedents. The references are unfortunate for them and the President—happy for me and the Constitution. The cases are antipodes to each other, in every essential point. Here is a nomination of Ministers to nations in gross, at the place where there sovereignty is not, and cannot be. The Ghent nomination was not to the nations at Ghent, nor even to Great Britain at Ghent—but "to Great Britain." The meeting of the Ministers at Ghent, was an incident—a mere affair of arrangement, and constituting no part of the nomination. There, and at Utrecht, the Plenipotentiaries were accredited to sovereign Powers—met their Representatives, under the law of nations, and

* "CONSULTATIVE COUNCIL."—Message to the House of Representatives.

for a purpose strictly diplomatic—that of negotiating treaties.

Doubtless there may be nominations to sovereigns without their dominions. The late Congresses in Europe furnish examples of the fact; but they are limited to Kings and Emperors, possessing the quality of sovereign ex-territoriality. But even to these a Minister could not be accredited in mass. He must have separate letters of credence to each, and separate full powers to treat with each. Reason tells us this: for each sovereign has the right to receive and to reject Ministers—to treat or to let it alone. Authority tells us the same thing; and, as authority is often more potent than reason, and this may be one of the cases in which it is so, let us look at the books.

[Here Mr. B. read—

"*One* letter of credence may serve for *two* Ministers, "sent at the same time, if they are both of the same order. "Sometimes, on the contrary, *one* Minister has *several* "letters of credence; this happens when he is sent to *seve-* "*ral* sovereigns, or to *one* sovereign, in *different* qualities." "The Ministers sent to Switzerland are often charged "with more than *four* different letters of credence. So "it is with those sent to the Emperor, to the circles of "the Empire," &c.]—*Martens.*

It is the same with the letter of *full powers*. There must be as many as there are sovereigns to be treated with; the exchange of these must be mutual and simultaneous; each Minister judges for himself the full powers of the other. Yet our intended Ministers to Panama are nominated to the "nations" in mass; the nomination will govern the commissions, and the commissions will govern the letters of credence and of full power. By consequence, the credentials and the full power will be presented to a Congress—*to an organized body*—and passed upon by it. Peradventure a committee will be raised upon their papers; the Congress vote upon them; and the President announce the result; a Clerk write it down; and a doorkeeper let them in! What a process for the reception of Ambassadors! Not so at Ghent. There the Ministers of the two Powers met upon the footing of equality. The full powers of each were mutually and simultaneously exchanged: *(See the Preamble to the Treaty.)* Each judged for himself; and from this equality, and this right of reciprocal decision upon each other's powers, there can be no exception except in one single case—a case which did exist at Ghent, and does not exist at Panama; it is the case of a negotiation opened under the auspices of a *Mediator*, to whom the full powers of each may, and ought to be, submitted, if they disagree. Our Ministers then must be accredited to *each* of the nations supposed to be at Panama; they must bear full powers to treat with *each* of their Plenipotentiaries; these again must have full powers to treat with *each* other, and with *us;* and these powers must be reciprocally exchanged all around.* So it was at Ghent, so at Utrecht, so at Westphalia, so at every Congress of Plenipotentiaries for the negotiation of treaties of which history gives us any account.

The sovereignty of these nations not being, in point of fact, at Panama, the next inquiry is, whether it is there by representation?

This is a thing possible. Ministers, known to the law of nations, *may* represent the sovereignty of their nations at any point upon the globe. They *may* come from the four quarters of the globe and form a diplomatic assembly. But is this Congress at Panama an assembly of that description? I maintain that it is not; and in maintenance of this opinion, I bring up and enforce again, the circumstance of their creation under treaties; their limited privileges, and their dependence for these upon treaty stipulations. I will then go forward and show what this Congress is. In doing this, I shall follow the example of the Senator from Rhode Island, (Mr. ROBBINS,) and improve a little upon it. He looks to the treaties which create this Congress, for its character, and he leaves out of view all that has appeared in reviews, proclamations, and newspaper essays. In this he acts like a Senator—like a statesman. I shall imitate him in looking to the same treaties, and in leaving out of view so much of the President's Message, and so much of the same loose authorities, as differ in any degree from the terms of the treaties; and I shall improve upon his example, by adding to the catalogue of excluded authorities, so much of the Secretary's communications, and of the letters of the Colombian, Mexican, and Guatemalian Ministers, as vary from the same standard. In the absence of these treaties, this message and these communications and letters would have governed us: for they would then have been the highest evidence in our possession; but, in the presence of the treaties, they are useless: for they signify nothing when they agree with them, and must be rejected when they differ from them.* And here, Mr. President, I shall admit that I was put upon this track by the words of wisdom which fell, in the first days of this debate, from that venerable Senator from North Carolina, (Mr. MACON,) who, I am proud to say, permits me to call him *friend*, and am still prouder to know, has been the friend of me and mine through four generations. This venerable Senator said, that this Confederation of Spanish American States, and their Congress at Panama, was to *them* what the Confederation and Congress of the Revolution was to *us*. This remark struck me, and set my

* The President, in his after Message to the House of Representatives, has mentioned, as a precedent for this Mission to Panama, the one which was instituted in our own country soon after the close of the Revolutionary war, to the principal Powers of Europe. A reference to the history of that mission has furnished me a pointed authority against this nomination to Panama, and in favor of the position which I maintained in the Senate.

The Ministers sent out on that occasion were Messrs. Adams, Franklin, and Jefferson; the Powers to which they were commissioned, were Russia, Germany, Prussia, Denmark, Hamburg, Great Britain, Spain, Portugal, Genoa, Tuscany, Rome, the two Sicilies, Venice, Sardinia, and the Ottoman Porte. But they did not carry a letter of credence and full powers to these nations in the gross—to the whole of them in mass—but a credential and a full power to each, by name.

Candor, however, requires me to say, that there was, in former times, when the knowledge of geography was less perfect than at present, a species of universal Ministers, or Knight-errant Ambassadors, carrying general letters of credence, and general full-powers, and bearing commissions addressed "*Ad omnes Populos.*" The name of this obsolete order, and their vocation, has been brought to mind by the passages in the same second message, in which this mission to Panama is supposed to be the means of dispensing the "promised blessings of the Redeemer," improving "the condition of man upon earth," and promoting the "welfare of the whole human race." But the *nomination* of Messrs. Anderson and Sergeant is not quite *up* to this universal mission; it does not read "*Ad omnes Populos,*" *(To all People,)* but, *ad omnes gentes Americanos*, (to all the *American nations*, AT PANAMA!) *ergo*, it is still without a precedent in the annals of diplomacy.—*Note by Mr. B.*

* The treaties were not communicated with the Message recommending the Mission. The message came in December 26th. The treaties were called for, January 4th, by Mr. Macon, as chairman of the Committee of Foreign Relations; and were sent in, January 9th.—*Note by Mr. B.*

mind at work. I determined to annalyze the two Confederations, and their Congresses, and I have done so. The result is in my hand, [*showing a paper,*] and I derive confidence in its correctness from seeing that the Senator from Maine, (Mr. HOLMES,) and the Senator from New Jersey, (Mr. DICKERSON,) without any concert with me, or even knowing what I was about, have, in part, made the same analysis, and arrived at the same conclusions. Their labors not only fortify me in the strength of my position, but relieve me from a part of my own: for, after what they have said, I will do no more, in this place, than to read from my notes the analysis which I have made of these Congresses and Confederations, respectively.

[Mr. B. then read from his notes, as arranged under appropriate heads, and in parallel columns, the analysis which he had made of the object of the two Confederacies, and the powers and duties of their respective Congresses.]

THE ANALYSIS.

Style of the two Confederacies.

English American States.	*Spanish American States.*
Articles of Confederation and perpetual union between the States of New Hampshire, Massachusetts Bay, Rhode Island, &c.	Treaty of perpetual union, league, and Confederation, between the Republics of Colombia, Guatemala, Mexico, &c.

Objects of the Confederates.

To make a firm league of friendship for the common defence and general welfare, and to bind themselves to assist each other against all invasions and attacks whatsoever.	To make a firm and constant league of friendship for the common defence, and to bind themselves to aid each other with land and sea forces in repelling all attacks whatever.

Mode of accomplishing these objects.

By a Congress composed of Deputies from each State.	By a Congress composed of Plenipotentiaries from each State.

Number of Deputies and Plenipotentiaries.

Not less than two, nor more than seven, from each State.	Two from each State.

Privileges of Deputies and Plenipotentiaries.

Deputies to be protected in their persons from arrests and imprisonment, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace; and not to be questioned in any other place for what was said in Congress.	Plenipotentiaries to have the rights of hospitality in the State in which the Congress sits, and to receive from such State the protection which is due to the sacred and inviolable character of their persons.

Place of holding the Congress.

At Philadelphia, in the State of Pennsylvania, one of the Confederate States.	At the Isthmus of Panama, in the Republic of Colombia, one of the Confederate States.

Right of Removal.

The Congress may adjourn, and remove to any other place within the Confederated States.	The Congress may remove to any other place within the Republics of Guatemala or Mexico, whenever the events of war may require it, or the majority of the States may so decide.

Powers granted to the Congress.

To make peace and war; to send and receive Ambassadors and other public Ministers; to conclude treaties and contract alliances; to regulate commerce; coin money; emit bills of credit; fix the quotas of troops or money which each State shall furnish; to make requisition for such quotas; to be the last resort on appeal in all disputes and differences between States, &c. &c. &c.	To fix the quotas in naval and military forces, or their equivalents in money, which each State shall furnish; each State bound to furnish the quotas or pay the equivalents so fixed; to serve as a council in great conflicts, as a rallying point in common dangers, as a faithful interpreter of their public treaties, and as an umpire and conciliator in their disputes and differences.

Privileges of Citizens.

The citizens of each State to have free ingress and regress in any State; to enjoy therein the privileges of trade and commerce; to be liable to no other duties, restrictions, or impositions, than those to which the inhabitants of the same State are subject and liable.	The citizens and inhabitants of each State to have free entrance to, and departure from, the ports and territories of the other; to enjoy therein all the civil rights and privileges of traffic and commerce which belong to the citizens of the same State: to be subject to the same duties and restrictions to which the inhabitants of the State are subject.

Fugitives from Justice.

Traitors, felons, and others, guilty of high crimes and misdemeanors, fleeing from one State into another, shall be delivered up to the Government from which they fly, to be dealt with according to law.	Persons guilty or accused of treason, sedition, or other grievous crime, fleeing from justice, and found in the territory of any of the States, shall be delivered up to the offended Government upon demand.

Admission of other States.

Canada, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union.	The contracting parties oblige themselves to interpose their good offices with the other *ci-devant* Spanish States to induce them to unite in this compact of perpetual union, league, and Confederation.

Reserved Powers.

Each State reserves its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not, by these Articles of Confederation, expressly delegated to the United States in Congress assembled.	This compact of union, league, and Confederation, shall not affect, in any manner, the exercise of the national sovereignty of the contracting parties, in regard to their laws, and the establishment and form of their respective Governments, nor in regard to their relations with other nations.

The closeness of this parallel, continued Mr. B. is full proof that the Congress of Panama is copied after the Congress of our Confederation of '78. The objects, powers, and duties of each, with one essential difference, are the same, and the words as nearly identical as could be expected after the double process of translating English into Spanish, and Spanish back into English. But, notwithstanding the general conformity, they differ in a leading feature, and this difference is fatal to the Diplomatic pretensions of the Congress at Panama. Let us display it.

Difference of Powers.

The English American Congress had power to declare war and make peace; send and receive Ambassa-	The Spanish and American Congress has— *First:* No grant of any of these powers.

dors and other public Ministers; to make treaties, and conclude alliances; to regulate foreign commerce; and to regulate all the foreign relations of the Confederated States.

This, Mr. President, is demonstration. It is mathematical. The conclusion proclaims itself, and argument would weaken it.

But besides the subjects submitted to the decision of the Congress, there are other matters agreed upon by the Confederates themselves, inserted in their treaties, and made fundamental articles of the Confederation. These, of course, cannot be affected by the acts of the Congress. Among them are four, highly material to be considered in the institution of this mission, three relative to the subject of commerce, and one in reference to treaties of peace with Spain. These articles stipulate for—

1. An equality of duties and port charges among the Confederates.

2. Leave to refit and repair vessels, take shelter, enlist crews, and increase the armament of vessels in the ports of each other.

3. An extension of maritime jurisdiction to the privateers of each other, for the purpose of preventing abuses upon their own commerce, and that of neutrals.

4. That neither shall compromit its independence in any treaty of peace with Spain, nor pay any price for the acknowledgment of its independence by the mother country.

From this analysis it results—

1. That the Congress at Panama is a Congress of Deputies, with full power over the limited number of subjects which are committed to them.

2. That these subjects resolve themselves into two classes: those relating to the external defence, and those relating to the internal tranquillity of the Confederate States.

3. That the Congress can only act upon the affairs of the Confederates.

4. That it is to be an organized body.

5. That its duties will sometimes be *Judicial*, as in the interpretation of treaties; sometimes *Legislative*, as in fixing quotas and equivalents; sometimes *Executive*, as in planning military campaigns; but never *Diplomatic*, because it is forbidden to affect the foreign relations of the Confederates, and cannot even treat with Spain for a general peace.

But, while I call it a Congress, as it is named in the treaties, I deny its similitude to the Diplomatic Congresses known to the law of nations. I pronounce them to be antipodes to each other in every essential attribute. The Diplomatic Congress meets for the sole purpose of treating for peace; this for the main purpose of carrying on war, and without the power of concluding a peace! The Diplomatic Congress is composed of Plenipotentiaries from all the parties at war; this is composed of the parties on one side only. The Diplomatic Congress sits temporarily, for the accomplishment of a single object: this at Panama, is to sit forever, and for the accomplishment of various and interminable objects. The Diplomatic Congress is incapable of organization; this is to be organized. The Diplomatic Congress can do nothing but negotiate treaties; this is to plan campaigns, fix quotas, assess equivalents, arbitrate differences, interpret treaties, and make none. The Diplomatic Congress meets on neutral ground; this sits on the ground of one of the belligerent parties. *That* has a mediator; this none. In *that*, all the negotiators have the commission of Plenipotentiary *only*, to avoid questions of ceremonial and of precedence; in *this*, our Ministers appear clothed with the rank of Envoys Extraordinary and Ministers Plenipotentiary, and will take rank of the others, which may give rise to curious and serious questions among the inviters and the invited.

Second. A restriction against the exercise of them.

Third. A grant to *interpret* treaties.

Fourth. No grant to *make* them.

Mr. President, I must be permitted to take a closer view of this Congress, under its character of an organized body. It is admitted, on all hands, that it is to have organization and rules. Now, this is a thing impossible in a Diplomatic assembly. The Ministers in such an assembly represent sovereign Powers, and cannot be organized. We had as well undertake to organize Kings and nations. The Ministers can have no rules of action, for their personal deportment, but those manners of gentlemen which they are presumed to possess; and none for their official conduct but such as are contained in their own instructions. The idea of organization is fatal to the Diplomatic pretensions of this assembly. What is organization? It is the disposition of the parts to make them subservient to each other; it subjects the whole to one will, or to one principle of action; it reduces this Congress to a unit, to one party, deciding for all, with one voice. A Diplomatic assembly, on the contrary, is multiplicate; it consists of as many parties as there are Powers represented, each independent of the other, each making the best bargain he can for his own side. How will our Ministers act with such a body? They must either become parts of its organization, or not become parts of it. Take either horn of the dilemma. In the first event, they make us parties to the Confederacy, and bind us by the voice of the body. Well, it is agreed, all round, that this will never do. Then, try the other. Let our Ministers stand off, become no part of the body, but undertake to negotiate with it. This is impossible: for the Congress is not sovereign to receive Ministers, nor can it, like our Congress of the Confederation, appoint Ministers to treat with them, nor treat as *two* parties: for the body will contain five parties, with only one voice, and we shall present a single party, with two voices. One will have to speak through a President or Secretary; the other, in their own persons. In short, Mr. President, the simple idea of organization explodes every pretension of this Congress to the character of Diplomatic.*

Sir, it is vain to endeavor to cover up this thing with mis-nomers and nick-names. It is a *Congress* of *Deputies*, in the ordinary sense of the terms, and was so described by all the parties, until it was seen that, under these names, Messrs. *Anderson* and *Sergeant* could never obtain admission into the Senate, much less a passage through it. Behold the proof! Here it is:

FIRST PROOF.

Letter from Mr. Clay to Mr. Salazar, November 30th.

"I have the honor to acknowledge the receipt of your "official note of the 3d instant, communicating a *formal* "*invitation* from the Government of Colombia to that of "the United States, to send *Deputies* to the contemplated "*Congress* at Panama," &c. &c. &c.

SECOND PROOF.

From same to same. Same date.

"It would have been better, perhaps, if there had been "a full understanding between all the American Powers "who may assemble by their Representatives, of the *pre-*

* This question certainly deserves to fix the attention of statesmen. The reception of Ministers, by an organized body not sovereign, is yet to find its precedent in the annals of the world. The Congress of our Confederation received Ministers from Foreign nations, because it was sovereign; but it did not treat with them, because it was an organized body. It appointed Ministers to treat, individuals to act with individuals, and this it could do, because it was sovereign. But the Congress at Panama cannot appoint Ministers to meet ours, because it is not sovereign; nor treat face to face, because one is an organized body, and the other individuals.—*Note by Mr. B.*

"*cise* questions on which they are to deliberate, and that "some other matters respecting the powers of the *Deputies* and the organization of the *Congress*, should have "been distinctly arranged, prior to the opening of its deliberations," &c.

THIRD PROOF.

Mr. Clay to Mr. Obregon, November 30th.

"I have the honor to acknowledge the receipt of your "official note of the 3d instant, communicating a *formal* "*invitation* from the Government of the United States of "Mexico to that of the United States, to send *Deputies* to "the contemplated *Congress* at Panama," &c. &c. &c.

FOURTH PROOF.

From same to same. Same date.

"It would have been better, perhaps, if there had been "a full understanding between all the American Powers, "who may assemble by their Representatives, of the precise questions on which they are to deliberate; and that "some other matters respecting the powers of the *Deputies* and the *organization of the Congress*, should have "been distinctly arranged, prior to the opening of its deliberations," &c.

Yes, sir, "Deputies to a Congress" is the invitation and the acceptance. It is in vain to endeavor to cover it up with the drapery of names and titles. The thing stands before you, stripped and naked, in all the nudity, if not in all the beauty, of a Grecian statue. Words can neither hide nor alter it. It is a thing unknown to the Constitution, and the Constitutional question then recurs upon it, Can the President and Senate send the nominees, as public Ministers to this Congress upon the Isthmus of Panama? I contend that they cannot; neither *to* it, because it is not sovereign to receive them, nor Diplomatic to negotiate with them; nor *into* it, for that would make our Envoys a part of its organization, and ourselves parties to the Confederacy; nor to act *with* it, because the Congress will act as an organized body, and our Deputies as individuals. It is in vain to affect indifference towards these difficulties. They are seen and felt by those who conduct this affair; and the almost utter impossibility of managing it, is betrayed by the Babylonian confusion of terms and ideas which pervade their councils. Behold the effects of this confusion. The Deputies to the Congress are called by all sorts of titles—Agents, Commissioners, Representatives, Plenipotentiaries, and finally promoted, in the President's nomination, to Envoys Extraordinary and Ministers Plenipotentiary! The Congress itself is equally the subject of a vague and contradictory nomenclature—sometimes a Congress; sometimes a Diplomatic Assembly, without power to negotiate treaties; once a Cortes; now an advising Council; then a Committee of Public Safety; and, at last swelled by the President into an Assembly of nations!* Then, as to the powers and duties of the Deputies themselves, what contradictions upon these points! Sometimes they are to be giving advice; sometimes to be consulting; sometimes negotiating treaties, and sometimes not; sometimes they are to "*settle*" the unsettled points in the Laws of nations; yea, sir, to give the law to the two Americas, and Europe, Asia, and Africa to boot! Then they are to do nothing in the world but make bows and compliments, and walk in and out, like our Territorial Delegates, and exhibit the extraordinary spectacle of lobby Ministers Plenipotentiary and lobby Envoys Extraordinary! And, with all these high and low pretensions, they are to be worked through this chamber upon the plea of an innocent operation; upon the recommendation of an old woman's medicine, that they will do no harm if they do no good.

I trust, Mr. President, that it is now made clear, that the proposed mission is unknown to the Law of Nations, and to the Constitution of this country; but, as it may, nevertheless, be sent, it becomes my duty to proceed upon that supposition, to follow it to Panama, and to show that its objects are, in some respects, already accomplished, in others, unattainable, in others, inexpedient—that we have nothing to expect from it but a heavy item of expense, some unpleasant apologies to Foreign nations, the risk of getting into difficulties with the new Republics themselves; and that every desirable and attainable object would be better accomplished by an Agent or Commissioner, without Diplomatic character, with little expense to our Treasury, and without harm to our Constitution.

Pursuing these Ministers to Panama, we have next to inquire, what are the objects of interest to us, which are expected to be accomplished by them at that place?

The President, in his Message, has enumerated several, at the head of which stands the item of commerce. Upon this subject, he expects to establish, 1st, The doctrine, that free ships make free goods. 2d, The restrictions of reason upon the extent of blockades. 3d, The "*consentaneous*" adoption of principles of maritime neutrality. 4th, The principles of a liberal commercial intercourse.†

The first question which presents itself, Mr. President,

* And, from this point of culmination, this position in the zenith, we presently behold a perpendicular plunge—a fall from heaven to earth—from an ASSEMBLY OF NATIONS to a "*Consultative Council.*"—(Message to House of Representatives.)—*Note by Mr. B.*

† A fifth object to be accomplished by sending Ministers to Panama, as disclosed by the President in his message to the House of Representatives, *and not disclosed in his message to the Senate*, is the abolition of private war upon the ocean—that is to say, to abolish privateering. In his message to the House of Representatives, he places this object in high and bold relief. He speaks of it in the following animated and impassioned strain:

"If it be true that the *noblest treaty* of peace ever mentioned in history is that by which the Carthagenians were "bound to abolish the practice of sacrificing their own children, *because it was stipulated in favor of human nature*, "I cannot *exaggerate* to myself the *unfading glory* with which these United States will go forth in the memory of "future ages, if, by their friendly counsel, by their moral influence, by the power of argument and persuasion alone, "they can prevail upon the American nations at Panama to stipulate, by general agreement among themselves, and "so far as any of them may be concerned, the *perpetual abolition of private war upon the ocean.*"

"It will be within the recollection of the House, that immediately after the close of the war of our Independence, "a measure closely analagous to this Congress of Panama, was adopted by the Congress of our Confederation, and "for purposes of precisely the same character. Three Commissioners, with Plenipotentiary powers, were appointed "to negotiate treaties of amity, navigation, and commerce, with all the principal Powers of Europe. They met, and "resided for that purpose about one year at Paris; and the only result of their negotiations at that time, was the first "treaty between the United States and Prussia—memorable in the Diplomatic annals of the world, and *precious* as a "monument of the principles, in relation to commerce and maritime warfare, with which our country entered upon "her career as a member of the great family of independent nations. This treaty, prepared in conformity with the in"structions of the American Plenipotentiaries, consecrated three fundamental principles of the Foreign intercourse, "which the Congress of that period were desirous of establishing. First, equal reciprocity, and the mutual stipula"tions of the privileges of the most favored nations in the commercial exchanges of peace; secondly, *the abolition of* "*private war upon the ocean;* and, thirdly, restrictions favorable to neutral commerce upon belligerent practices."

[*See continuation of note, next page.*

is one of power in the Congress to treat of these subjects at all. It seems to me that it has no power to touch them. They belong to the "Foreign Relations" of the confederates, and these it is forbidden to the Congress to "affect in any manner," as shown in the analysis of its powers. The article to that effect is the same in every treaty. It is article 17th, in the treaty between Colombia and Chili; 6th, in that of Colombia and Peru; 18th, in that of Colombia and Guatemala; and 17th, in that of Colombia and Mexico. It is in these words:

"This compact of union, league, and confederation, "shall not affect, in any manner, the exercise of the na- "tional sovereignty of the contracting parties, in regard "to their laws, and the establishment and form of their "respective Governments, *nor in regard to their relations* "*with other Governments.*"

Here are three restrictions upon the powers of the Congress:

1. Against interfering with the municipal laws of the confederates.
2. Against interfering with their forms of government.
3. Against interfering with their foreign relations.*

The last of these restrictions ought to prevent the Congress from touching the commercial relations of the United States, with any or all of the Confederate Powers. But, admitting that this restriction had not been imposed, would it then have been the part of a wise and prudent policy to open the subject of our commercial relations in the Congress of these Confederate Powers? I think not, sir, for many reasons: and, first, because we have already so nearly all that we want from each of these Powers, respectively, that it would be impolitic to put to stake the much which we have in possession, for the chance of gaining the little which we have not yet acquired. With Colombia we have a treaty, ratified by ourselves about sixty days ago, containing every stipulation that we can possibly ask for: the flag to cover the property; free ships to make free goods; the trade of the two countries to be placed on the liberal basis of perfect equality and reciprocity; liberty of conscience, and the right of worship, allowed to our citizens, and the privilege secured to them of being buried in decent and suitable places; and, finally, the crowning stipulation, that, if a better treaty should be made with any other Power, all the advantages of it shall immediately accrue to the United States, in the same manner as if it had been made with us. This is certainly covering the whole ground for which we went into the mission to Europe, at the close of the Revolutionary War—it is gaining all that can be got from Colombia. Then for Guatemala. We have a treaty with her, ratified likewise by ourselves, at the present session, in which every point is secured which is contained in the one with Colombia, even to the stipulation for contingent advantages, in the formation of better treaties with other Powers. With Buenos Ayres and Chili we had no treaties, positively signed, at the date of the last advices; but our Ministers were in negotiation; and, on the 28th of September last, our Government was officially informed that these negotiations were probably concluded, and treaties signed by that time, which would contain every stipulation which had been put into the treaty with Colombia.—(*See Mr. Poinsett's letter of that date.*) With Peru we have neither treaty nor negotiation; but it is understood that a *Chargé d'Affaires* will soon be sent to that country, and, unless he goes to make a commercial treaty, I presume he will go *uncharged* with any *affairs* at all. Mexico, alone, remains to be considered. With her we have interchanged Ministers, and from our Plenipotentiary "*near*" her Government, we are informed, under date of the 13th and 28th of September last, that every article in the proposed treaty was adjusted to his entire satisfaction, *save one*, and that *one* a proposition, on the part of Mexico, to reserve the right of granting some commercial privileges with the other American States, formerly Spanish, which would not be granted to other Powers. The last intelligence from our Minister, left the negotiation hanging upon this single point, with a peremptory declaration, on his part, that he would never agree to it. Since then, the Message of the Mexican President to his Congress, has been seen and read by us all, in which he speaks of this treaty being so nearly concluded, as to enable him to say that it would be laid before Congress in a few days! Then, take this matter as you will, in the first place, it is highly probable that we have, before this time, treaties with all these Powers, containing every stipulation that we wish. Certain it is, that we have such with Colombia and Guatemala, *two* out of *three* of the Powers that have invited us to Panama. It is almost certain that we have the same from Mexico, the remaining Power that invited us—highly probable that we have just what we want from Buenos Ayres and Chili; and, if we have not, it would seem like a sleeveless errand to go to Panama to get it, because Chili has not invited us to meet her there! And Buenos Ayres has, herself, refused to go there! Neither has Peru invited us, nor can it be presumed that, without the expectation of seeing *us* at Panama, either this Power or Chili has given full powers to their Plenipotentiaries to treat with us at that place. Shall we, then, voluntarily incur the hazard

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Upon this disclosure and animated appeal to the People, through the House of Representatives, I have two remarks to make:

1. That Mr. Adams ought to have disclosed this object to the Senate; and cannot be excused for the omission to do so, except upon the ground that he did not think of it when he was stating the objects of the mission to *them*.

2. That Mr. Adams, himself, in his quality of Minister to Prussia, on the 11th day of July, in the year 1799, expunged the aforesaid most "*noble*," most "*glorious*," and most "*precious*," stipulation from our treaty with that Power.—(*See article 23d of the two treaties with Prussia; Laws of the United States, pages* 241 *and* 259.) The political pamphlets of the day, and the memory of individuals, contemporary with the event, assert that great applause was bestowed upon the young negotiator, Mr. *J. Q. Adams*, for his success in getting this stipulation expunged.

With respect to the value of the stipulation itself, I look upon it to have been of about as much consequence as if it had been made with the King of Prussia's neighbor, "*the King of Bohemia:*" who, according to *Tristram Shandy*, had neither sea-coast, nor sea-ports, nor ships; and with whom, of course, treaty-stipulations in favor of "*human nature*" upon the ocean, would be about as availing against "*Orders in Council*, and *Berlin and Milan Decrees*," as if they had been made with the *King of Ashantee*, or half-a-dozen young nations at Panama, who have, indeed, a plenty of sea-coast, but who, for a long time, must be as destitute of naval force, and as incapable of regulating public or *private* war upon the ocean, as the King of Bohemia, the King of Prussia, or the King of Ashantee.

As to Mr. Adams' Diplomatic merits in the premises, I look at them in this wise: Either he was wrong at Prussia in 1799, or wrong at home in 1826.—His admirers may divide as they please, but divide they must.—*Note by Mr. B.*

* The Committee of Foreign Relations, in the House of Representatives, in a report, professedly replying to objections to the Panama Mission, which objections had not, at that time, been made any where but in the Senate, has quoted the first and second of these restrictions, and omitted the third. The omitted clause, I presume, was deemed by the Committee to be immaterial, and not worth inserting; but, in my opinion, the insertion of it would have annihilated their report.—*Note by Mr. B.*

of losing all that we have secured from these nations separately, by opening fresh negotiations with them in a body? Shall we run the risk of seeing Colombia, Guatemala, Peru, Chili, and the rest of them, innoculated with this Mexican doctrine—a doctrine so well calculated to become infectious, of granting to each other peculiar privileges to the exclusion of us? Is not a bird in the hand worth two in the bush? Are not four birds in the hand worth the feather of one in the bush?

But let us look further. Who is the negotiator contending with our Minister in Mexico for this doctrine of exclusive privileges? Is it not *Don Ramos Arispe?* And who is Don Ramos? A Catholic Bishop; (and I do not mention this in derogation of his character, but for a purpose which will show itself in the proper place;) a Catholic Bishop, and one of the Mexican Plenipotentiaries to the Congress at Panama. Yes, sir; the negotiator selected to contend with Mr. Poinsett, in Mexico, for this doctrine of reserving peculiar commercial privileges among the new States, because they are akin to one another, and we are not akin to them—this negotiator is one of the Plenipotentiaries appointed to meet our Ministers at Panama! And is there nothing in this coincidence? No visible sign about it, of the determination of Mexico to contend for the same thing in this Congress? To those who think so, the perusal of Mr. Poinsett's letters of the 13th and 28th of September, will show them their error. They will there discover that Mexico is "obstinately bent" upon carrying this point; that she looks to the Congress at Panama as the place at which she can carry it; and to the sensible answer of Mr. Poinsett, that, *while our treaties with the other States continue,* THEY *cannot enter into this arrangement with Mexico,* the negotiators of this Power reply, that these treaties may be dissolved, and even mention war as a means of dissolving them! But these passages are too material to be paraphrased; let us have the information of Mr. Poinsett in his own words:

Mr. Poinsett's letter to Mr. Clay, September, 28, 1825.

EXTRACT.

"I replied, that this exception could now avail them "(the *Mexicans*) nothing, as our treaty with Colombia, "and those probably by this time concluded with Buenos "Ayres and Chili contained *no* such provision. The Pleni- "potentiaries of Mexico hastily remarked, that a *war* might "dissolve any one of those treaties, and, in such an event, "they thought Mexico ought to possess the power to "evince her sympathies in favor of either of the Ameri- "can nations which had formerly been Spanish. To this "observation, I replied that I considered this argument "conclusive why the United States should not accede to "the insertion of such a provision in the treaty; that I re- "garded a *war* between the United States and any of the "other Republics of America, as a very remote and im- "probable event; but that I never would consent, by "treaty, to place the former in a less favorable situation "than their enemies, if, unfortunately, those Republics "should ever become so."

Now, Mr. President, put this question upon either foot. Let it be assumed that Mexico has concluded a treaty with Mr. Poinsett before this time, or admitted that she has not. In the former case, it would be idle to go to Panama to conclude it over again; in the latter, it would be the extreme of imprudence to refer the subject to the Congress at Panama; because we should then have to open all our treaties with the other Powers upon the same point, and to run the risk of a general combination of those States against us. The improvidence of doing this *now,* is even greater than it would have been when Mr. Poinsett wrote: for, since that time, Guatemala has concluded her treaty with us, upon our own terms. Mexico is left alone, and *must* yield if we stand still and do nothing: for it is impracticable for her to grant these exclusive privileges to the other States, until they are loosed from their treaties with us, and free to grant them back again to her. Why, then, spoil our own market by a childish over-eagerness to trade?

So much for the item of commerce: enough, I think, Mr. President, to prove two things; *first,* that the Congress at Panama, has no power to treat upon the subject at all; and, *secondly,* if it had, that it would be unwise and improvident in us to go there to treat about it.

But the President proposes another object in the same paragraph of his message—which relates to commerce, and somewhat in connexion with that subject. It is the establishment of certain unsettled and disputed principles of national law.

I hold it to be a sufficient answer to this suggestion, to refer again to the third restriction upon the powers of the Congress; the one which forbids that body to touch the subject of foreign relations. But there is another point of view in which to look at this suggestion, and to arrive at the same conclusion. The law of nations is either *natural,* derived from the law of nature; or *conventional,* derived from treaties; or *customary,* founded upon usage. The introduction of any new principle into the body of national law, or the restoration of any old principle to it, in either the *natural* or the *customary* law, will be out of the question at Panama; and the alterations made by *treaties* are only binding upon the parties to the treaty. *(Vattel, section 24 of the Introduction.)* And even without a book to tell us this, natural reason would seem to say, that half a dozen of the youngest and weakest nations upon earth, collected in a corner of the world, would not be able, by any agreement among themselves, to give a new code of national law to the oldest and most powerful.

The subject next mentioned in the message, is that of religion. The President expresses an opinion that our Ministers at Panama can be instrumental in effecting a change in the Constitutions of the new Republics, favorable to the cause of religious liberty. He says:

"Some of the Southern nations are, even yet, so far "under the dominion of prejudice, that they have incor- "porated, with their political constitutions, an exclusive "church, without toleration of any other than the domi- "nant sect. The abandonment of this last badge of reli- "gious bigotry and oppression, may be pressed more ef- "fectually by the united exertions of those who concur "in the principles of freedom of conscience, than by the "solitary efforts of a Minister at any one of the separate "Governments," &c.

This, Mr. President, is the declaration of a direct intention to interfere with the internal affairs of the Spanish American States. The President proposes to effect an amendment in their "political constitutions," in one of their fundamental and most valued articles. This is an act which he has no right to do, and which our intended Ministers cannot attempt, without giving just cause of offence. I admit that the President may recommend to *us* an amendment in *our* Constitution, and I should be glad to see him do so in a certain particular; but I deny to him any right to propose amendments to the Constitutions of foreign nations. It is true, sir, that he proposes the mildest mode of operation, that of "*moral influence;*" but even this is forbidden by the law of nations. The books forbid it expressly. Listen to Vattel:

"It is the business of the nation alone to judge all dis- "putes relating to its Government. * * * * No foreign "power has a right to interfere. * * * * If any intrude "into the domestic affairs of another nation, and *attempt* "*to* INFLUENCE *its deliberations,* they do it an INJURY." (*Book* 1, *Chap.* 4. *Sec.* 37.)

Advice without request, is, Mr. President, intrusive, and offensive alike to nations and to individuals. This is the case on subjects of ordinary policy; how much greater the

injury, how much deeper the offence, when the interference touches their religion! All sects are sensitive upon this point, and Roman Catholics above every other. The Catholic is the Mother Church; and, whether right or wrong in their belief, every individual belonging to it reposes upon the truth of its doctrines with an unwavering and perfect faith. What, then, will be the fate of our Ministers, if they undertake to "*press the abandonment*" of a fundamental article of that religion, now "incorporated with the Constitutions" of the new Republics, and treat it as a "badge of bigotry and oppression?" The Committee of Foreign Relations have hinted at their possible fate, and I will now improve upon their suggestions, and back it with the books. The committee have suggested that the invitation given, would be withdrawn as soon as our Ministers unmasked their designs upon the religious establishments of the new Powers; I will suggest further, that, in addition to this withdrawal of invitation, they might be ordered to quit the territories of the confederates as disturbers of the public peace.

[Here Mr. B. read several passages from Vattel, to show that an Ambassador is not allowed the public exercise of a religion not tolerated by the law of the land; that he would be considered as a disturber of the public peace, and might be ordered out of the country, for such an offence.]

And continued—If, then, the public exercise of a religion, not tolerated, would be an offence in an Ambassador, for the commission of which, all the high privileges of his character could not save him from expulsion, what else, in addition to this penalty, might he not expect for attempting to create that universal disturbance which would result from the commission of the same offence by all descriptions of persons, foreigners as well as citizens? And to whom, sir, is this proposition to be addressed? Who is it that are to be told that they are "under the dominion of prejudice?" Who is it that are to be charged with "bigotry and oppression?" It is an assembly of Roman Chatholics, one of them, at least, a Bishop in full pontificals, bound to preach, as the others are bound to believe, that, "without the pale of the Roman Catholic Church, there is no salvation." And is this the way to negotiate, to make treaties, and draw closer the bonds of friendship between us and the Spanish American States? I had always understood that the first business of the negotiator was to gain the good will of the opposite party, and that, when this was effected, his treaty was more than half made. But here we are to set out with insults upon the religion of the opposite party, and outrages upon their prejudices, (if you will,) with committing an offence against the law of nations, for which our Ministers may be ordered to quit the country; an offence precisely equal to an attempt on the part of *their* Ministers, now in this city, to "*exert*" their "*moral influence*" to procure an amendment in our Constitution to make the Roman Catholic Religion the established church in these United States.*

* In the President's message to the House of Representatives, this subject of Religion is presented under an aspect entirely different from the view above taken. I am one of those who complain of that difference, and to enable the candid part of the community to judge for themselves, I will here insert the two paragraphs in parallel columns:

Message to the Senate.	*Message to the House of Representatives.*
There is yet another subject, upon which, without entering into any treaty, the moral influence of the United States may, perhaps, be exerted with beneficial consequences at such a meeting—the advancement of religious liberty. Some of the Southern nations are, even yet, so far under the dominion of prejudice, that they have incorporated, with their political constitutions, an exclusive church, without toleration of any other than the dominant sect. The abandonment of this last badge of religious bigotry and oppression, may be pressed more effectually by the united exertions of those who concur in the principles of freedom of conscience, upon those who are yet to be convinced of their justice and wisdom, than by the solitary efforts of a Minister to any one of the separate Governments.	And lastly, the Congress of Panama is belived to present a fair occasion for urging upon all the new nations of the South, the just and liberal principles of religious liberty. Not by any interference whatever, in their internal concerns, but by claiming for our citizens, whose occupations or interests may call them to occasional residence in their territories, the inestimable privilege of worshipping their Creator according to the dictates of their own consciences. This privilege, sanctioned by the customary law of nations, and secured by treaty stipulations in numerous national compacts; secured even to our own citizens in the treaties with Colombia, and with the Federation of Central America, is yet to be obtained in the other South American States and Mexico. Existing prejudices are still struggling against it, which may, perhaps, be more successfully combatted at this general meeting, than at the separate seats of Government of each Republic.

I maintain, that the first message proposes an interference in the internal concerns of the Spanish American States; the latter, I admit, suggests nothing but a laudable and familiar proposition. Nobody could object to it. The Senate, the "*nineteen*" included, would not: for, in the months of December and January preceding, they had unanimously ratified the Colombian and Gautemalian treatics, each of which contained the stipulation for freedom of worship and right of burial in decent and suitable places. I have heard of no difficulty in getting the privilege of worship from "*the separate Governments;*" we have it from them as far as we have treatics with them; and I can see no necessity for going to Panama for it.

In the second message, there is also this sentence:

"It may be, that, in the lapse of many centuries, no other opportunity so favorable will be presented to the Govern-
" ment of the United States to subserve the benevolent purpose of *Divine Providence*, to dispense the promised bles-
" sings of the Redeemer of mankind."

I do not like this jumbling of *politics* and *religion*.

In Monarchies, Church and State naturally go together; in Republics, they should be kept apart. Their union is more dangerous to liberty, than the union of the purse and the sword. It was the religious consular order of 1801, for the burial of Pius 6th, that made the ten years' Consul a Consul for life—every Catholic in France voting for the *life-estate*, at the election of 1802; and this estate was only converted into a *fee simple* by the Conservative Senate in 1804.—The burial of a dead Pope, in 1801, brought a living one to Paris, in 1804, to exclaim, at the Imperial Coronation, "*Vivat Imperator in æternum.*" "May the Emperor live forever!" After all, the Consul, General, and Emperor, had no religion at all. This he told us at St. Helena. In Egypt a Musselman, in France a Catholic, in St. Helena a Free-thinker.

[*Note continued on next page.*

A third object to be accomplished by this Congress, is one indistinctly seen in the message*—the establishment of a league of Republics to counterpoise the Holy Alliance of Europe. The honor of being at its head, seems to be tendered to us. This, Mr. President, is a most seductive object. It addresses itself to the generous and heroic feelings of our entire population. The brilliant honor of presiding in a such a league would cast a new splendor over our administration; but it is the business of those who are appointed by the Constitution to counsel the President about it, to take counsel themselves rather from their judgments, than from illusions of glory, and the ardent feelings of young men.

The despots of Europe have confederated for the purpose of putting down liberty. They have embodied one million five hundred thousand bayonets to march against the banner of freedom wherever it can be seen. One of the *protegés* of this alliance is engaged in war with the Spanish American States, formerly his colonies; and these States have confederated against *him*, as we confederated against *our* ancient master, in the war of the Revolution. For the success of all their objects in this Confederation, they have the prayers and the best wishes of all the friends of liberty throughout the globe. But I cannot advise the President to enter into this Confederation as a partner, neither upon the open sign, nor in the secret articles.† I cannot approve even of a dormant partnership in this business. Not that I am determined, in no event, to make common cause with these new Republics, or any one of them, in a contest with the combined Powers of Europe; but because I would be the judge of the occasion which required me to do so, and free to act as I thought proper, when the occasion occurred. The occasion *may* occur, Mr. President. We have the Holy Allies in front and in rear, in Europe and in Asia. They may conceive it to be the shortest way of accomplishing their final object, to extinguish, at once, the light of liberty in the new world; and the subjugation of the new Republics might be the first step in that great work. In such an event, I would not wait for the dastardly privilege of being the last to be devoured. I would go into the contest from the beginning; I would grapple the universal enemy while he was engaged with my neighbor; I would go into the conflict not as ally, but as principal; not with regulated quotas and starveling contingents, but with all our power by land and sea. I would go into it to conquer or to perish. I would stake life and property, and Household Gods, upon the issue. I would fight the battle of desperation and of death. It would be the last struggle for human liberty, and should be worthy of the cause; great in the triumph, and greater still in the fall!

The relations of Hayti with the American States, (these United States inclusive) and the rights of Africans in *this* hemisphere, are two other questions to be "*determined*" at the Isthmus. We learn this from a paragraph in the letter of Mr. Salazar, the Colombian Minister. I will read it: for in matters of this kind, we cannot be too exact.

THE PARAGRAPH.

"On what basis the relations of Hayti, and of other parts "of our hemisphere that shall hereafter be in like cir- "cumstances, are to be placed, is a question simple at "first view, but attended with serious difficulties when "closely examined. These arise from the different man- "ner of regarding Africans, and from their different rights "in Hayti, the United States, and in other American States. "This question will be determined at the Isthmus, and, "if possible, an uniform rule of conduct adopted in re- "gard to it, or those modifications that may be demanded "by circumstances."

Our policy towards Hayti, the old San Domingo, has been fixed, Mr. President, for three and thirty years. We trade with her, but no diplomatic relations have been established between us. We purchase coffee from her, and pay her for it; but we interchange no Consuls or Ministers. We receive no mulatto Consuls, or black Ambassadors from her. And why? Because the peace of eleven States in this Union will not permit the fruits of a successful negro insurrection to be exhibited among them. It will not permit black Consuls and Ambassadors to establish themselves in our cities, and to parade through our country, and give their fellow blacks in the United States, proof in hand of the honors which await them, for a like successful effort on their part. It will not permit the fact to be seen, and told, that for the murder of their masters and mistresses, they are to find *friends* among the white People of these United States. No, Mr. President, this is a question which has been *determined* HERE for three and thirty years; one which has never been open for discussion, at home or abroad, either under the Presidency of General Washington, of the first Mr. Adams, of Mr. Jefferson, Mr. Madison, or Mr. Monroe. It is one which cannot be discussed in *this* chamber on *this* day; and shall we go to Panama to discuss it?—I take it in the mildest supposed character of this Congress—shall we go there to *advise* and *consult* in council about it? Who are to advise and sit in judgment upon it? Five nations who have already put the black man upon an equality with the white, not only in their constitutions but in real life; five nations who have at this moment (at least some of them) black Generals in their armies and mulatto Senators in their Congresses! And who is the counsel retained on *our* part, to plead *our* cause before that tribunal?—Mr. President, have we forgot the Missouri question, its agitators, and their doctrines? I say the agitators! for I separate the credulous crowd that followed, from the designing few that went ahead. Have we forgot the doctrines and the leaders of that day?—On this floor we had one, who proclaimed to our faces, that slavery did not exist! could not exist! was condemned by God and man! by our own Declaration of Independence! by the nature of our Government!

I say, I do not like this jumbling of politics and religion. My dislike to it dates from the reading of Cromwell's expulsion of the Rump Parliament, when he said to one member, "*thou art an adulterer;*" to another, "*thou art a hypocrite;*" to a third, "*the Lord hath no further occasion for thee;*" and to the whole,—"*I have besought the Lord night and day, not to put me upon this work; but he hath sent me here to drive ye all away—get ye gone.*"—*Note, by Mr. B.*

* The President, in his second message, the one to the House of Representatives, has come out more explicitly on this subject. He even seems to stimulate Congress by piquing their pride on the delicate article of their animal courage. He says, (in answer to the supposition that the Holy Allies may take offence at this meeting at Panama,) that "The Holy League of Europe itself was formed, without inquiring of the United States, whether it would, or would "not, give umbrage to them. The *fear* of giving umbrage to the Holy League of Europe, was urged as a motive "for denying to the American nations the acknowledgment of their Independence. That it would be viewed by "Spain as hostility to her, was not only urged, but directly declared by herself. The *Congress* and *administration* of "that day consulted their rights and duties, and not their FEARS."—*Note, by Mr. B.*

† The Colombian Minister proposes that a defensive alliance against European Powers shall be formed between the United States and the Confederates at Panama, to be kept "*secret*" until the *casus fœderis* should occur. (*Letter to Mr. Clay, Nov. 2d*, 1825.)—*Note, by Mr. B.*

and that the Supreme Court would so declare it! Well, sir, this gentleman has been sent to London, to plead the cause of *slave-holders* before the King of Great Britain; to claim payment for *slaves* taken from us during the war, twelve years ago, and payment withheld ever since, in violation of the treaty of Ghent. This gentleman was one of those agitators, and we thought him for a long time the most violent and determined; but not so the fact: for when this gentleman had lost the "*restriction,*" he scorned to go against the "*constitution*" on account of some few negroes and mulattoes. He told me so himself, and his conduct was conformable to his declaration: for he spoke no more on the subject.

But now came forth, upon another floor, another agitator, of far different temper, who, having taken the hold which knows no relaxation, resisted the admission of Missouri during the entire session of 1820—'21, upon the single isolated point of *free negroes' and mulattoes' rights!* And now, this very individual, who kept Missouri out of the Union for one whole year, because she would not take free negroes and mulattoes into her bosom—this identical individual is to go to Panama to prevent the black Ambassadors and Consuls from Saint Domingo, from coming into the bosom of the United States! But gentlemen say it is only for advice and consultation. I answer, that the question is not debatable, neither at home nor abroad; not even in this chamber, where we have sincere advocates and unprejudiced judges. In reply to our objections to Mr. Sergeant, they say that Mr. Anderson goes along to plead the cause of the slave holders. I say, if he must go upon such an errand, give him an assistant, not an opponent. Give him another Southern man, not a Missouri agitator, not a *President* of an *Abolition* Society, not the veteran advocate of free negroes' and mulattoes' rights!* They say they only go to consult! I say, there are questions not debateable. I would not debate whether my withholding the advice which the President requires upon this occasion, is the effect of a "*factious and unprincipled opposition;*" I would not debate whether my slave is my property; and I would not go to Panama to "*determine the rights of Hayti and of Africans*" in these United States. Mr. President, I do repeat, that this is a question which ought not to be agitated by us, neither at home nor abroad. The intentions of the agitators are wholly immaterial. The consequences to us will be the same, whether their designs be charitable or wicked. Knaves can do nothing without dupes. The wicked would be harmless, were it not for the good men who become their associates and instruments. Who made the massacre of San Domingo? Was it not the society of "*Les Amis des Noirs*"† in Paris? And who composed that society? I answer, every thing human, in the shape of virtue and of vice, from *Lafayette* and the *Abbe Gregoire*, down to *Marat* and *Anacharsis Klootz*. The speeches, the writings, and the doctrines of this society, carried to San Domingo by emissaries, with "religion in "their mouths, hell in their hearts, and torches in their "hands," produced that revolt, the horrors of which yet harrow up the soul, and freeze the blood—that revolt, in which the sleeping babe was massacred in its cradle—in which the husband and the father, tied to his own gate, beheld, by the light of his burning house, the violation of his wife—saw his daughters led off—and received, as a relief from his horrors, the blow of the axe which scattered his brains upon the ground. And how was the news of these scenes received in Paris, by the authors of so much mischief? Very different, Mr. President, by the different members of the society. The hearts of the good were rent with anguish; but the wicked rejoiced with an exceeding joy. Their dens, smeared with human blood, resounded with acclamations!—"*Perish the Colonies—save the* PRINCIPLE!" was the cry of these infernal monsters; and have we not got societies here, treading in the steps of that at Paris? Is not our advocate at Panama a President of one of these societies, whose principles, "*carried out to their legitimate conclusions,*" will justify the slaves of this continent in re-enacting the tragedy of San Domingo? Are not the slave-holding States filled with emissaries, preaching doctrines which lead to the same result! Has not a second *Anacharsis Klootz* appeared in France, sent his petition here, and found a person in the Speaker's chair to present it to the House of Representatives, in which the *total destruction* of all the slave-holding States is recommended as a "*sublime*" measure?

[Mr. B. also referred to an address delivered by Judge Story, to a grand jury in Boston, during the agitation of the Missouri question, which he considered to be uncalled for by the case before the Court, and going the whole length of justifying the insurrection of our slaves. He quoted from memory, and begged to be corrected if he was wrong. He paused for the correction—none was given.]

But there is one other point of view, Mr. President, in which I wish to look at this black and mulatto question. It is that point of view which exhibits the real parties to it, their conduct upon it, and their weight in its decision. Who are the real parties? They are the States South of the Potomac, South of the Ohio, and the State upon the right bank of the Mississippi. What is *their* conduct? They are in the opposition, united, sir, against this mission, solid as a wall of granite, some fissures about the edges excepted. And what their weight in the decision? A feather; dust in the balance! Yet, sir, the *real* parties to this question are disregarded, and strangers to their interests decide it for them.

The last, and the *main* argument, relied upon by the President, for sending this mission, is the fact of *invitation* to do so. This he calls the "*decisive inducement.*" The President is particular in the use of words; we are permitted, therefore, to say, that all other reasons for sending the mission, were *persuasive* only, until the weight of this invitation *decided* his mind. I felt the full force of this decisive reason myself. Invitations to mere individuals are often embarrassing, and cannot be accepted without inconveniences or impropriety, nor refused without giving offence. With nations, the acceptance or decline of respectful invitations, often become an affair of State, full of responsibilities. When then I saw it stated in the newspapers, that we had been "*invited,*" I felt the delicacy of the position in which our Government was placed. When the annual Message was read, and I heard from authority, that the invitation had been *given* and *accepted*, and that Ministers would be *commissioned*, I was ready to give my advice in favor of sending them, with a protest against the President's right to send them without such advice. When the Message of the 26th December was read, and the fact of the invitation placed in high relief, as the *decisive cause*, I responded to the sentiment, and said to the Senator next to me, "THAT *is the strongest of all the reasons.*" ‡ But what was my astonishment on coming to look among the appended documents, to find out the real

* The vote on Mr. Anderson's nomination was *one* more, in his favor, than there was in favor of Mr. Sergeant. Mine made the difference.—*Note, by Mr. B.*

† "*The friends of the blacks.*"—*Note, by Mr. B.*

‡ In the President's Message to the House of Representatives, he dwells with warmth and animation upon the force of this invitation. He makes it an affair of *insult* to refuse it. "To *insult* them by a refusal of their overture." "To meet the temper with which this proposal was made, with *a cold repulse.*" "Nothing can be gained by SULLEN *repulses and* ASPIRING *pretensions.*" Such is the language of the Message to the other branch of the Legislature.

[*Note continued on next page.*

circumstances of this invitation! I found them to be entirely different from what I had supposed them to be, and from what the newspapers and the President's Messages had induced me to believe them to be. But as this ground is delicate, sir, I must trust nothing to memory, nor even to my notes. Let the President's organ speak, the report of the Secretary of State, which accompanied the Message of December 26th.

THE REPORT.

"SIR: Agreeably to your direction, that a statement "should be presented to you of what passed in the De- "partment of State, with the Ministers of the Republics "of Colombia, Mexico, and Central America, in respect "to the invitation to the United States, to be represented "in the Congress at Panama, I have the honor now to "report:

"That, during the last *Spring*, I held separate confer- "ences, on the same day, with the respective Ministers "of Mexico and Colombia, at their request, in the course "of which, each of them verbally stated that his Govern- "ment was desirous that the United States should be re- "presented at the proposed Congress, and that he was in- "structed to communicate an invitation to their Govern- "ment to send Representatives to it. But that, as his Go- "vernment did not know whether it would or would not, "be agreeable to the United States *to receive such an invi- "tation, and as he did not wish to occasion any embarrass- "ment*, he was charged *informally to inquire, previous to the "delivery of the invitation*, whether it would be accepted, "if given by both of the Republics of Mexico and Co- "lombia. It was also stated, by each of those Ministers, "that his Government did not expect that the United "States would change their present neutral policy, nor "was it desired that they should take part in such of the "deliberations of the proposed Congress, as might relate "to the prosecution of the present war.

"Having laid before you what transpired at these con- "ferences, I received, about a week after they had been "held, your direction to inform the Ministers of Mexico "and Colombia, and I accordingly did inform them, that "their communication was received with due sensibility "to the friendly consideration of the United States, by "which it had been dictated; that, of course, they could "not make themselves a party to the existing war with "Spain, nor to councils for deliberating on the means of "its further prosecution; that the President *believed* such "a Congress as was proposed, might be highly useful in "*settling* several important disputed questions of public "law, and in arranging other matters of deep interest to "the American Continent, and strengthening the friend- "ship and amicable intercourse between the American "Powers; that, before such a Congress, however assem- "bled, it appeared to him to be expedient *to adjust be- "tween the different Powers* to be *represented*, several *pre- "liminary points*, such as the *subjects* to which the at- "tention of the Congress was to be directed, the *nature* "and the *form* of the *powers* to be *given to the Diplomatic "Agents* who were to compose it, and the *mode* of its *or- "ganization* and *action*. If these *preliminary* points could "be arranged in a manner *satisfactory* to the *United States*, "the Ministers from Colombia and Mexico were inform- "ed, that the President thought the United States ought "to be represented at Panama. Each of those Ministers "undertook to transmit to his Government, the answer "which was thus given."

This report, Mr. President, put a new face upon the character of the invitation. I found it had not been peremptory, not of a kind to impose an obligation of acceptance, nor so understood by either of the parties. I found that our Government had been sounded with the utmost delicacy, in an unofficial conversation, to know whether it would be agreeable to itself to receive the invitation, and that the President had met the overture with the utmost propriety, with friendly professions, and with a stipulation for preliminaries which gave him the 'vantage ground, and enabled him to accept the invitation, eventually, with safety and honor, or to decline it without offence. Thus far the conduct of both parties must receive an unqualified approbation. But what next? Why, sir, on the second, third, and fourteenth of November ensuing, the preliminaries not being complied with, the invitation is delivered in form; and, on the thirtieth of the same month, it is accepted "*at once.*"—Six months roll away, and at the end of that time, the Ministers send in their answers, the conditions not complied with, and our Government accepts "*at once.*" Call this an invitation! Sir, it is but little short of the reverse—We are invited provisionally—we make conditions;—the conditions are not complied with; but the invitation is extended in form. What is this but a dispensation to stay away? The non-compliance with the conditions is the *substantive* answer, and the formal invitation to attend, *nevertheless, &c.* is the compliment to grace the repulse.—Let any gentleman make the case his own. He is invited to a party, either for business or pleasure—he makes conditions—he must know four things, or not come. The four things are told him, but the inviters say, "*we shall be glad to see you sir!*"—What is this but leave of absence? Sir, I am not joking about this matter. I do believe that our attendance, at the forepart of this session, will be embarrassing and disobliging to the Confederates, and that, if they wish us to come at all, it is not immediately. I will give another reason for this inference, in the proper place. At present it is sufficient to know the fact, that these confederates are determined upon the invasion of Cuba and Porto Rico, and that we are going to Panama to advise against it.

From this view of the invitation, it is clear that it was not of a character to lay us under an obligation to accept it—that we might have declined it without offence, and that our final acceptance was more *our* invitation than theirs. But there are two other aspects under which this invitation is still to be looked at. In the first place, it comes from a *part* only of the confederates—*three* out of *five*—Colombia, Mexico, and Guatemala; Peru and Chili not having joined in giving it. In the next place, our invitation is by word of mouth, or, at least, by a note. We go, if we go at all, upon a parole request, whereas all the other Powers go upon treaties. They create the office by treaties, before they fill it, and in this they do right. Their Constitutions are copied from ours, and from *their* example our Government should learn, if not from *our* arguments, that this office should be *created* before it is filled. But, on these points, as on many others, I limit myself to stating the proposition, and refer the Senate to the unanswered and irrefutable arguments of gentlemen who have preceded me—*the Senators*, Macon, Randolph, Hayne, Woodbury, Dickerson, Van Buren, White, Holmes, Berrien, and him whose arguments we have, but unhappily not his presence—Tazewell: These have broke the way before me, overturned all obstacles, silenced all

But I deny that the alternatives lay between a blind acceptance, and a cold, sullen, and insulting refusal! I say, that the President and his cabinet would have proved themselves to be unfit for their stations, if they could have discovered no middle ground between these two extremes. They did see the middle ground. They resorted to it. They took a position upon it like statesmen; occupied it for six months; and then abandoned it without any reason that has been shown to *us*, the Senate. Then why this talk about *insult* in the second Message? Is it an afterthought, a piece of material, to be worked up with other material, to compose an impassioned appeal to the People through the medium of the House of Representatives?—*Note by Mr. B.*

voices, and left to me the easy task of following in the rear—a file closer in the column which traverses the field without resistance.

Some further arguments, Mr. President, and of a kind which I was not prepared to hear, have been pressed into the service of this mission. It is said that our refusal to give this advice will embarrass the President; that he has already accepted the invitation, and informed the world that Ministers would be sent; and that he will be disgraced if they do not go. We have just seen, sir, what manner of invitation this is; and as for that precipitate acceptance, six days before the meeting of the Senate, to urge *this* acceptance in favor of our acting, at this time, would be to make one act of imprudence a plea for another; and, as for the declaration, that Ministers would be commissioned, I look at it in this wise: Either the President still believes that he has the right to do that thing, or he does not. Take which you please. In the first case, let him send out his Ministers, and meet his responsibility to this Senate and to the People; in the other, let him acknowledge his error, make atonement to the offended majesty of the Constitution, and relieve himself and us from the effects of the strife which must otherwise subsist between us, and spread itself throughout the States of this Confederacy.

The argument of embarrassment is one to which I am not insensible, and one to which I have already *once* yielded under this administration. I allude to the nomination of Mr. King. In that case I yielded to the embarrassment; but the present does not come forward under similar circumstances of excuse and mitigation. In that case the nomination was one of six months standing; the Minister was gone, with his children and grand-children—he was at his post, engaged in his negotiations—his outfit and salary in his pocket. Here, on the contrary, is an acceptance of six days; the nominees yet at home; their salaries yet in the Treasury. Mr. King's nomination was to fill a vacancy—a *pro tem.* appointment, to endure to the end of this session of Congress—and was clearly within the Constitutional competency of the President: but the institution of this Panama Mission, was a new measure—the promise to send Ministers was a promise to make an originiinal appointment, and clearly without the President's power. My reasons for yielding to embarrassment, in the case of Mr. King, do not apply here. The Senate have their rights as well as the President, and it is their duty to transmit them, unimpaired, to their successors. One, and the most important of these rights, is that of free deliberation. They are made counsellors to the President—they were intended to be an efficient body, a check and control upon the President—in some respects superior to him, particularly in the article of impeachment: for the Senate may sit in judgment, upon the President; and pronounce the forfeiture of his office; but even then they could not judge of his "*motives*"*—that would belong to God. They could only judge him by his *acts*. We have a right to give him advice, in the plain meaning of the word—advice *before-hand*, to regulate his conduct, and not advice after the fact, to confirm and applaud what he may have done. To give this advice like Senators—like freemen, and in the spirit of the Constitution, we must be untrammelled and unembarrassed. The President has no right to embarrass *us;* yet he has twice done so in one session. Once we have yielded—shall we yield again, and so on from time to time, until the American Senate shall degenerate into a Parliament of Paris—a *Bed of Justice*, for the registration of Presidential edicts? Yet this is the real argument which is getting this Panama mission along. This consideration is dragging it through the Senate, and, this left out, and ourselves fairly consulted, according to the spirit of the Constitution, and left free to act, without giving offence, and, my word for it, the voice would be general, if not unanimous, *against* appointing Ministers, and *in favor* of sending Agents or Commissioners.

Another argument near akin to the one last mentioned, is also urged upon us—one which addresses itself to the kind feelings of the Senate, and asks if they have not confidence in the President? I answer that this is not a case for confidence, but for advice. The two things are distinct in their nature, and ought not to be confounded in practice. There are cases when the President has a claim to confidence, and then it would be a breach of the spirit of the Constitution to withhold it; but in this case he asks for *advice*, that is, for us to tell him what he ought to do, and, instead of giving him real counsel to do a thing or let it alone, this miserable argument of confidence steps forward to say, "*Do as you please, Sir.*" In a case of real difficulty, Mr. President, such good natured counselling would give the Executive no help: and, in a case in which he was determined to have his own way, such tame acquiesence in his views would sink the Senate into a mere approbatory council, and place them as a sort of political break-water, between the President and the People, to shelter *him* from the tempest of their just indignation.

† There is one other consideration, Mr. President, which I wish to bring to bear upon this question—a consideration which would have commanded considerable attention about a quarter of a century ago, but for which I cannot claim much respect in these "sky-light," or rather, sky-rocket times, when administration is circumnavigating the globe, and vaulting against the heavens, to find out objects of expenditure—*it is the consideration of* EXPENSE! We already have Ministers, Chargé d'Affaires, and Secretaries, under full salaries, with all the Spanish American States, and we are about to institute a duplicate mission at a great additional cost. Here is a book which tells us something about it. It is a little blue volume of 297 pages, filled with the names of about 10,000 persons who are drawing money out of the public treasury. Let us read a page in it.

THE BLUE BOOK—*Page* 11.

Joel R. Poinsett, Envoy Extraordinary and Minister Plenipotentiary to México,	*per annum*	$ 9,000
John Mason, Jr. Secretary of Legation,		2,000
Richard C. Anderson, Minister Plenipotentiary and Envoy Extraordinary to Colombia,		9,000
Beaufort T. Watts, Secretary of Legation,		2,000
Condy Raguet, Charge d'Affaires to Brazil,		4,500
William Miller, (now John Williams,) do. to Guatemala,		4,500
John M. Forbes, do. to Buenos Ayres,		4,500
Heman Allen, Minister Plenipotentiary and Envoy Extraordinary to Chili,		9,000

* This refers to the President's confidential message to the Senate, of February 17th, in which the imputation of bad motives in the Senate, and the President's claim to judge them, seems to be inferrible. The following is the sentence: Let the reader judge:

"Believing that the established usages of free confidential communications between the Executive and the Senate, ought, for the public interest, to be preserved unimpared, I deem it my indispensable duty to leave to the Senate itself the decision of a question, involving a departure, hitherto, so far as I am informed, without example, from that usage, and upon the motives for which, not being informed of them, I do not feel myself competent to decide.

JOHN QUINCY ADAMS."

† This topic was pretermitted in the spoken speech, but it is deemed necessary to a fair view of the mission, to insert it here.—*Note, by Mr. B.*

Samuel Larned, Secretary of Legation,	$2,000
——— Chargé to Peru,	4,500

Sixty thousand dollars per annum for salaries, and as much more for outfits and contingencies, say $120,000.

Add the expenses of this proposed mission to that sum:

Richard C. Anderson, &c.	*per annum* $9,000
John Seargeant, &c.	9,000
William B. Rochester,	2,000

Twenty thousand more. Then double it for outfits and contingencies, and make forty thousand. Then add the expense of equipping and keeping at sea, I know not how long, the ship of war which is carry out our Ministers, I know not at what cost, but say $50,000, and add all the items together.

We shall then find that we have Ministers with all the Confederates, under full pay, treating with these same Confederates at home, *or doing nothing*, while we are sending a splendid embassy to treat with these same States at Panama. If there is economy in this, I know not the meaning of the word; it is a word indeed of which the sound, as well as the meaning, seems to be lost, and the mention of which at this time has more the air of intrusion and of interrupting the company, than the aspect of presenting a serious topic for consideration.*

I now return, Mr. President, to the resolution which I have submitted. I admit that my argument goes beyond it; but I only ask the Senate to vote the extent of the resolution itself. What is it? Why, that we CANNOT *advise* the President to send this mission to Panama *before* we shall have had *satisfactory* information upon the *character* of the Congress, the *subjects* it is to act upon, the *powers* of the Plenipotentiaries, the mode of *organizing* the body, and its mode of *deciding* questions.† It seems to me that the only answer which could be admissible against this resolution, would be an allegation unfounded, and therefore, not urged, that we have the information already; for it is contradictory to ask us for *advice*, and to withhold the statement of facts upon which alone we could give advice. Instead of this, we are urged to give the advice *instanter*, and by way of consolation, we are asked, "Have you not confidence in the President?" Then, I say, let him act on his own responsibility, not mine. Let him commission his Ministers, as he said he would, and be the consequences *his*, not *ours*. He says that he has the power; then exercise it! Why persist in dragging the Senate at his heels? But what will be the effect of adopting my resolution? Will it defeat the mission? Not at all, sir. It will only postpone it for information which we have a right to expect by every arrival from the seat of the Congress, or from the cities of the neighboring Powers. The Congress was in session on the first day of November last. So says Mr. Obregon, in his letter of the third of that month. This is four months ago. Since that time, we have had news from the confines of Asia, not only upon the straight line, but round by the head of the Borysthenes, the Gulf of Finland, and the Baltic Sea. The Emperor Alexander died at Taganrok, on the borders of the Sea of Azoph, twenty days posterior to the meeting of this Congress, and we have had intelligence of his death, even by the way of Moscow and St. Petersburg, forty days ago. Must we not, then, soon hear from our *neighbors* at Panama?

But some gentlemen seem to consider this Congress as a feast, which may be over before the distant guests arrive, unless they hie away with all possible speed. Not so the fact. It is not to be over so soon. Whether it is to be a "*Love-feast*," or a feast of the *Lapithæ* and *Centaurs*, is not for me to foreknow and foretell—but one thing is certain—it is not intended to be over in a day. It is intended to last *forever!* And surely a thing which is intended to be eternal, will last long enough to give us a little time for reflection, before we rush into it. But it is further said that something may be done to our detriment before we arrive. Not so the fact. Look to Mr. Obregon's letter of Nov. 3d, the one last quoted. He says the Congress is in session, and that they "*will be engaged upon the preliminary rules of the Assembly.*" Why, sir, these *preliminaries*, and these *rules*, are the very things we want to know—the same for a knowledge of which the President stipulated, *before* he would accept the invitation; the same for which my resolution proposes to wait; and shall we not wait a few days, weeks, or even months, to receive such important and long desired intelligence?

These preliminary rules being agreed upon, what next? Why Mr. Obregon goes on to inform us that the Congress will *then* be occupied upon "*questions exclusively belonging to the belligerents.*"

"*Questions exclusively belonging to the* BELLIGERENTS!" Now, Mr. President, amidst all the contrarieties of fact and opinion which prevail on the subject of this Congress, there is one point, at least, upon which the whole of us agree, President, Secretary, Ministers, friends and enemies to the mission, in the House and out of the House—all, all agree in this one point. And what is that? Why,

* Mr. Van Buren submitted a resolution in the Senate, importing, that it would be better to order up some of these unoccupied officers to Panama, than to institute a new mission. But his resolution was rejected, 24 to 19, being the same vote as on the main question.—*Note by Mr. B.*

† It will be recollected that these are the President's own words, as communicated by him in Mr. Clay's Report accompanying the Message of December 26th. In his Message to the House of Representatives, he seems to have changed ground entirely upon this point. Far from wanting "satisfactory information" any longer, the idea of it is turned into ridicule. The "*indefinite*" nature of the measure becomes a "*cogent reason for its adoption.*" But let the two Messages speak for themselves. Here they are:

Message to the Senate.

"I stated to you, by *direction of the President*, that it appeared to him to be *necessary*, BEFORE the assembling of such a Congress, to *settle* between the *different* Powers to be represented, several *preliminary* points, such as the *subjects* to which the *attention* of the Congress should be directed; the *substance* and the *form* of the *powers* to be given to the respective Representatives; and the mode of *organizing* the Congress; and that, *if* these points should be *satisfactorily arranged*, the President would be disposed to accept, in behalf of the United States, the invitation with which you were provisionally charged."

Message to the House of Representatives.

"It has, therefore, seemed to me *unnecessary* to insist, that every *object* to be discussed at the meeting should be specified with the *precision* of a *judicial sentence*, or enumerated with the *exactness* of a *mathematical demonstration*. The purpose of the meeting itself is to deliberate upon the great and common *interests* of several new and neigboring Nations. If the measure is new and without precedent, so is the situation of the parties to it. That the *purposes* of the meeting are *somewhat indefinite*, far from being an *objection* to it, is among the *cogent reasons for its adoption.*"

"Precision of a judicial sentence—exactness of a mathematical demonstration." This ridicule cannot fall upon the "Nineteen." They only asked for "*satisfactory information*," such as the President himself asked for from April or May up to the 30th day of November.—*Note by Mr. B.*

sir, that we have nothing in the world to do with "*questions belonging* EXCLUSIVELY *to the belligerents.*" Why, then, not suit the action to the word? Why not wait a little while for the question to be disposed of? Why rush forward to commit our neutral character upon a discussion of belligerent questions in a council of war? And here I will bring out the suggestion which I have hinted at before. I intimated that the Confederates did not wish our Ministers to be present at the forepart of this Congress. In making this suggestion, I went upon the obvious principle, that they did not want counsellors to dissuade them from doing what they were determined to do, and what any skilful and capable belligerents will do—*carry the war into the enemy's country*—invade Cuba, Porto Rico, the Canaries, the Philippines, and Old Spain herself, upon her own coasts, and within the Pillars of Hercules! And for the truth of this suggestion, I now hold the proof. Mr. Obregon's letter furnishes it. He tells us that the belligerent questions are now under discussion; that they concern the Confederates "*exclusively;*" and what stronger intimation could a gentleman give, that the time has not arrived for us to go to the Congress, and that we should be excluded if now there?

But, gentlemen say that we shall be anticipated, and counteracted, if we do not send immediately; that a Power which never sleeps when her interest is at stake, will be before us with her operations upon the Isthmus. Granted, sir; because that Nation will do what we ought to have done—send an Agent, without diplomatic character or privilege. "*La Senora de las Naciones*" will, doubtless, be there; not in the questionable and clumsy shape of a formal Embassy,* but in the active, subtle, penetrating, and pervading form of unofficial Agents, speaking the language of the country, and establishing themselves on the basis of social intercourse in every Minister's family; and this is precisely what we should have done. We should have sent an Agent, as President Washington sent Gouverneur Morris to London, in 1790, or a Commissioner, as President Monroe sent Messrs. Rodney, Prevost, and Brackenridge, to South America, in 1817. This Panama mission is a case for Agents, and not for Ministers. Every object to be accomplished by Ministers might have been accomplished by Agents or Commissioners, the greater part of the expense saved, and the breach of the Constitution, and of the Law of Nations, avoided. Agents or Commissioners could have expressed our good wishes, made explanations, held consultations, given advice, *if requested*, and sent home reports of all they saw and did. This is all that either of the Senators propose the Ministers to do: for they agree, with us, that they cannot negotiate treaties. The name of Agent, or Commissioner, would not have prevented the first citizens of the Republic from going out on this service. Mr. Gouverneur Morris was not inferior to Messrs. Anderson or Sergeant in point of talents, yet, upon the letter of President Washington, without diplomatic character or privilege, or ambassadorial *outfit*, he held *consultations* with the Duke of Leeds and Mr. Pitt, transmitted the result to his own Government, and paved the way for the commercial treaty which followed. And this did not degrade Mr. Morris, who had been a Member of the old Congress, Deputy in the Convention which framed this Constitution, and Member of this Senate under the Constitution; nor prevent him from being appointed, soon after, Minister Plenipotentiary and Envoy Extraordinary to Louis the 16th. So, of Mr. Rodney, and of his rank of Commissioner to South America, which did not prevent him from becoming, afterwards, Senator and Minister.

I think, Mr. President, that enough has now been said, surely enough until some part of it is refuted—to justify the Senate in withholding its advice to the President to send these Ministers to the Congress at Panama. I admit that Congress to be a wise measure for the Spanish American States, as our Congress was a wise one for us in 1778; but it is impossible for us to advise this mission in any of the various forms, or under any of the names and colors, in which it has been presented to us. We cannot send Ministers *into* the Congress: for that would make us a party to it; we cannot send them *to* it: for they are not sovereign to receive them. We cannot send them to act *with* it: for that is an organized body, and our Ministers will be individual. We cannot send them to hang about it, and talk, and remit home accounts of consultations: for they are accredited to *nations*, and cannot sink to the condition of unofficial Agents and Lobby Ministers.

But the mission is said to be popular. Certainly it is exhibited under forms to catch the public favor. Religion, Liberty, and Commerce! Such are the banners under which it goes forth! Banners well calculated to draw after them a crowd of followers from every walk and station in life. The prospect of a political crusade against the "*bigotry and oppression*" of the Roman Catholic Church, must warm the hearts and command the benedictions of every religious sect in the Union. Even the Unitarians, who are not Christians, must be struck with joy, and filled with delight, at beholding it. The institution of a Sacred Alliance of Republics, to counterpoise the Holy Alliance of Kings, must fire the souls of all the votaries of Liberty. The generous Republicans of the West must be particularly inflamed by it. Then comes Commerce, with her golden train, to excite the cupidity and to fire the avarice of the trading districts. New Orleans, Charleston, Baltimore, Philadelphia, New York, and Boston, must see their riches suspended upon the issue of this mission to the Isthmus. In a word, every section of the country, mountain, valley, and sea-coast; every class of citizens, and all denominations of religious sects, must find something in it to suit their particular taste, and to accommodate their individual wishes. It will be to no purpose that *Prudence*, in the form of a Senatorial minority, shall come limping on behind, and endeavoring to prove that all these expectations are vain and illusory. Cold calculation will avail nothing against the fascinations of Religion, Liberty, and Commerce. Two of these objects alone, so far back as three hundred years ago, precipitated the Old upon the New World; fired the souls of Cortes, Pizarro, and their followers; overturned the thrones of Montezuma and the Incas, and lighted up a flame in which the 'Children of the Sun' were consumed like stubble. What, then, may not be expected, when, to the inspirations and the glitter of these two objects, are added the noble impulsions and the brilliant attractions of Liberty? But great as are all these causes of popular excitement, the success and popularity of the mission is not allowed to rest exclusively upon them. The terrors of denunciation are superadded to the charms of seduction. Those who cannot be won by caresses, must be subdued by menace. A body co-ordinate, and bodies not co-ordinate, have been set in motion against the Senate. Loud clamors beset our walls. The cry of "*faction!*" "*opposition!*" "*unprincipled!*" resound through the streets. Wo to the Senator that hesitates! Wo to him that refuses his advice! Wo to him that asks for information before he gives it! To withhold advice is to deny confidence—to deny confidence, is to oppose the Administration—to oppose the Administration is to commit a crime of the greatest enormity; for the instant punishment of which, the air itself seems to be alive and filled with avenging spirits.

* This was spoken in the Senate on the 13th. Two weeks afterwards, we received information that Mr. DAWKINS, British *Commissioner*, was on his way to Panama. *Commissioner*, not *Minister.—Note by Mr. B.*

I have now finished, Mr. President, what I had to say. I do not mean to recapitulate. I am no enemy to the new Republics to the South. On the contrary, I have watched their progress with all the solicitude of a partizan and all the enthusiasm of a devotee, from the first impulsion at *Buenos Ayres*, in 1806, and at *Dolores*, in 1808, down to the "*crowning mercy*" at *Ayachucho*, in 1824. I saw with pride and joy the old Castilian character emerging from the cloud under which it had been hid for three hundred years. When first on this floor, in 1821—'2, I voted for the recognition of the new Republics—I gave my vote with a heart swelling with joy for the greatness of the event, and with gratitude to God that he had made me a witness to see, and an instrument to aid it. Whether these Republics shall be able to maintain their independence, and the free form of their Governments, is not for me to say, nor is the decision of *that* question material to my decision of *this*. I wish them to be free and Republican, and I shall act upon the presumption that they are to be so. I wish for their friendship and commerce, and, to obtain these advantages, I have advised the sending of Ministers to all the States, no matter how young and unimportant, and would now advise an Agent or Commissioner to be sent to Panama. I will not despair of these young Republics. Under all their disadvantages, they have done wonders. The bursting of the chains which bound them to Old Spain, and the adoption of our form of Government, is a stupendous effort for a People sunk for ages in civil and religious despotism. BOLIVAR, VICTORIA, BRAVO, and a host of others, have deserved well of the human race. They have fixed the regards and the hopes of the civilized world. I trust that these hopes will not be disappointed; but in this age of miracles, when events succeed each other with so much rapidity; when the diadem has been seen to sparkle on the brow of the Republican General, it is not for me to hail any man as WASHINGTON until he shall have been canonized by the seal of death.

[Mr. RANDOLPH concluded the debate in a very long speech, not reported for the reason before stated: after which, late in the night of the 14th, the final questions were taken on this subject, as stated in the preceding record of Executive Proceedings.

Previously, however, to the question's being taken, the following reasons were assigned by Mr. REED, of Mississippi, for asking to be excused from voting upon the nomination.]

Mr. REED, when the vote was about to be taken in the Senate, upon the nomination of Ministers to attend the Congress of Nations at Panama, rose and observed as follows:

Mr. President: I take leave to observe to the Senate, that I arrived in this city on the evening of the 10th inst. after a very fatiguing journey, by water and land, commencing on the 5th of February, and laboring under the effects of influenza, with which I have been severely afflicted on my way hither. It is known to the Senate that I took my seat in this honorable body, for the first time, on Saturday, the 11th instant. Immediately upon being qualified, I applied to the Secretary of the Senate for a copy of the confidential communications made by the President to the Senate, relative to the contemplated mission to the Congress of American Nations at Panama, with a view to inform myself of the basis on which the mission was sought to be instituted, and the reasons offered in favor of it. The Secretary informed me that all the copies printed for the use of the Senate had been disposed of, and he had not one in his possession to give me. On the next day I applied to an honorable friend of mine, (a Senator from Kentucky,) for the use of his copy, which was obligingly furnished, but material parts of which were out of place, and which I did not then obtain. On Monday morning, shortly before the meeting of the Senate, I obtained a complete copy from my friend and colleague; but that day being spent in Executive business, I had not time to look into these documents before this morning, previous to the sitting of the Senate. Thus unprepared with information from authentic documents, I was left to derive it from the very learned and eloquent arguments which I have heard delivered on this floor, by several members of the Senate. But, unfortunately for me, all the arguments I have heard have been on one side, and against the constitutionality as well as the expediency of the mission. They threw a strong and glaring light upon the question; but then the facts from which they reasoned were almost entirely unknown to me; and, hence, I was unable properly to appreciate their reasoning, or to see with precision the precise points in contest between the opposing parties. Before I took my seat in the Senate, it is obvious my information, in reference to this mission, must have been extremely vague and indistinct. I had seen it mentioned in the papers, and heard it spoken of in conversation; but then I had no means, as the constitutional adviser of the President, to form any definite opinion upon the subject.

It seems to be considered, on all hands, to be a measure as important as any propounded to the Senate since the first organization of the Government, and those opposed to it think it is a measure calculated to work an entire change in our foreign policy and exterior relations. They have said that our policy, hitherto, had been to abstain from entangling alliances, and that this policy was consecrated by the parting advice of the Father of his Country; but that the institution of this mission would tend to countervail this policy, and establish a new system of diplomatic intercourse abroad. It has been said in debate, and urged with great eloquence, that we are now happy at home, and as prosperous as a wise People could wish to be, and that the experiment of bettering our condition by a crusade in favor of the Spanish American Nations in the Southern part of our hemisphere, would be more romantic than the crusades of the Middle Ages, to redeem the Sepulchre of Christ from the pollution of the Moslems. Considerations, too, have been urged with great force, applicable peculiarly to the Southern and slave-holding States.

I confess that my imagination has been alarmed at the same time that my judgment has not been convinced. If it be true, as has been stated, that the condition of Hayti, in the great family of nations, is to be fixed at the Congress of Panama, and that Assembly is to have the power of giving Hayti equal rank with communities of men composed of the descendants of the Saxons, the Franks, and ancient Germans, why then I shall be prepared to deprecate a mission charged with such deleterious powers. But if, as has been said in conversation, one of the objects of the mission is to *prevent* this disastrous recognition, then I am prepared to see in it objects greatly salutary to the interests of the Southern People bordering upon the Gulf of Mexico. It has also been urged in argument, that the Congress of Panama may so dispose of the destinies of Cuba and Porto Rico, as to have the most pernicious influence upon the feelings and passions of a separate *caste* of People, which Providence has permitted to exist among us. If the torch of revolution and of servile war is to be lighted up in those Islands, in order to rescue them from the imbecile hands of Ferdinand, and to place them under the banners, besmeared with the blood of the white man, of equal liberty and "universal emancipation," then the Southern States should take no part or lot in such an unholy mission. But, it is said on the other side, in conversation, that one of the principal objects of the mission is to prevent such a state of things in those Islands as may impart itself to our adjacent shores. In fine, sir, it has been said that the wrongs of Africa were to be avenged in this Congress of infant nations, and the crimes of many centuries were to be obliterated, by one great effort made in the cause of humanity. That the black man was to be

restored to his long lost rights, and the principle of "universal emancipation" was to be engraved upon the altar around which the Congress of Panama was to assemble. But, on the other hand, it has been said, that each nation represented at Panama, was to retain its sovereignty and its independence, and its right to regulate its own interior concerns, without the impulse of any foreign action, and that the Congress might be useful in restraining the Southern nations in this regard, and protecting ourselves from the contagion of their opinions. Amidst this conflict of opinions, how *can* I be prepared at present to decide? I represent here, in part, a sovereign State, which has placed its highest interests in my hands. I am unfortunately placed, by circumstances, in a crisis where I am unable to act with becoming dignity and circumspection upon this momentous question. The Senate have been debating it for two months, and upwards, and their most enlightened statesmen yet widely differ in opinion upon it. How can I, then, be prepared to speak the voice of my constituents, or the results of an enlightened judgment, under the circumstances I have detailed? I was not sent here to enlist under the banners of any party; but to represent a community of enlightened freemen, upon the principles of the Constitution, under which I hope to preserve their liberties and their rights unimpaired. In such a state of things, *inaction* is safest, while a vote at hazard might affect the best interests of the Republic. If I should ask to be excused for voting, where I had opportunities equal with my colleagues of forming an opinion, such a request would be at once the evidence of imbecility, and a cowardly desertion of my post. My constituents would not sustain me in it, and my own conscience would never cease to reproach me. But I am about to ask the indulgence of the Senate to be excused from voting, where, to act, might happen to be *right*, but, also, might happen to be *wrong*. I am called upon to *advise* the President to institute this Mission to Panama, and yet I am not sufficiently *advised* of and upon the premises, myself. The President is a Constitutional organ in the initiatory steps of this Mission, and in making the nomination of Envoys. He has been practised in matters of diplomacy, and the affairs of States from his youth. This consideration, though it cannot bind me, without reflection, to follow in his wake; yet it ought to lead me to reflect profoundly before I undertake to condemn his measures. I do not, therefore, feel that I have the requisite information upon this great question. I shall take occasion to make up my opinion before the Mission is consummated, by the act making an appropriation to carry it into effect; and that shall be formed upon a full survey of every consideration in its favor and against it, which can suggest itself to my feeble, but I hope, impartial judgment. I should be grieved to find the gentleman from Virginia* opposed to granting me an indulgence under circumstances which cannot impeach my firmness and independence. I heard that gentleman deliver his finest speeches upon the floor of the other House twenty years ago, which afford, in my opinion, specimens of the purest idiom of the English tongue, and of the best style of eloquence since the days of Chatham and Burke. He then seized upon my youthful imagination, and I have never ceased to regard him as a man of the most delicate honor, and distinguished powers in debate. I believe he will see reasons, compatible with the nicest honor and firmest independence, to give his vote for excusing me upon this occasion.

I therefore move, Mr. President, that the Senate excuse me from the vote now to be taken upon the resolution reported by the Committee of Foreign Affairs, declaring that it is not expedient to send Ministers to the Congress of Nations to be assembled at Panama.

[Mr. REED was excused accordingly, as stated in the preceding record.]

WEDNESDAY, MARCH 15.

This day, the decease of the Hon. CHRISTOPHER RANKIN, a member of the House of Representatives, was announced by message: and the Senate adjourned to Friday, after determining to attend the funeral to-morrow.

FRIDAY, MARCH 17.

MILITARY APPROPRIATION BILL.

On motion of Mr. SMITH, the Senate proceeded to the consideration of the Military Appropriation bill.

The bill having been read through—

Mr. COBB said, he had no desire to vote against the passage of this bill, so far as the appropriations were directly confined to the military service of the year; but it did seem to him that, by some kind of process, things had got into the bill which did not belong to it. What had the Cumberland Road, for instance, to do with the military service—either the continuation of the road, or for repairs made on it; or the appropriation for deepening the channel of the entrance into the harbor of Presque Isle? These were certainly not matters which belonged to the military service of the year. His object, he said, was to strike out all these objects; they were separate and distinct things; and if matters of internal improvement were to be adopted, a separate bill ought to be introduced for them. With the view, therefore, that gentlemen who thought with him on the subject, might not have to vote against the whole bill, instead of these few paragraphs, he moved to strike out from the 67th line to the 72d line, inclusive, [comprising $110,000 for the continuation of the Cumberland Road, $749 for repairs in 1825, $7,000 for the works at Presque Isle, and $50,000 for defraying the expenses incidental to making examinations, surveys, &c. preparatory to, and in aid of, the formation of Roads and Canals.] Without going into the general question of the power of Congress on the subject of internal improvements, these were appropriations, Mr. C. said, not belonging to the military service of the year, and ought to be separated by a distinct bill, where gentlemen would have it in their power to record their votes on the principle, and not be obliged to vote against the appropriation bill on account of these items.

Mr. SMITH said, the appropriation for the continuation of the Cumberland Road was last year adopted; and the Committee to whom the bill was referred, finding these articles contained in it, presumed it was the intention of Congress to continue the road as far as the Mississippi.

Mr. JOHNSON, of Kentucky, said he did not intend to occupy the time of the Senate by entering into the discussion of a principle which had been acted on for twenty years. The nature of this country and of our Government is such, Mr. J. said, that while the Hon. gentleman from Georgia wanted an appropriation of $100,000, to remove some obstructions in the river Savannah, the People in the interior of the Western country want an appropriation of the same amount to continue this same national road, by which they might enjoy some facilities of intercourse, not only as regarded the Post Office Department, but some little comfort, also, in coming to the seat of Government. Mr. J. said he had looked with pleasure on the report of the Committee on Commerce on this appropriation of $100,000 for the special benefit of a part of Georgia, because he believed it was for the benefit of the whole United States; because the interest of one part is connected with the interest of all. He did not notice this in an invidious manner; far from it. The Western People had no sea-port. No Philadelphia, no Baltimore, where to erect an arsenal; they could not call on Congress for a part of the four or five hundred thousand dollars appropriated for the erection of offices; they came into the

* Mr. RANDOLPH had intimated an inclination that Mr. REED should not be excused from voting.

Union too soon to get any part of the ten millions appropriated annually as a sinking fund for the payment of the debts of this Union; they lived too far in the interior to ask for fortifications; the stout hearts and the strong arms of the militia were, he said, the barrier to the interior settlements; they did not call for fortifications. But when the subject was introduced, the Western People did not shrink from the appropriations for erecting fortifications on the sea-board, and on the rivers running up from the sea-board to the heart of the different States of the Union. It was entitled to some consideration, that the interior States could only, in this way, present their legitimate claims to the consideration and patronage of the General Government, unless the Constitution should be placed in the way to prevent it. When that should be the case, Mr. J. said he would ask no individual to vote for the appropriation. But this for the Cumberland Road had been admitted and repeated for a period of twenty years: yet at every session some honorable members think it their duty to oppose it. He regretted this, because his honorable friend from Georgia could not vote for that which would give interest and advantage, though not equal advantage, to every part of the Union, from the conviction on his mind that the Constitution interposed a barrier. Their object was, Mr. J. said, to have this road go on to the Mississippi; and he hoped, when it got there, it would not stop short of the Rocky Mountains, if indeed our population is to proceed so far. They asked for it now, and while they bore the burthen and heat of the day with any portion of the country, they were entitled to equal privileges and equal advantages; and where the Constitution did not oppose a barrier, he was well aware his honorable friend would not refuse.

Mr. BENTON was in expectation that the bill would have passed without producing discussion; but as that was not the case, he felt compelled to move to lay the bill on the table, with a view of moving afterwards to go into the consideration of Executive business.

The motion prevailed, and the Senate then proceeded to the consideration of Executive business.

EXECUTIVE PROCEEDINGS THIS DAY.

On motion of Mr. RANDOLPH,

Ordered, That the following motion, submitted by Mr. RANDOLPH, on the 21st February, and withdrawn on the 22d February, be inserted on the Journal:

Resolved, That the Senate having, on the 15th day of February, passed the following resolutions:

"*Resolved*, That, upon the question whether the United States shall be represented in the Congress of Panama, the Senate ought to act with open doors; unless it shall appear that the publication of documents necessary to be referred to in debate, will be prejudicial to existing negotiations.

"*Resolved*, That the President be respectfully requested to inform the Senate whether such objection exists to the publication of the documents communicated by the Executive, or any portion of them; and, if so, to specify the parts, the publication of which would, for that reason, be objectionable."

To which the President returned the following Message in answer, viz.

"WASHINGTON, *Feb.* 16, 1826.

"*To the Senate of the United States:*

"In answer to the two resolutions of the Senate, of the 15th instant, marked (Executive,) and which I have received, I state, respectfully, that all the communications from me to the Senate, relating to the Congress at Panama, have been made, like all other communications on Executive business, *in confidence*, and most of them in compliance with a resolution of the Senate requesting them confidentially. Believing that the established usage of free confidential communications, between the Executive and the Senate, ought, for the public interest, to be preserved unimpaired, I deem to be my indispensable duty to leave to the Senate itself the decision of a question, involving a departure, hitherto, so far as I am informed, without example, from that usage, and upon the motives for which, not being informed of them, I do not feel myself competent to decide.

"JOHN QUINCY ADAMS."

Resolved, That the Senate cannot, consistently with a due sense of its constitutional rights and duties, proceed, under the circumstances of the case, to a further consideration of the question, whether or not it be expedient for the United States to send a mission to the Congress at Panama."

On motion, by Mr. RANDOLPH,

Ordered, That the following motion made by Mr. RANDOLPH, on the 14th March, and afterwards withdrawn, be entered on the Journal.

Resolved, That the States of South Carolina and Alabama, being unrepresented, in consequence of the death of JOHN GAILLARD, and of HENRY CHAMBERS; and the State of Virginia being also unrepresented, by the unavoidable absence of LITTLETON WALLER TAZEWELL; and the State of Mississippi, by the vote that THOMAS B. REED, one of the Senators, be excused from voting, he not having had time to make up his opinion, so as to be prepared to vote understandingly on the question: The Senate cannot, on a question involving the dignity and neutrality of the United States, and the fundamental principles of their union, and the peace and security of a great subdivision of the Confederacy, proceed to consider the nominations, until the States shall be more fully represented.

On motion, by Mr. HAYNE,

Ordered, That the injunction of secrecy be removed from the foregoing proceedings, and that the Secretary cause the same to be published.

Extracts from the Journal.

Attest, WALTER LOWRIE, *Secretary*.

MONDAY, MARCH 20, 1826.

Mr. HOLMES rose to offer a resolution, to call, as he said, for light. He understood there had been an invention effected by the Legislative Council of Florida, calculated to throw considerable light on this world. It is, said he, an invention in arithmetic, much more celebrated than that which was effected in another part of the United States not long since. Mr. H. said he was not able to give a precise account of it, but he was told that, by means of this invention, a member of the Legislative Council, who travels two or three hundred miles, can contrive to make out twelve or thirteen hundred miles. This he thought a very important discovery, and particularly interesting to the Members of Congress, about to go home. He therefore offered the following resolution:

"*Resolved*, That the Secretary of the Treasury be directed to communicate to the Senate the amount of compensation charged and allowed to each Member of the Legislative Council of Florida, for the last year, for travelling to and from, and attendance on, the session of said Council; together with the certificates and vouchers on which the accounts have been allowed and paid."

INDIAN RELATIONS.

Mr. REED rose to offer a resolution, which, as it embraced some principles on which he believed the Senate had not hitherto been called upon to act, he begged leave to submit a few remarks by way of explanation.

Mr. R. said it struck him that this resolution which he was about to offer to the Senate, involved some principles in which several of the States of this Union had a joint, and something like an equal, concern. It related to the Indians, and to the light in which they were to be viewed by this Government. It was well known, Mr. R. said, to every member of this honorable body, that there were se-

veral States of the Union, a great portion of whose Territory is in the occupancy of the aborignal inhabitants; and he presumed it was already known to the Senate that more than half of the State of Mississippi, which he had the honor, in part, to represent, is still in the occupation of the Indian tribes—the Choctaw and the Chickasaw nations. In regard to the action of the State laws on these People, there never had been any difficulty, nor was it ever sought on the part of the State of Mississippi, to extend its jurisdiction over them; but there were evils growing out of their situation in this territory, which required the consideration of this Government. Mr. R. said he did not mean to call the attention of the Senate to the actual condition of these People who inhabit the territory within the limits of the State; his object was to call the serious consideration of the Senate to the condition of our own citizens, who, after having committed crimes, or contracted debts, locate themselves amongst these Indians, and consider themselves as beyond the jurisdiction of our laws. He would recount to the Senate some singular facts, which, he believed, to the same extent, existed in no other State of the Union, and which he thought would go far to show that something, if within the competency of this Government, ought to be done on this subject.

There is, said Mr. R. in the territorial limits of the State of Mississippi, and near to the white settlements, one of the most beautiful regions in the world, called Lake Washington. The territory surrounding it is most beautiful, the soil is rich, and this lake and territory are both situated within the Indian territory. A man, notorious for the commission of various crimes in the State of Tennessee, has fled for refuge within the jurisdiction of these Indians, and has subject to his jurisdiction, by a kind of feudal sovereignty, fifty or a hundred persons, living on this lake, who know no other authority but his own. These persons are exempted from the jurisdiction of the laws of the Union, and cannot be reached by the laws of the State of Mississippi. This was a state of things, Mr. R. said, the Senate would easily perceive, was not to be endured, and if there was any thing within the competency of the Senate to remedy the evil, it was time it should be done. There was another fact which had fallen within his observation. A man emigrated from Georgia twenty years ago, and settled amongst the Choctaw Indians. He acquired property to a large amount, and he recently died without leaving any legitimate heirs in the place where he lived and died. His brother came on to claim the property; he applied to counsel for an opinion; it was given, and decided that the State laws did not extend to the case, and that no remedy whatever could be provided, to put him in possession of the property. Even some of the Officers of Government, now resident in the Choctaw nation, are considered as entirely beyond the reach of the laws of the United States, or the State laws. It had occurred to him, therefore, that it was a duty incumbent on him to call this matter to the consideration of the competent authority of the United States. He repeated, it was not sought on the part of the State of Mississippi, or by her Senators in this House, to enforce the action of the laws on the Indians themselves; they did not claim to consider them as subject to their operation. The Indian tribes have laws and traditionary usages of their own, and are entitled to the patronage and protection of the General Government; and, Mr. R. observed, the Indian rights are sufficiently secured, and they themselves are protected in the enjoyment of the lands in which they are located—but they have no right to constitute their country into an asylum for debtors and criminals, from every State of the Union, and to afford them protection. He remarked to the Senate, and particularly to those gentlemen who were not acquainted with this subject, having no Indian territory within their limits, that the Indian territory in Mississippi affords a complete sanctuary for debtors and vagabonds and criminals from every part of the Union. This state of things ought not to be endured, and he intended to offer a resolution, which had in view the taking the sense of this body, whether it was competent for them to extend to our own citizens, who happen to be within the Indian territory, the process of the Courts of the United States, in order that justice might be done. At present, as far as he had been able to investigate the subject, it was the opinion of some able jurists on this point, that process does not extend to persons residing in the Indian territory—and he would wish to bring to the consideration of the Legislative authority of the Union, the question, whether it is competent for us to extend our civil and criminal process; or whether it is one of the appendages—one of these People's rights, as sovereigns, to afford a sanctuary to vagabonds from every part of the Union, and who are of no service, but detrimental to the Indians themselves.

There was, Mr. R. said, another question involved in this matter, which he was very anxious to bring before the consideration of the proper authority of the Union. How far it is within the competency of the State to extend the action of its own laws, without the aid of the United States, to persons thus circumstanced, is a question somewhat novel, and has never been decided. Being forcibly struck with the importance of this question to the States within whose territorial limits the Indian territory is situated, at the last session of the Legislature of Mississippi, a proposition was made to extend the civil power of their Courts to their own citizens who had contracted debts within the State, and had fled to this savage sanctuary: the matter was debated for many days, and it was at last decided that there existed no power in the State to extend the action of its laws in the manner which was sought by the proposition before the Legislature. Mr. R. said his own opinion on this point was, that it is in the power of the State to act within its own territorial limits, so far as to serve its own civil process, and the action of its laws, on citizens who may have contracted obligations. The State decided otherwise, and said it was a matter for the General Government; therefore, if there was any remedy on this subject to be obtained, it was to be at the hands of the General Government, and not by force of any competent authority in the State Government. The resolution he was about to submit, Mr. R. said, would go to investigate this point, in which he considered rights of high importance to be involved—his proposition would go to inquire how far it is competent for the State alone, by its own authority and power, without the aid of the General Government, to act within their own territory, on their own citizens, who had contracted obligations amongst the whites, and then had fled to the Indian territories. On the subject of this resolution, Mr. R. begged the particular attention of the gentlemen from Georgia and Alabama. One question which was involved, would be, to see how far it is in the competence of any State situated as his or theirs were, to act on this subject, without invoking the aid of the General Government. If, upon investigation, it was found that the States have no such competency by their individual efforts, to attain the aid he had in view, then the resolution contemplates the matter in another point of view, how far it is competent for this Government to concede its assent to such States, that they exercise the right of sovereignty for such purposes of justice. Mr. R. said he did not intend to enter into a full discussion of this matter, which he regarded as highly important to those States whose territories were similarly situated with those of Mississippi.

In regard to these Indians, Mr. R. said it was unnecessary now to discuss their actual posture in our social and political order: it had been a matter of debate from the first establishment of this Government up to the present time. Their actual condition in our political order has not yet been settled—whether they are considered as an in-

dependent People, entirely free from the action of our legislation and laws, or whether they are to be considered as independent *sub modo* only, are questions which have not yet been decided. How far their rights to the soil are plenary or imperfect, or under what modifications they hold the right of occupancy, is still a question on which no determinate opinions have yet been formed. On one question, Mr. R. said his opinion, from an observation of fifteen years, was settled beyond possible change—it was, that the prospect of civilizing these People by the actions of surrounding communities, is illusive. It is a dream, which never can be realized. He was entirely persuaded that, so long as the tribes of Indians, within any State of the Union, were exempted from the action of our laws, they never would consent to remove from the territory they occupy. He thought it was a fair and correct policy, instead of making vain and illusive efforts to civilize them, and include them in our political institutions, to remove them to the borders of our territories, where the real character of the savage man can be benefitted. If this policy cannot be pursued, the tribes of Indians in the State of Mississippi will not last for twenty years longer. The seeds of national dissolution are sown; they are operating with extraordinary rapidity, and the period is not far distant when these nations must undergo an entire dissolution. But, until our legislation can, in some form or other, be brought to act on these People, or those resident amongst them, they never will consent to abandon their lands. So soon as our laws can reach those abandoned citizens, who settle amongst them and become as savage as the Indians themselves, a powerful motive for their continuance will be removed. It is the first step in a system of removal; it is the first step in any system tending to a change of residence.

Mr. REED concluded by submitting the following resolution:

"*Resolved*, That the Committee on the Judiciary be instructed to inquire into the expediency of authorizing by law the Courts of the United States to issue process, both civil and criminal, and to cause the same to be executed against persons resident upon land, occupied by the Indians, within the territorial limits of any State. And that the same committee be further instructed to inquire, whether there is any mode by which the United States can yield their assent, that any State may exercise the power of issuing civil and criminal process against persons so resident upon lands, occupied by Indians, within its limits; and whether such assent, on the part of the United States, be necessary to the exercise of this power, on the part of any individual State."

CUMBERLAND ROAD.

The Senate then again proceeded to the consideration of the bill "making appropriations for the military service for the current year," Mr. COBB's motion to strike out the following item, being the pending question—viz: "For the continuation of the Cumberland Road, one hun-"dred and ten thousand dollars, which shall be replaced "out of the fund reserved for laying out, and making "roads under the direction of Congress, by the several "acts passed for the admission of the States of Ohio, In-"diana, Illinois, and Missouri, into the Union, on a footing "with the original States."

Mr. SMITH said, if he understood the objection of the gentleman from Georgia, it was, that such a proposition had never before been introduced into a military appropriation bill. In that, Mr. S. said, he was quite right: when the Cumberland Road was commenced, it was put under the direction of the Secretary of the Treasury, then Mr. GALLATIN, and it was completed entirely under the direction of the Treasury Department. All the appropriations which were passed after the first act, for the continuation of the Cumberland Road, were inserted in the general appropriation bill; but, since then, a new system, and perhaps a much better one, had been adopted. The business of roads and canals has been transferred to the War Department, because they have there the aid of the Engineer Corps. An act was passed in the year 1820, directing the survey of a route to be made from the right bank of the Ohio, opposite to Wheeling, to the Mississippi. The route was run and surveyed, and a report was made on it. Some objections were made to the report, that the route did not strike the metropolis of any of the States, and by the act of last session, another survey was directed. The fourth section of that act has been considered, in some measure, as pledging the Government to the continuance of the road. Mr. S. said it would be proper for him to state, that the act of 1820 stipulated, specifically, that nothing therein should be construed as pledging the United States to make such a road. The sum appropriated by the act was simply for running the route on which the road was to pass. The act of 1825, appropriated $150,000 for the road, to commence at Canton, in Ohio, and to go to Zanesville. The fourth section of that act appeared something like a pledge of the Government of the United States to continue the road, and, under that idea, the House of Representatives had passed this appropriation of $110,000. Mr. S. said he was disposed to continue the road, if it could be done conformably to the Constitution of the United States. This Cumberland Road has proceeded as far as the Ohio, and is to be continued on to Missouri; the object of which is, that there shall be a short course from the seat of Government to St. Louis, in Missouri, by which many days would be saved to the United States in the transportation of the mail, and facilities would be afforded for travelling. He did not look on the old beaten argument of its raising the value of the land, as of any weight: experience had proved that it was illusive. But he looked to the general convenience of the country. Mr. S. concluded by observing, that, having carried the road as far as the Ohio, he should give his vote for its continuation.

Mr. COBB said, when he made the motion to strike out, he did not do it with the design of going into the discussion of the constitutional power. When the subject was under discussion last year, he had delivered his ideas on it, and he had no desire to repeat them; nor should he do so; the effect they had on the Senate was not such as to encourage him at all to embark in the discussion again. He would, however, still insist that the reasons which he had assigned for making this motion were sufficient to induce the Senate to adopt it. The appropriation here called for, is, at least, a thing contested on principle, and on constitutional principles, too; and it ought not to be inserted in a bill, the general objects of which are clearly constitutional and proper, viz: making annual appropriations for the military service. In favor of these appropriations he wished to vote—they are all legitimate and constitutional; but when, in this bill, making appropriations for the military service, is inserted an appropriation having no connection whatever with it, and for a different and distinct object, which he believed to be unconstitutional, he must vote against the whole bill, if it was retained. The appropriations for fortifications, Mr. C. said, have been distinguished from the military appropriation bill, and separately passed upon; and there was ten thousand times more reason for distinguishing the appropriations for what was called a system of internal improvement, than there was for distinguishing the appropriations for fortifications from the military service.

The gentleman from Kentucky, (Mr. JOHNSON,) Mr. C. said, seemed to think it was rather hard that he should oppose this appropriation, when he insinuated that he, (Mr. C.) was in favor of another appropriation, which has not yet been acted on, for removal of obstructions in the River Savannah. In the first place, Mr. C. said, he had

not yet voted on that bill, but he considered it as a distinct object, depending on a distinct principle from the other consideration. During the Revolutionary war, the United States, for the defence of the place, directed certain obstructions to be placed in the River Savannah. At the end of the war they were not removed, and they have remained ever since, to the manifest injury of the harbor; and the question here to be considered was, not whether they would adopt a system of internal improvement, but whether they would remove the obstructions from the harbor, where they had themselves placed them.

Mr. RUGGLES hoped the gentleman would not persist in his motion to strike out the appropriation. The reason why it was inserted in this bill had been satisfactorily explained by the gentleman from Maryland. The subject was transferred from the Secretary of the Treasury to the Secretary of War. The money is expended in the same way that the other items in the bill are expended. Hence the necessity of uniting these items in one bill. This question, Mr. R. said, had been settled—the principle was discussed last session; a law was passed, which provided for making the road, and officers are now in commission, and under pay, for superintending it; and it certainly was the intention of Congress that this road should go on, otherwise, they would not have passed the law creating those offices. Mr. R. said he had listened, with great attention, last session, to the eloquent argument of the gentleman from Georgia on the subject. A majority of twenty-eight to sixteen, decided then in favor of the principle. The law was passed, and he thought it was now too late to make these constitutional objections. The proper course for the gentlemen to pursue, would be to strike at the law passed at the last session, if they wished to arrive at their object—to repeal it. Mr. R. then contended that the fund arising from the sale of the lands would be sufficient, not only to make the road, but a large surplus would be left, and argued that the road could be made cheaper than had been estimated. It was now in the hands of the laboring classes, instead of speculators or monopolists, and the system was altogether improved. As this item in the bill had passed the House of Representatives in that shape, he trusted it would pass this body likewise, and he repeated that he hoped the gentleman would not persist in his motion.

Mr. CHANDLER inquired of the Chairman of the Committee that reported this bill, as this sum was to be replaced out of the fund reserved for laying out and making roads, under the direction of Congress, whether he knew how much this fund would amount to. He should like to know, also, what proportion had been laid out of this sum already. When they took into consideration the bill introduced by the gentleman from Missouri, to graduate the price of public lands, by which, after a continual reduction of price, on the lands not being sold, they were to be given away, he wanted to know how much the fund would amount to then. He thought the expenditures for the road would overrun the amount provided for by the fund, out of which it was to be paid.

Mr. FINDLAY said, he had voted against an appropriation similar to this last year, but not upon constitutional grounds. He could not perceive how the proposed appropriation involved any constitutional question. It was only carrying into effect the compact made with these new States. It was not now necessary to inquire whether the compact between the United States and the States already formed, would confer any additional power on Congress or not. Congress may admit new States into the Union, and there is nothing unconstitutional in forming the particular terms on which the State shall be admitted. This was part of the compact, that certain funds should be set apart for making roads. If this appropriation was intended to be applied between Wheeling and Zanesville, and would complete the road, he would have voted for it; but, as he found it was to be applied altogether beyond Zanesville, he should vote against it.

Mr. BARTON made a few remarks, too indistinctly heard to be reported.

Mr. FINDLAY then moved to amend the bill, so as to confine the appropriation to the road as far as Zanesville; which motion was negatived without a division.

Mr. COBB said, the inquiry made by the gentleman from Maine had not been answered, because it could not be. He would, he said, make another inquiry—whether the appropriations made for the Cumberland and other roads, had not already exceeded the actually received proportion of the two per cent. fund which is to be devoted to roads, which had been received from the sale of public lands in those States? If such was the fact, they were now loaning the money of the United States to the object of this road, without knowing whether it was ever to be repaid. By calculation, it was possible to make almost any thing appear; but they were not to calculate that this land would sell for a dollar and a half an acre—a very large portion of the land in the several States would never bring that—it was doubtful whether a great portion would ever be sold at all. Even if Congress should assume the power, he could call it nothing but assumption—of continuing this road from this fund—they certainly ought not to anticipate it—they ought to wait till it is received into the Treasury before they appropriate it. Congress had, Mr. C. said, long since, exceeded the proportion of the two per cent. fund that has been received from the sales of the public land, in its expenditures on this road.

Mr. NOBLE said, he had hoped that the principles in relation to this road had long since been settled. Appropriations on the subject had been passed for years, with little or no interruption or opposition, on constitutional grounds. The gentleman from Georgia might determine for himself; but, when it is evident that appropriations have been made in almost every State in this Union, as well as Territories, for roads, he should like to be informed, and hear nice discriminations, and the provision in the Constitution pointed out, that forbids the appropriation now under consideration; and that too against solemn stipulations, entered into by the United States with the People of the Northwestern States, while they were Territories. Sir, said Mr. N. the construction given to the Constitution, by those most scrupulous as to the powers of Congress on the subject of making roads, have not denied that Congress has not the power to make roads in the Territories. The Constitution declares that Congress shall have the power to make all needful rules and regulations respecting the Territories, and Congress had, in making rules and regulations, by law appropriated millions of dollars for the construction of roads, not only in the Territories, but in the States.

The gentleman from Georgia wishes to know the extent of the two per cent. fund for making roads leading to the Northwestern States. Sir, the inquiry comes too late; it is unimportant as to the amount, be it great or small. Congress being the strong arm, actually, in 1818 or 19, pledged the whole of this fund to reimburse the United States for money they had expended in making the Cumberland Road, within the jurisdiction of three States, Maryland, Pennsylvania, and Virginia, without regarding their contract with the States through which this road is to pass.

The compact was binding, Mr. N. said, between the Government and the States. If it was not binding, what a fraud had been practised on the States. The Territories bound themselves by ordinances, and were admitted into the Union in full faith. They had complied with their stipulations, but the General Government had not performed theirs. It was true, there was no time specified, but were they, therefore, to wait till the day of judgment?

It was obligatory on the General Government the moment the compact was entered into, to fulfil it. If you are one of the contracting parties, said Mr. N. and we are the other, and we are to wait your will and pleasure, I would rather have no compact at all. I would rather not come into the Union. I would rather remain a Territorial Government, than to have yielded what we have yielded. I hope this road will go on as it has commenced. The whole interest of the Western Country is to be destroyed if this road is to be discontinued. It was advocated by Jefferson, by Madison, and Monroe, and now seems to be the time that this road is not to be made an inch further. You receive the money, you put it into the Treasury, and your stipulation remains yet unfulfilled. Mr. N. concluded by hoping the Senate would vote for this road, and bind the interests of the Western States and Missouri with the Eastern. He had more faith in this road than in digging a canal through the Alleghany mountains.

Mr. RANDOLPH then rose, and said, I do not rise to detain the Senate, or to give a history of this very extraordinary road, or of the compact between the State of Ohio, or rather Territory, and the United States, out of which this appropriation for roads grew. I will only say, that that subject, when before Congress, now about twenty-four years ago, if I don't forget—was referred to the Committee of Ways and Means, of which I was a member. There was a gentleman from the State of Ohio attending here in behalf of that State—I no not now recollect whether he was a Territorial Delegate—I think he was not—he has since been Governor of Ohio. The Committee did not choose to come into the views of that gentleman in many respects, and, among others, in reference to the boundaries of the State of Ohio—extending them beyond the Miami of the Lake—they did not give him *carte blanche*, to make the bill what he pleased. The Committee of Ways and Means were so extremely—what shall I say? so extremely impracticable by this Agent, that they were discharged from the further consideration of the subject, and the question was referred to another Committee. That Committee brought in a bill under which Ohio came into the Union, and that bill was the work almost exclusively of the Representative of what is now the State of Ohio, with some little modifications on the part of the then Secretary of the Treasury, who had this road a good deal at heart, and through whose interest, instead of going through Clarksburg, as was contended for by the Representative from that district of country, it was carried through Pennsylvania, to Wheeling, only going through a small portion of Virginia, called the county of Brooke, hardly as wide as the Eastern Shore of Virginia—extending between the Western Boundary of Pennsylvania and the River Ohio, which, in that particular reach of its course, is nearly due South, and almost parallel to the line that separates Pennsylvania on the West from Virginia. The bill passed as modified by the Agent of Ohio, giving to her a greater disposable area of arable land, than any other State in this Union possesses—giving her a superficies of land fit for cultivation, surpassing the other two States of Indiana and Illinois, and cutting off from the Territory of Michigan all that fine country which lies beyond the Miami of the Lake, to suit the designs of this Agent, and those of another gentleman, then at the head of the Post Office Department, [Gideon Granger,] who I heard declare with his own lips, that he would make a State there, which should countervail "*the great State of Virginia;*" and he has done it. I did not rise to give this history, but to vindicate my consistency—it is by that consistency, for although the truth may be blamed, she never can be shamed—it is to that consistency that I owe my place here—that it is that consistency, which, according as the several parties of this country have vibrated one way or another, has brought me into collision with, or in support of them. I hope the Senate will pardon this egotism—it is due to myself to release me from the imputation of any "bad faith" in respect to the State of Ohio—I disclaim it—I declare, before God and man, that I never did—though the record will speak to the contrary—yet the record don't tell the truth—I never did vote for the admission of any one new State into the Union from the time that I took my seat in Congress—and, so help me God, I never will. Ohio was the first State which was admitted after I took my seat in Congress—in the Journal you will find my name, but you will find it as one of the Committee on Ways and Means to whom the subject was in the first instance referred. You will not find it on the Committee, to which, the Committee on Ways and Means being discharged from the subject, it was referred, because the Committee on Ways and Means were not sufficiently practicable to the views of this—(whether a territorial delegate or lobby member, it don't value *that!*) this diplomatic agent on the part of Ohio. I did not vote against the admission of the State of Ohio into the Union, not only because there was no occasion for me to throw myself into the ranks of opposition against my best friends, with whom I was united in the closest bonds of intimacy, when that opposition could not avail, but because I was unable to attend on the final question. If I had been in the House, I should have voted against the State of Ohio being admitted into the Union, but I could not get to the House from indisposition, when the question was taken on the passage of the bill. From that day to this (and I recollect that I was once in a minority of two with an old sedition-law and black-cockade Federalist on some of them) I voted against the admission of any new State into the Union—I won't be positive, for I have not hunted the Journal—my last vote I think was in reference to the admission of the State of Missouri into the Union, which seems to excite the risibility of my friend from that State (Mr. BENTON) and the facts are these: As Ohio was the first State admitted, so was Missouri the last—the facts are these—I don't see any one here who can corroborate them, but my then colleague, W. S. ARCHER can, so can twenty, thirty, fifty, gentlemen in the House of Representatives. The facts were these: On the night that that bill had its last vote in the other House, my colleague was a new member—I declared publicly and openly that in case that bill should pass, with the amendment then proposed, unless another amendment should succeed, which did not succeed—I declared conditionally, that I should move for a reconsideration of the vote—myself and my colleague, who, with another gentleman whom I shall not refer to, though near me, (Mr. MACON,) were the only persons whom I have heard of, belonging to the Southern interest, who determined to have no compromise at all on this subject. They determined to cavil on the *nineteenth* part of a hair in a matter of sheer right—touching the dearest interests—the life-blood of the Southern States. The House was exhausted—a gentleman fainted in front of the Chair and tumbled on the ground—in this state of things, my colleague asked me whether it would not do as well to put off the motion till to-morrow, (for he was in ill health and much fatigued.) I said I could not agree to that till I had taken the opinion of the Court in the last resort. After that question had eventuated, as I foresaw it might, I rose in my place and asked of the Speaker whether it was in order to move a reconsideration of the vote—he said that it was. Sir, I am stating facts of more importance to the civil history of this country than the battle which took place not far from this—he said it was. I then asked him—(to relieve my colleague, who had just taken his seat the first time that session) whether it would be in order to move the re-consideration of the vote on the next day. He said something to this effect: Surely the gentleman knows the rules of the House too well not to know that it will be in order at any time during the sitting to-morrow, the next day—I replied I thought I did; but I wanted to make assurance doubly sure—to have the

opinion of the tribunal in the last resort. I then agreed—to accommodate my colleague, in the state of exhaustion in which the House then was—I agreed to suspend my motion for re-consideration, and we adjourned. The next morning, before either House met, I learned—no matter how—no matter from whom or for what consideration—that it was in contemplation that this clock, which is hardly ever in order, and the clock in the other House, which is not in a better condition—should somehow disagree—that the Speaker should not take his seat in the House till the President had taken his seat here, and then, that when I went into the House to make my motion, I was to be told that the Chair regretted very much that the Clerk had gone off with the bill—that it was not in their possession, and the case was irreparable—and yet I recollect very well when we applied to the Secretary of State for a parchment roll of an act which had not been duly enrolled—two sections were left out by the carelessness of the clerks and of the Committee of Enrolment—that act was, by the House of Representatives, in which it originated, procured from the archives of the Department of State, and put on the statute books, as it passed, not as it was on the roll—and enrolled anew. It was the act for the relief of the captors of the Mirboha and Missouda. As soon as I understood this, sir, I went to the Speaker myself, and told him that I must have my vote for reconsideration that day—I can only say that I inferred—not from what he *told* me—that my information was correct—I came off immediately to this House—it wanted about twenty minutes of the time when the Senate was to meet—I saw that most respectable man whom we have just lost, and begged to speak with him in private. We retired to a Committee Room, and to prevent intrusion we locked the door—I told him of the conspiracy laid to defeat me of my Constitutional right to move a reconsideration—(though I think it a dangerous rule, and always voted against its being put on the rules at all—believing that, to prevent tampering and collusion, the vote to reconsider ought to be taken instantly—yet, sir, as it was there, I had a right to make the motion)—I told this gentleman that he might, by taking the Chair of the Senate sooner than the true time, lend himself unconsciously to this conspiracy against my constitutional rights as a member of the other House from the State of Virginia. I spoke, sir, to a man of honor and a gentleman, and it is unnecessary to say that he did not take the Chair till the proper hour arrived. As soon as that hour arrived, we left the Committee room together: I went on to the House of Representatives, and found them in session, and the Clerk reading the Journal—meanwhile, there had been runners through the long passage, which was then made of plank, I think, between the two Houses, hunting for Mr. Gaillard—where is he? he is not to be found. The House of Representatives having organized itself—when I came in from the door of the Senate I found the Clerk reading the Journal—the moment after he had finished it I made the motion, and was seconded by my colleague, Mr. ARCHER, to whom I could appeal—not that my testimony wants evidence—I should like to see the man who would question it on a matter of fact—this fact is well remembered—a lady would as soon forget her wedding day as I forget this. The motion to reconsider was opposed—it was a debatable question, and the Speaker stated something this way—"that it was not for him to give any orders—the Clerk knew his duty"—The Clerk went more than once—my impression is, that he went more than twice—I could take my oath, and so I believe could Mr. ARCHER, that he made two efforts, and came back under my eye, like a Mouse under the eye of a Cat, with the engrossed bil in his hand—his bread was at stake—at last he, with that pace, and countenance, and manner, which only conscious guilt can inspire, went off, his poverty, not his will, consenting, and, before the debate was finished, back he comes with the bill from the Senate which had then become a law, before it was decided whether they would reconsider it at my motion or not, which motion nailed the bill to the table until it should have been disposed of. I mention this fact to show what unprincipled men, "*feeling power and forgetting right*," are capable of doing even in the presiding Chair of a deliberative Assembly—yet, notorious as these facts are, so anxious was one side of that House to cover up their defection; such was the anxiety of the other to get Missouri in on any conditions, that this thing was hushed up, just as the suspension of the HABEAS CORPUS was hushed up.

The bill was passed through the forms of law—Missouri was admitted into the Union contrary to the Constitution, as much so as if I had voted the other way in the first instance, and the Speaker had ordered the Clerk to put my name with the AYES in the Journal when I had voted NO—because, sir, agreeably to the Constitution of the United States, every member has a right to his vote under the forms of the House, whether these forms are wise or foolish, and my colleague and myself were ousted out of our right to re-consider, for which I would not have taken all the land within the State of Missouri.

Having given this account of this transaction, permit me to say that, without voting upon any *principle*, as it is called, upon the subject of internal improvement at all, without calling that matter into question—without calling into question any "plighted faith," real or imaginary—unless I allowed myself to vote inconsistently with the manner in which I have voted from 1802-3—I remember the time, because it was the only session that I lived next door to the Secretary of the Navy; and I was a fellow lodger with a gentleman whom I now see in his place—I may be mistaken, but, (whether mistaken or not in the date,) I know that few men in Congress stood higher than I did at the time with the then administration; but I could not stomach this thing—I would not vote for it. I saw the old States playing what I thought a most ruinous and pernicious game, and what, in the end, it has proved to be—giving away to the States, North of the Ohio, immunities and privileges, and making concessions, which they must sooner or later rue—which they rue at this time, which I then rued, and shall forever rue—even till "the day of judgment," which some of us may wish to be with a stay of execution. I have no design, as you may perceive, sir, on the Presidency, nor on any other office which is in the Presidential gift, or in that of "the *Nation*," whose power has increased, is increasing, and never will, I fear—although it ought to be, and I wish it could be—diminished. I have persevered in this course, *ab ovo usque ad mala*—from the beginning of the feast—I fear I must say, to the beginning of the famine. I shall continue to do so, whether I commit a breach of faith or not. I shall vote on this as on any other question—if you can find an instance in which I have nodded, then will I agree that, with abler and better men, I too have slumbered on my post—*aliquando optimus dormitat*.

Having said thus much on this bill, there is one more subject on which I will touch, and sit down. In the National Intelligencer, last Friday, I saw a piece signed IMPRANSUS; that is, if I have not forgotten my Latin, a man that wants his dinner. This dinnerless gentleman is doing what the printers of the public laws in Kentucky and elsewhere are doing every day—lauding to the skies certain gentlemen, and libelling others; you, in particular, sir. This hungry man, who stands so much in need of a dinner—there is no man's appetite so sharp as his who is to eat at another's expense—who was the cynic, sir? I think it was Diogenes—who, being asked what wine he liked best, answered, that which he drank at another's expense. I am not of that opinion at all. I like no dinners but such as I pay for out of my own pocket. *De gustibus non est disputandum*, even between cynics, sir. So there are none so sharp set as those who mean to eat out of the public larder. I should like to know how long it is since that respectable journal, (for so I have always con-

sidered it to be,) has lent itself—this is the first instance that I have seen—and to an insinuation of the grossest kind and degree to the honor of this body, and of its presiding officer. I am not at all surprised to see it in the "KENTUCKY REPORTER," or other papers of that stamp; but I am astonished to see that respectable journal lend itself to an insinuation derogatory to the body whose public servant it is. Nor, when I say this, do I mean to hold out any thing like a rod *in terrorem*—a threat. They who wish to stand well need not deprecate my opposition, as was proved in the case of the Clerk of the House of Representatives.

And now, sir, with regard to those gentlemen who feed their horses out of the public crib, who never plant any corn, there is no country under the sun where they dine so sumptuously at the public cost as in this. There is no country under the sun where the inferior officers are paid so largely, whether absolutely or relatively, or with such punctuality as here; where even the superintendence of the Cumberland Road is a better office under the General Government, and has annexed to it a larger salary, than is allowed to the Governor of Ohio. I have said thus much, though I should have consulted my own ease and health by keeping silence. There is one member in this body who ought to be obliged to me, if no one else is, for the part that I have taken of late: for, sir, from father to son, I have proved the best conductor, the best *imaginable* conductor, of the inimical properties of that dynasty, and if the gentleman to whom I allude enjoys a temporary respite, he will have been indebted to me—not that he owes me any thanks—not that I have done what I have done with a view to relieve him—if he enjoys a temporary respite from the abuse of the satellites of the administration, from the abuse of those who are paid with the People's money to abuse us their Representatives, who are paid with *our* money, (the money of the States,) for abusing *us*—I say, sir, if that gentleman enjoys any respite, he will have been indebted to me for it; but he owes me no thanks, I can assure him—it was from no such motive that I have endeavored to take the bull by the horns—*bull* by the *horns*, did I say? No, sir: another, and very different animal, by the *tail*.

Mr. HARRISON said, he could not at this moment, from indisposition, go into the discussion of the subject, in relation to the Cumberland Road; he regretted this the less, as he found those who had spoken on the subject, had avoided bringing into the discussion any thing relating to the Constitutional power of Congress on this subject. Mr. H. said, if he understood the gentleman from Virginia rightly, he had alluded to the gift of great immunities and advantages to the State of Ohio. If this was the fact of the case, that State had greatly misunderstood the subject. It was a matter of complaint against those who formed that compact; the People of that country all conceive the immunities to have been on the side of the General Government. The single concession by the State, that it would not tax the lands of the United States, was worth ten-fold all those advantages that any of the States Northwest of the Ohio ever received from the General Government.

The Legislatures of the States, through which this road is to pass, have, Mr. H. said, given up the right to the United States to make it; not only that, they have requested it. One of the objections which had been urged against internal improvements is, the right of the United States to make a road without the consent of the States. Another objection is, that, to appropriate the money of the United States to internal improvement, is not one of the enumerated powers of Congress. The respectable Western States had come before Congress; those sovereigns came as suppliants, and asked Congress to lend on this two per cent. fund, which they considered as sufficient security, a sufficient sum of money to accomplish this purpose. The question is, is it an important purpose? Mr. H. said he considered the United States would be more benefitted by the construction of this road than any of the States which it was intended immediately to benefit. What is it, Mr. H. asked, that binds and connects this great Union together? Is it a string of words and sentences, called the Constitution? or was it mutual interest? It would be an insult to this body to say, such was the fact. When had interest ever produced the continuation of an alliance, when that alliance was not secured by the affection and attachment of the parties to that alliance? Whenever the time shall come that these United States are connected together by no other bond than interest, they will then have tottered to their foundation. What is it then that connects them together? It is the affection that exists between the individual citizens of the different States; it is the attachment that the People of Ohio feel for those of Georgia and Maine; that attachment which was manifested, and which led the People of Ohio to step forward at once, in support of what? Not their immediate rights, but the rights of their sea-faring fellow citizens in Massachusetts. Were they deficient in their duty on that occasion? He trusted no gentleman would say so. Mr. H. then proceeded to consider the question, of how this appropriation would tend to increase this principle of affection, which he contended and insisted was the bond of this Union; and argued that, by facilitating the means of intercourse, it would bring the long absent daughter to the embraces of her mother, and the son to receive the blessing of his father. Mr. H. said, he had seen a great deal of human misery, but he had never seen it in any shape which touched his heart in a greater degree, than in the emigrants to the Western country before the Cumberland Road was constructed. A farmer, with a fine family of children, finding a difficulty of procuring subsistence in some of the old States, and looking forward to their future welfare, determines to go to the Western country, where land is cheap; and he sets out with a little cart, and two poor horses, to carry his wife and half a dozen children; and, not knowing the distance, or the road accurately, his slender means are soon exhausted; the horses are unable to carry any farther all that is dear to him; he is broken down by sickness, and his children cry around him for that relief which he is unable to afford them; and, when he arrives at the place of his destination, he is separated forever from all those relations whom he may have left behind. But now, by the means Congress has given to level the mountains, and causeway the swamps, this poor man turns his eyes once more to the place of his nativity—he recollects once more the mother whom he has left; he returns, and is once more blessed by her embrace. This is no story, sir; it may be daily realized. By travelling along this same Cumberland Road, you may see persons in the situation I have described, who are offering their prayers to Heaven, and calling for blessings on the heads of those who have again enabled an affectionate daughter to be restored to a tender mother. Such are the facilities which this road gives, has given, and will give, that, aided by the genius of Fulton, the most imbecile man in St. Louis may hope to travel comfortably once more to behold those who gave him birth. It is on the confidence, reverence, and attachment, with which the People of the United States look on Congress, that the prosperity of this Union depends. The word Congress—not the Congress of Panama—is an important word with the People of the United States. This very road is called by the People, not the Cumberland Road, but the Congress Road; and they remember with gratitude and veneration, the venerable body of men who first assumed that appellation; and the men, women, and children, that travel along that road, offer their prayers to Heaven for that body who afforded them this facility.

Mr. H. thought it unnecessary to detain the Senate longer on the subject, and would say no more.

Mr. RANDOLPH again rose, and said, the gentleman is mistaken if he supposes that I begrudge the People of Ohio the lands within the body of Ohio. I wish that every new

State had all the lands within the State, that, in the shape of Receiverships and other ways, these States might not be brought under the influence of this ten miles square. In other words, I wish that all the patronage of the Land Office was in the hands of the individual States, and not in the hands of the General Government. I am the friend of State rights, and will cut down the patronage of this General Government, which has increased, is increasing, and must be diminished, or we the States shall be not only "shorn of our beams," sir, but "abolished quite." Having cleared the ground so far, let me state to the gentleman that such is the difference between the measure meted out to the new States and to the old ones, that in consequence of my having missed the post this morning, I shall have to-morrow to send a servant two hundred miles; and why? because my attorney in fact, as well as counsel at law, resides near Halifax Court-house, eighteen miles beyond my own dwelling, and about two hundred miles from Washington; and, so far from my possessing any of those facilities which the gentleman describes, I cannot get an answer to a letter from Halifax Court-house under three weeks, even if there be no miscarriage of the mail. Ever since I have been in Congress, gentlemen from Lexington, Kentucky, could get answers to their letters sooner than I could to mine. I shall then be told it is owing to the great Serbonian Bog between Neabsco and Chappawamsick; but to pass that bog, the mail from Richmond to this place takes only a day and a night, even when the navigation prevents its being avoided by the steamboat—but then, sir, when it comes from Richmond to my county, which is only one hundred miles—it is only ninety-five miles from Petersburg—I cannot get an answer to a letter sometimes under a month: and it is only in consequence of a cross post from Fredericksburg to Farmville, that I can get an answer in the time that I do. I intended to have mentioned this to the gentlemen from Kentucky: if we were only one-half as well off in post offices and post roads as that querulous country, we should make our bow and be thankful. Such is not the fact—I can send to Savannah—from Savannah to Boston, and get back an answer sooner than I sometimes can from here to my own home—for any miscarriage adds a week to the delay. The Postmaster General—I dont attribute any blame to him—has very kindly promised me "to rectify the procedure;" and how? By a mail twice a week, which will enable me then to get an answer in one-half the time—say in ten days on an average—and I shall then almost consider myself as half a freeman on the subject of Post Offices and Post Roads—I shall feel almost, not altogether as if I did not belong to one of the "Negroe States." Now, sir, the only difference between the gentleman from Ohio and myself is this—and it is vital—that gentleman and myself differ fundamentally and totally, and did differ when we first took our seats in Congress—he as a Delegate from the Territory Northwest of the River Ohio, I as a Member of the other House from the State of Virginia; he was an open, zealous, frank supporter of the sedition law and black-cockade Administration; and I was as zealous, frank, and open an opponent of the black-cockade and sedition law Administration. We differ fundamentally and totally—we never can agree about measures or about men—I do not mean to dictate to the gentleman—let us agree to differ as gentlemen ought to do, especially natives of the same State, who are antipodes to each other in politics. He, I acknowledge, just now, the ZENITH and I the NADIR; but unless there is something false in the philosophy of the schools, in the course of time even these will change their places. I shall not here enter into a lecture on the precession of the equinoxes, much less on the figure of the earth—I dont know whether it is established by the *modern Philosophers* that it is hollow at the South pole as well as at the North—but I dont mean to enter into that question, sir, because I dont mean to enter into the earth, as long as I can keep above ground. It is the height of folly in us, as it would be in any other nation under the sun, to acquire by conquest, whether by the *conquisitio* of Blackstone, which he says means *purchase* or conquest by force of arms, territories—in order that these territories may govern us instead of our governing them; this I deem to be madness or folly, not wisdom; my doctrines are not, I know, at all orthodox, and why? I go on the principle that the first duty of a nation is to itself; aye, and of a man, too, sir—if Old England was to admit Representatives, black or white, from her fifty millions of Hindoos, according to a certain ratio, in the Commons House of Parliament—or even from Scotland and Ireland, they would govern Old England, instead of Old England ruling them—and if as an Englishman, I would never consent to be governed by Scotland or Ireland, *a fortiori* I would not submit to be ruled by Canada, by the East Indies, or by New Holland—Virginia acted very foolishly when she followed this *Ignis fatuus* of equality of rights to her own undoing. I say *Ignis fatuus:* for, whenever it leads to her advantage, it is not allowed to be the true guide. For is not the smallest State, as a State, on a footing with the largest here? What, then, do you tell me about a Representation *per capita* in the Federal Government? I dont care a pinch of snuff whether your Representation be *per capita*, or whether your districts, like every sheet of paper in this quire, consists of an equal number of square inches or square lines. You may make your districts thus equal in superficial area or in population—you may provide, that, if a woman in the chequer A, be brought to bed of twins, that one of the children shall be removed into chequer B, to preserve *equality* of Representation—for any uncertainty is fatal in the certain sciences—a miss is as good as a mile. These notions of applying geometry and arithmetic to Government is the Government of Lagado—it is *Laputan*—it is Lilliputian—mathematics have no more relation to Government than chemistry. You might as well undertake to construct a Government upon chemical principles for the use of man.

I don't pretend to be more learned on the subjects of the partition of this Territory than the gentleman from Ohio—but Congress did reserve the power of carving five or three States out of the lands on the other side of the River Ohio—did reserve to itself the power, and, in the act defining the boundaries of Ohio, gave to that State territories which ought to be part of the State of Michigan—I mean beyond the Miami of the Lake. I don't mean to enter into a squabble, whether it is your land or my land: this is what I mean, sir—Congress, after having passed this act, which, by cession of the State of Virginia, did what? It said, as long as 30,000 men shall remain in Pennsylvania, in the county of Washington, they shall send one Representative here: and, as an integral part of Pennsylvania, shall send their proportion of her two Senators—let only these men strike their tents, and go in quality of emigrants, and set down in one of those political diagrams called States, beyond the Ohio, and they shall not only send a member, whether they have the requisite number or not, (each State shall have at least one Representative) but they shall send two Senators here—to counterpoise Pennsylvania or New York. That is, that 30,000 men in one place have rights that the very same men have not in another place; upon the principle that the rights of men depend upon the question of numbers, and nothing else—which is manifestly contradictory and absurd. Did they do no more than that? I am a matter of fact man, sir, and abhor abstraction in politics, and in every thing else, except pure mathematics and metaphysics; which last I have long since given up to the boarding schools for young ladies—but did not this same State of Missouri, which is not even now lawfully in the Union, which by its one member would have controlled the

whole thirty-seven of New York—did not this State of Missouri, which is not now Constitutionally one of the United States, make the Chief Magistrate of the Union by the vote of one single man in the other House? Does the gentleman consider this as nothing? Is this the nothing given to the Western country? Aye, sir; is it not by this *nothing* given to that country, that the voice of the majority of the People of the United States has been suffocated—strangled—and countervailed; and are we, because we are not in favor of it, to hold our peace? It would be prudent in us to do so, perhaps gentlemen think it would be very civil in us to do so, and no doubt it would be more agreeable to them—but I shall not do so

I have no hesitation in saying, that never were People so wild as we have been in the pursuit of this *ignis fatuus*, not only across the Ohio, but beyond the Mississippi—beyond Aurora and the Ganges—to barter away their *independence* to the control of one man, and the State of Virginia stood looking on in helpless impotence—there was only one man in her delegation who was capable of voting for the present incumbent (Mr. NEWTON)—verily he shall have his reward—but not from us—from *him*. Yes, sir, we twenty helpless individuals stood by to see the single Delegate from Missouri countervail the vote of the ancient and renowned Commonwealth, whose true Representatives we were. I speak of the fact, that one Delegate was put in one scale, and Virginia, with her two and twenty members, in the other—we kicked the beam, sir—we were not merely balanced, but we kicked the beam—for the Missouri vote settled the question. Is this nothing? Is this a correct statement, or is it the romance of love-sick girls—or boys—"all for love, or the world well lost"—the ascendency of old Virginia destroyed—I speak not of her ascendency abroad, but at home—not over other States, but over her own unquestioned territory—In Virginia herself, all for love of our Western brethren, of liberty and equality—the liberty of being dictated to by them, not in the election of President, but upon our own soil—of being upon a footing of equality with Missouri, upon this very Cumberland Road, and on the subject of our black population, involving not only all our property, but what money cannot buy. I dont want to have an ascendency over our brethren beyond the Ohio, or North of the River Potomac, or—East, I was going to say, of the Western boundary of Pennsylvania—Yes—I do want to get back to the country of Yohioghania. I owe my seat here to no favor, or affection from any man under the Sun—and the moment it is to be kept by conciliating opinions that come in direct collision with my own, unless they come in a shape that I am bound in duty and in honor to respect; in that of the Legislature and People whom I represent—I am ready to resign it—I do not set up the claim of acting independently of instructions, to what I know to be the sentiments of the State—far from it—I think any man here who does go against what he knows to be the sentiments of the State which he represents, is in the situation of a Foreign Minister who goes against what he knows to be the opinions of his Court, and violates the instructions which he has received; and he who deliberately violates such instructions I consider to be ripe—did I say?—rotten rather, and fit for every mischief. Suppose, what is not to be supposed, an extreme case, a real case of *conscience*—let him resign.

Having used some pretty plain language on this subject, all that I have now to say is, that that sort of equality which gives to thirty thousand People on one of these diagrams, power in this House equal to the largest of the good old United States—which gives to them an influence in the first instance over the Presidential election in a ratio treble of that population in the Electoral College, and, in a certain contingency, equal power with the largest and oldest of the original States, is an equality that I do not understand. I would not concede it to them if their population was equal to ours; so far, at least, as relates to the intermeddling with the internal affairs of Virginia: and why? No Government can be safe for Virginia, that is not a Government of persons having a common feeling—a common interest—a common right with Virginia; and this holds good in every Government under the Sun. Therefore it was that the British Parliament was not the proper Representative of this Country—therefore it is, that the saints and fanatics are not the proper Representatives of Jamaica; and if Jamaica was strong enough she would tell them so.

This is not a Court of Law where we are to plead, but it is a deliberative Assembly—I throw out these imperfect hints, and if my opinion is worth nothing, it may serve to excite a train of thought in others, and elicit that which is of great value. We should cease to be a deliberative Assembly if we did not deliberate—if we were logicians in the schools it would be otherwise—if, when a man comes into the world to converse with mankind, he were to put on the armor of the schools and courts of law—to deal in syllogisms and enthymems—and *rebutters* and *surrebutters*—to set a price upon his tobacco by syllogism, and court his wife by a dilemma of marriage or single blessedness, he would only show himself to be a learned fool. It will not do to bring into a parliamentary body the technical habits of a profession that is more remarkable for sharpening the perception, than for enlarging and liberalizing the understanding. A good deal has been said, sir, about the dignity of this Assembly; about its being improper to talk vernacular English here—we must speak so superfine and mincing that nobody but an *accomplished* lady from a "*female* seminary" can understand us. Is that the case in the House of Commons, or even in the House of Peers? Again, sir, on the subject of talking beside the question; can you conceive any question more foreign to the business of the House of Peers than a contested election in the House of Commons? Any thing more foreign to the subject here, be it what it may, than a contested election in the other House? Yet, sir, on what subject did Lord Chatham make that great speech in which he put down Lord Mansfield, who, endeavoring to shelter himself under forms and technicalities, the refuge of the bar, declared that the House could not entertain the question on the expulsion of Wilkes? It was on that occasion that Chatham made that great speech—in which he did only not call him, to his face, a rogue: for, after praising two other great luminaries of the law, for their integrity, and legal science, and attainments, he said, I vow, my Lords, I think the noble Lord [Mansfield,] equals them both *in abilities*. When you know how much depends on the tone—the eye—the finger—though a man may not be disciplined to put out his hand and place it on his breast—"here's my hand, and here's my heart; I never will deceive you"—it is self evident that he could not have called him a dishonest man in terms more forcibly than by this inuendo.

Again, sir—have not assertions, not the most delicate, been made on the floor of both Houses of Parliament, in the House of Peers, with all its robes and wigs, and every thing else? Was it not broadly insinuated, over and over again, that there was an adulterous intercourse between the Dowager Princess of Wales and the Earl of Bute, the favorite? Is this very delicate? Is this very sentimental and refined? And was there not, when I was last in England, a Bishop obliged to fly from the country for the commission of a crime not to be named amongst Christians? And would not this have been investigated and tried in open Court? Courts of law are sometimes very coarse things; they have to call spades, spades, to try tough cases, whomsoever's fastidious delicacy they may offend. So are legislative bodies coarse things—it is there where the passions of men are brought into collision; and when the strife is for empire, that if you expect to carry on the intercourse as you would at a meeting of ladies and gentlemen, where every body is in the

most amiable disposition possible, and where nothing in the slighest degree indelicate can be endured, you are grossly mistaken—This body must probe every thing that comes before it, in the same manner that the House of Peers in England probes every thing, without consulting the delicate sensibilities of young misses of either sex, or going to the circulating library, or the Sorrows of Werter, or Rousseau's Nouville Heloise, where the most abominable sentiments are covered up in the most elegant yet voluptuous language, or one of Anacreon Moore's songs, which the poor little things sing, and do not know that they are singing all the time—what cannot be named. The refinement of a nation is in language always in the inverse ratio of the purity of their manners. Did not the House of Commons compel Sir John Trevor to put the question himself whether or not he had been guilty of bribery, and corruption, as their Speaker? They would not let the Clerk put it—he was reduced to propound it himself, and when it had voted that he was guilty, they expelled him, and he had to walk out and make his humble bow of thanks that he was not kicked out.

I have said these things to put myself *rectus in curia* here—we dont come here to pay compliments to one another—we dont come here to blink any question—to call bribery and corruption "influence"—we dont come here to call military despotism "a vigor beyond the law"—we come here to do our duty as men, to be the faithful Representatives of the States that send us here. Having done that, sir, according to my views of the true interests of Virginia, I shall feel indifferent myself whether I fall under the censure of any other State, or subdivision of States, beyond a certain mystical line, a parallel of latitude, not having a common feeling and common interest with me, and which I will not trust to legislate within the limits of the State of Virginia on any subject, unless they can shew me the grant in this blue book, [holding up the Constitution,] and when they can, I cannot gainsay it—but never, under pretence of districting the States, or any other however plausible, shall they put their hands within the limits of that State, and do any one act that by the terms of the Constitution they cannot now lawfully do.

I have said a great deal, as I generally do, that I did not intend to say—I came out for the express purpose of voting against this bill, sick as I am, and to give the history of the manner in which Missouri was let into the Union—not admitted, but let in—not through the gate, but over the fold—for that express purpose—and having discharged that duty, I shall relieve the Senate from any further annoyance on my part.

While I am on my feet I give notice, that I shall, unless some other member undertakes it, seize the earliest occasion, consistently with my views and my strength, to reinstate this body in its Constitutional privilege of appointing its own committees—I have exchanged opinions on this subject with the gentleman before me, as well as other members of the Senate, at the very outset of the session, and I take this occasion to say, that, indisposed to yield this power to one of our own body, dependent upon us for his appointment, I shall never be brought to yield it to an irresponsible authority, over whose appointment we have not a shadow of control. Whatever confidence I may be disposed to yield that authority, however bent on backing every effort to reduce the President's patronage, I am afraid that he, or some of his agents, will remind us that this is "a question involving "a departure, without example, from the established "usage of the Senate, on the motives of which, not be-"ing informed of them, they do not feel themselves com-"petent to decide"—but, inasmuch as no Vice President has ever been entrusted with this power before, they will charitably insinuate that we had better take the beam out of our own eye, before we attempt to pull the mote out of our brother's eye. You, sir, are the first Vice President, within my recollection, since the days of George Clinton, who has discharged the duties of the office, as well as received the salary—who has deemed that, as the laborer was worthy of the hire—so was the hire worthy of the laborer.

If I make any mistake I beg pardon—I know I am pretty correct on one important point—so long as the Vice President was content to receive the salary, without discharging the duties incident to the office, the chair was filled by your countryman, so ably and so well, that it was, perhaps, a saving of trouble, that he should have the appointment of the Committees, because he was responsible to the House, on the principle, *qui facit per alium facit per se;* but when that state of things was changed, it became proper for the Senate to take the appointment into its own hands. At some future time I will enter into an explanation of this thing—I shall then refer to the gentleman before me, who compared notes with me, on this and another subject, early in the session, and, it is unnecessary to say that our opinion has no reference at all to the gentleman who presides over this body. If that appointment is to be given to any Vice President, I have no greater objection to its being exerted by the present Vice President than by any who shall succeed him.

After some explanatory conversation between Messrs. HOLMES and RANDOLPH, the question was taken on the motion to stike out the appropriation, and decided in the negative, by yeas and nays, as follows:

YEAS—Messrs. Berrien, Chandler, Clayton, Cobb, Dickerson, Findlay, Hayne, King, Macon, Randolph, Sanford, Van Buren, White, Willey, and Woodbury—15.

NAYS—Messrs. Barton, Benton, Chase, Eaton, Edwards, Harrison, Hendricks, Holmes, Johnson, of Ken. Johnston, of Lou. Kane, Knight, Marks, Mills, Noble, Reeds, Robbins, Ruggles, Seymour, Smith, Thomas.—21.

Mr. COBB next moved to strike out the item of $ 750 for repairs made on the Cumberland Road in 1825; which motion was lost.

Mr. COBB then moved to strike out the following words: "for defraying the expenses incidental to making examinations, surveys, &c. preparatory to, and in aid of, the formation of Roads and Canals, $50,000." On this motion some discussion took place between Messrs. COBB, RANDOLPH, HARRISON, CHANDLER, SMITH, and JOHNSON, of Ken.

In the course of this debate Mr. HARRISON said, that he could not refrain from making his acknowledgments to the gentleman from Virginia for the notice he had been pleased to take of him. He has been pleased to say, that, in the administration of Mr. Adams, I was a Federalist, and he comes to that conclusion from the course pursued by me in the session of 1799—1800. At that session, the gentleman and myself met for the first time—he in the station of Representative from Virginia, and I in the more humble one of Delegate from the Northwestern Territory. Having no vote, I did not think it proper to take part in the discussion of any of the great political questions which divided the two parties. My business was to procure the passage of the bills which I had introduced for the benefit of the People I represented. The gentleman had no means of knowing my political principles, unless he obtained them in private conversation. As I was upon terms of intimacy with the gentleman, it is very probable that he might have heard me express sentiments favorable to the then administration. I certainly felt them—so far, at least, as to the course pursued by it in relation to the Government of France. Nor, said Mr. H. was I unsupported in that opinion by those who had a right to control my actions, if not my opinions. In no part of the country were those measures more decidedly approbated than by my immediate constituents—the Legislature of the Northwestern Territory; as the address of that body to the President, during that session, will show.

For Mr. ADAMS, said Mr. H. I entertained at that time, and have ever since entertained, the greatest respect. I believed him to be an honest man and a pure patriot, and his conduct during that session proved him to be such. This opinion I know, said Mr. H. was entertained by those two able and upright statesmen, JOHN MARSHALL and JAMES A. BAYARD. [To the question asked by Mr. RANDOLPH, whether Mr. H. recollected a conversation between Mr. NICHOLAS and himself, in relation to the Negroes and politics of Virginia, Mr. H. answered:] I recollect it perfectly well, but can this be adduced as an evidence of my favoring the sedition law? Mr. Nicholas was my relation and intimate friend; the conversation was entirely jocular, and so considered by that gentleman at the time, and ever after. I will never, said Mr. H. resort to any one to support an assertion of mine on a matter of fact. But, if I choose to do so, the gentleman from Maryland, who sits opposite to me, (General SMITH,) and who was the brother-in-law of Mr. Nicholas, knows the undeviating friendship and support which I received from Mr. Nicholas through his whole political life. Mr. JEFFERSON was at that time Vice President of the United States, and was upon the most intimate terms with Mr. Nicholas. He took his seat as President of the Senate within fifteen minutes after the conversation alluded to had passed. If it had been considered in any other light by Mr. Nicholas than as a joke, Mr. Jefferson would certainly have heard of it, and he would as certainly have withheld those evidences of his confidence and regard which I received from him through the whole course of his subsequent administration. But, sir, said Mr. H. my opposition to the alien and sedition laws was so well known in the territory, that a promise was extorted from me by my friends in the Legislature, by which I was elected, that I would express no opinions in Philadelphia, which were in the least caculated to defeat the important objects with which I was charged. As I had no vote, I was not called on to express my sentiments in the House. The Republican party were all in favor of the measures I wished to have adopted. But the Federalists were the majority. Prudence, therefore, and my duty to my constituents, rendered it proper that I should refrain from expressing sentiments which would injuriously affect their interests, and which, if expressed, could have not the least influence upon the decisions of Congress.

The question being taken on the motion of Mr. COBB, last above stated, was decided as follows:

YEAS—Messrs. Berrien, Cobb, Dickerson, Findlay, Hayne, King, Macon, Randolph, Sanford, Van Buren, White, Willey, and Woodbury.—13.

NAYS—Messrs. Barton, Benton, Chase, Edwards, Harrison, Hendricks, Holmes, Johnson, of Ken. Johnston, of Lou. Kane, Knight, Marks, Noble, Reed, Robbins, Ruggles, Seymour, Smith, and Thomas—19.

The bill was then passed to a third reading; and

The Senate adjourned.

TUESDAY, MARCH 21, 1826.

The resolution submitted by Mr. HOLMES, yesterday, was considered and concurred in.

The Senate then proceeded to consider the resolution submitted by Mr. REED, yesterday.

Mr. BERRIEN said, when this resolution was presented yesterday, it occurred to him that the principle which directed that inquiry, was in itself so exceptionable, that he thought it was his duty, as a member of this House, and the Representative of a State, to express his conviction, that neither a Committee of this House, nor this Body, nor both Houses together, have the right to do what this resolution proposes shall be done. He meant to say it was not competent for this House, or both Houses, to decide what a sovereign State, in the exercise of its sovereignty, can, or cannot do. The department to which the Constitution has assigned that power is not this department. Further reflection had, however, satisfied him, that, though he could not himself have originated such an inquiry, the correct mode of meeting it was by the Judiciary Committee. He should not, therefore, throw any obstacles in the way of the gentleman's proposition for inquiry.

The resolution was then concurred in.

The Military Appropriation bill was read a third time, PASSED, and returned to the House.

EXECUTIVE PROCEEDINGS THIS DAY.

EXTRACT FROM THE JOURNAL.

Mr. BENTON submitted the following motion:

Resolved, That the injunction of secrecy be removed from the President's Message of December 26th, 1825, relative to the proposed Assembly of American Nations at Panama, and from all Executive communications made, and documents sent to the Senate in relation thereto, and from all proceedings in the Senate upon that subject, from which the injunction of secrecy has not yet been removed; and that six thousand copies of the whole be printed. Also, that the injunction of secrecy be removed from all communications relative thereto, received from the Executive since the Senate's decision upon the Mission, and that an equal number thereof be printed as an appendix to the proceedings had, and documents first sent. Also, that all papers and documents sent, and communications made by the Executive to the House of Representatives, and not sent or made to the Senate, shall in like manner be printed in a second appendix, distinguishing the papers and passages sent to the House and not to the Senate, and those sent to the Senate, and not to the House. Also, that the resolution of December 28th, shall be transferred to the Legislative Journal of the Senate.

The Senate proceeded to the consideration thereof.

On motion, by Mr. MILLS,

That the further consideration thereof be postponed until to-morrow;

It was determined in the negative—yeas 6, nays 30.

The yeas and nays being desired by one-fifth of the Senators present, those who voted in the affirmative, are,

Messrs. Barton, Chase, Edwards, Mills, Sanford, Seymour.—6.

Those who voted in the negative, are,

Messrs. Benton, Berrien, Bouligny, Chandler, Clayton, Cobb, Dickerson, Eaton, Findlay, Harrison, Hayne, Hendricks, Holmes, Johnson, of Ken. Johnston, of Lou. Kane, King, Knight, Macon, Marks, Noble, Reed, Robbins, Rowan, Ruggles, Smith, Van Buren, White, Willey.—30.

On the question to agree to the motion, (of Mr. BENTON,)

It was determined in the *affirmative*—yeas 33, nays 3.

The yeas and nays having been desired by one-fifth of the Senators present, those who voted in the affirmative, are,

Messrs. Barton, Benton, Berrien, Bouligny, Chandler, Chase, Clayton, Cobb, Dickerson, Eaton, Findlay, Harrison, Hayne, Hendricks, Holmes, Johnson, of Ken. Johnston, of Lou. Kane, King, Knight, Macon, Marks, Noble, Reed, Robbins, Rowan, Ruggles, Sanford, Smith, Van Buren, White, Willey, Woodbury.—33.

Those who voted in the negative, are,

Messrs. Edwards, Mills, Seymour.—3.

WEDNESDAY, MARCH 22, 1826.

The Senate took up, in Committee of the Whole, the bill making appropriations for the Indian Department, for the year 1826.

Mr. KING objected to the item of ninety-five thousand dollars, for contingencies, on the ground, generally, that the information in possession of the Senate, as to the probable amount and nature of the contingencies, requiring the appropriation of so large a sum, was not precise, or full enough, to authorize its passage, without further inquiry.

He, therefore, moved to recommit the bill, that more information on the subject might be obtained and reported.

This motion brought on some discussion, on the part of Messrs. KING, BERRIEN, HOLMES, and BENTON, in which the objection of Mr. KING was combatted, and which resulted in a disagreement to the motion for recommitment.

Mr. EATON then moved to lay the bill on the table; which was negatived—ayes 12, noes 15; and the bill was then ordered to a third reading, without amendment.

ACCOUNTABILITY OF OFFICERS.

The Senate then resumed, as in Committee of the Whole, the bill to secure the accountability of disbursing officers and others.

The following are the first and third sections of the bill, on which the discussion principally turned:

"*Be it enacted, &c.* That no money, appropriated by any act or law whatever, shall be paid to any person for his salary, compensation, or emolument, who is, or shall be, indebted to the United States, until such person shall have accounted for, and paid into the Treasury, all sums for which he may be so indebted."

The Committee of Finance, to which the bill was recommitted, had reported, among others, the following amendment:

"To the third section add the following proviso: *Provided*, That nothing in *this section* shall extend to any person who shall become indebted to the United States, except as a Collector or Receiver, or in some office or place which entitles him to receive, and makes it his duty to account for, public money."

Mr. BERRIEN moved to amend this proviso so as to apply it to the *first* as well as the third section.

On these amendments, and on the principles and merits of the bill itself, a long, and, considering the confined nature of the subject, a very able debate took took place.

The amendment of Mr. BERRIEN, was advocated by the mover, and by Messrs. MILLS, JOHNSON, of Ken. and HARRISON, as necessary to deprive the bill of a character of rigor, that would amount, in many cases, to cruelty and injustice; to shew which, and against which, they adduced examples, and argued at much length, and the two first named gentlemen repeatedly.

The opposite grounds were taken by Messrs. HOLMES, WHITE, and COBB, who opposed the amendment, and supported the principle of the bill at considerable length, maintaining that the principle had proved highly salutary, so far as it had been tried, was necessary to procure general fidelity, and that cases of individual hardship should not prevent the adoption of a rule correct in principle and good in practice.

The question was, after two hours' debate, taken on Mr. BERRIEN'S amendment, by yeas and nays, and negatived, as follows:

YEAS—Messrs. Berrien, Bouligny, Chase, Clayton, Eaton, Edwards, Harrison, Hayne, Johnson, of Ken. Mills, Noble, Seymour, Smith, Willey.—14.

NAYS—Messrs. Barton, Benton, Chandler, Cobb, Dickerson, Findlay, Hendricks, Holmes, Kane, King, Macon, Marks, Randolph, Reed, Rowan, Ruggles, Sanford, Thomas, White, Williams, Woodbury.—21.

Mr. KANE then moved to amend the proviso proposed by the Committee on Finance, by attaching thereto the following additional proviso:

And provided, also, That nothing in this section shall be so construed as to prohibit the re-appointment to office of any person so indebted, who shall make it clearly appear that such indebtedness accrued from unavoidable accident or misfortune.

On this motion, also, a long discussion ensued, in which Messrs. KANE, WOODBURY, HOLMES, MILLS, EATON, and RANDOLPH, engaged—the last named gentleman speaking more than an hour, in support of the principle of the bill. Finally, the question was taken on Mr. KANE'S amendment, and negatived without a division; and

The amendments reported by the Committee were agreed to; and the bill was ordered to be engrossed for a third reading.

THURSDAY, MARCH 23, 1826.

On this day considerable business was done, but none which produced any Debate or incident of particular importance.

FRIDAY, MARCH 24, 1826.

Mr. BENTON rose, to ask leave, of which he gave notice on Wednesday, to bring in a bill for the relief of Don Carlos Dehault Delassus. This individual, said Mr. B., was the King of Spain's Governor in Upper Louisiana, at the time of the cession of that province to the United States, and upon the cessation of his functions there, he was transferred to Baton Rouge, and became the King's Governor over the province of West Florida. It is known to every body that we claimed this province, as far as the Rio Perdido, under the terms of the Louisiana Treaty, and that the King of Spain denied our right and refused to give it up. In this posture of demand and refusal, the question continued until the night of the 23d of September, 1810, when the American inhabitants of the West end of the province rose in arms against the Spanish authorities, captured the fort in which they resided, killed some, and made prisoners of the others, including the Governor. The Federal Government of the United States had nothing to do with this affair. It excited no body to insurrection, nor seized any thing by the hands of its agents; but the Federal Governor of Louisiana was hard by, and after a decent interval, the fort and its armament, with the province and its population, was delivered up to him; and, after a further interval, the captors, for their trouble and expenses in the premises, were gratified with some seventy or eighty thousand dollars out of the Treasury of the United States. In the mean time the prisoners, by order of the Governor of Louisiana, were set at liberty: but the sum of thirteen hundred dollars, taken by the captors out of the Governor's private desk, and reclaimed by him as his own, and the further sum of six thousand dollars, taken out of the military chest, and reclaimed by him as the King's money, (sent to him for the payment of salaries, his own salary included;) these sums, I say, were not given up, but applied by the captors to the payment of their own men, and the Governor was told to look to the United States for his indemnification.

These, Mr. President, are the facts upon which is founded the application for leave, which I now make, to bring in "*A Bill for the relief of Don Carlos Dehault Delassus.*"

With the bill, I shall present his petition, supported by vouchers; and, at the proper time, I shall, by a reference to these, prove the truth of every word of the statement which I have made. But my bill differs from his petition in the measure of relief which it proposes to give. The petitioner prays for the restoration of his own money, with interest, and for so much of the King's as would pay the arrearages of his salary to the day of his capture. He prays for this, and for nothing more nor less. He has not framed his petition, like a suitor in chancery, with a double aspect, looking to *this*, if he cannot get *that*. But, as a good chancellor always grants relief according to the case made out, and not according to the suitor's prayer, so we in my opinion, should give to the petitioner in this case the relief to which he is entitled, whether he has asked it or not; with this impression, I have drawn the bill for the whole amount taken, and conceive it our duty to make

the entire restitution to be just as clear, as is the petitioner's right to receive it. In the first place, we are bound to restore it, because we had no right take it. We claimed West Florida, as far as the Rio Perdido, under the terms of the Louisiana treaty; but we claimed no money under that treaty, neither the King's nor his subjects; but the money of both was taken, and taken by those who took the Province, and we have made their act our own, and assumed all its liabilities, by receiving the fruits of their enterprize, and rewarding them for what they did. In the next place, the petitioner has a right to receive back all the money that was taken from his possession, both the King's and his own. His right to his own cannot be questioned; his right to receive the King's is just as clear. He was the King's officer, and had the keeping of the money for the purpose of paying certain salaries. The King trusted him, and it is not for us to say that he is unworthy of trust. Besides, the laws are in force, and payment can be coerced if refused. But the great moral ground is, that, having no right to take this money, we have none to retain it; that it is our duty to restore it, and the duty of others to account for its disbursement.

I think, Mr. President, that these considerations are sufficient, not only to procure me leave to introduce the bill, but to ensure its final passage. But, if other considerations are necessary, they may be found in the character of the petitioner, his former state, and present condition, and in the injustice with which all his countrymen of Louisiana have been treated by these United States. The Ex-Governor Delassus is as irreproachable a man in private and public life, as any that lives. He has been Governor, with almost unlimited powers, over a province larger than the kingdom of Europe, and he is now the cultivator of a farm of some twenty acres in the suburb of the town which was the capital of his dominion. He had more, or rather ought to have more, than twenty acres. The King of Spain gave him some thousands; but the United States' Government picked a hole in his title papers, and have fought him out of his land for five-and-twenty years. He is one of that body of Frenchmen who were transferred to us with the cession of Louisiana, and who have seen the young grow old, and the old die; who have seen a quarter of a century roll over their heads, and a generation pass from the earth while they have stood at your doors vain petitioners for the land which they received from the bounty of a King, and which they are in danger of losing from the cupidity of a Republic.

The leave being granted, Mr. B. introduced the bill; which was twice read and referred.

After the transaction of some business not giving rise to debate, the Senate adjourned to Monday.

MONDAY, MARCH 27, 1826.

INQUIRY INTO ADJOURNMENT.

The Senate then proceeded to consider the following resolution, submitted on Friday last, by Mr. HOLMES:

"*Resolved*, That —— be a committee, to be joined by "the House of Representatives, to report what business "is necessary to be acted on this session, and when Con"gress may have a recess."

Mr. HAYNE moved to amend the resolution, by striking out the words "have a recess," and inserting "adjourn." Mr. H. said he did not like the word *recess*, it looked like an earlier meeting of Congress, against which he protested.

Mr. HOLMES thought the words meant the same thing. The word recess meant a breaking up—a going away—and he did not know that adjournment meant any thing more. The sessions are very unequal, said Mr. H. and as we cannot add to the latter end of one session, the only way to lengthen it is by adding to the commencement of it—and if the time was more equally divided, more business would be done. It is generally understood that the first session of Congress is the *speaking* session, and this ought be emphatically so called—and the second session is the *acting*, or business session. Mr. H. thought it would be an advantage to take a little from the speaking session, and add it to the business session.

Mr. HAYNE wished the resolution should pass in the usual form. He wished those terms should be used which are ordinarily used, when the object is to ascertain what business is to be done prior to an adjournment. The very term recess, implied an interruption from one short period to another short period, and that this was the meaning of it in the present instance, was to be inferred from its being followed up by the particular inquiry in the second resolution, as to the period at which they were to meet again. Against this Mr. H. protested. He was satisfied that nothing was to be gained by an earlier meeting of Congress. When they met at the constitutional period, and adjourned on the 4th of March, more business was done than during the long session—it would be injurious to the public interest, as well as inconvenient to the members, to meet at an earlier period; at all events, the inquiry ought, he thought, to be made in the usual terms.

Mr. NOBLE said, if the position of the gentleman from Maine was correct, he had seen a difference between the long and short session, which he (Mr. N.) had not seen during the last ten years. He believed it was perpetual talking, both during the long and the short session; there was no difference. He was for meeting on the day authorized by the Constitution; and as for preventing talking, that was, he thought, all folly. They knew what business they had now before them, and it must be known by the members from the new States, that if a day was fixed, three or four weeks hence, for adjournment, the interests of a large portion of nine new States would be jeopardized. The Bankrupt Bill, and the bill for the abolition of imprisonment for debt, were, he said, both important measures, and the Senate would have again to go over the doctrine which they had already discussed in secret session. There was, too, another question, which would consume considerable time, in relation to a certain treaty. He was therefore opposed to this resolution, and moved to lay it on the table; which motion was lost, ayes 13, noes 17.

And then the question being taken on Mr. HAYNE'S proposed amendment, it was decided in the affirmative, ayes 19, noes 9.

Mr. FINDLAY was opposed to the resolution, from which he thought no good could be derived. It seemed to be connected with another resolution that proposed an earlier meeting of Congress than the Constitutional day. No good could come from it—their business was now in train—they were better prepared to act on it than they would be at the commencement of a new session. He was of opinion they would get through more business, now, in one week, than in three times that time hereafter. He was therefore opposed to the whole resolution.

Mr. MILLS thought that some resolution should be adopted, for the furtherance of public business. It was admitted on all hands, though as the gentleman from Indiana suggested, there was sufficient talking in both sessions—yet, when the termination of a session was fixed, more business would be done in proportion to the length of time they continued in session. To effect this object, it was proper the time of adjournment should be fixed—not that it should be at so early a day as to preclude the consideration of any important measure now before them—all he wished was to have a day fixed that they might see when they would get to the end of their labors, and then they would apply themselves earnestly to the business before them, with a firm determination to bring it to a close.

Mr. HAYNE said he was opposed to the second reso-

lution, though in favor of this. Congress ought not to adjourn till the important business before the House was disposed of, but it was important to know what that business was. The long session was an intolerable evil, and they should bring it to a close as soon as it could be done consistently with the public interest.

The resolution was then agreed to, modified as follows:

"*Resolved*, That —— be a committee, to be joined by a committee of the House of Representatives, to report what business is necessary to be acted on this session, and when Congress may adjourn."

A second resolution offered by Mr. HOLMES, relative to an earlier meeting of Congress than the first Monday in December, was, at his suggestion, laid on the table.

TUESDAY, MARCH 28, 1826.

KENTUCKY ASYLUM.

The Senate then proceeded to the consideration of the bill granting a township of the public lands for the benefit of the incorporated Kentucky Asylum for teaching the Deaf and Dumb.

Mr. COBB objected to the bill on principle, as an unconstitutional grant of common property for a partial or local purpose, and argued against the bill on that ground, whereupon

A debate of wide extent, and considerable duration, ensued on the merits of the bill, and validity of the objections made to it by Mr. C. and on some of its details. The bill was supported by Messrs. ROWAN, JOHNSON, of Ken. BENTON, BARTON, EATON, HOLMES, LLOYD, MILLS, EDWARDS, HENDRICKS, and KING.

Mr. BARTON, in the course of the discussion, moved (for the purpose of obviating some objections, as well as to render the bill more perfect) an amendment, in substance providing that the land to be granted should be sold under the direction of the President of the United States, as other lands of the United States are, and the proceeds applied to the benefit of the Kentucky Asylum for educating the Deaf and Dumb *of the several States*.

This was opposed and supported by various gentlemen on various grounds; and

Mr. HENDRICKS intimated that he should move an amendment to confine the location of the land to one of the territories of the Union, as it would be prejudicial to the interest of any State, to have the location, according to the terms of the grant, made in a State.

To unite the views of both these gentlemen, and embrace their objects in a more acceptable form to himself, Mr. JOHNSON, of Kentucky, (the other amendment being withdrawn for the purpose,) moved an amendment that the land should be sold in five years, and be located in a Territory; which amendment was agreed to.

Mr. DICKERSON then moved to amend the bill further, by inserting a provision for a like grant of land to the Institution in New Jersey, for instructing the Deaf and Dumb; which motion he made pursuant to instructions from the Legislature of New Jersey.

This amendment was opposed by Messrs. ROWAN, MILLS, BENTON, and JOHNSON, of Kentucky; not from hostility to the object, but on the ground that it was irregular and improper to engraft on a bill a new measure, substantially by way of amendment, which had not been regularly introduced, and previously examined.

Mr. BENTON, in particular, placed his opposition emphatically on this ground.

Mr. DICKERSON maintained the propriety of the course he had pursued, and was supported by Mr. COBB, who saw no difference between the two cases, though he was opposed to both.

Mr. D's amendment was negatived without a division.

The question being on the engrossment of the bill,

Mr. COBB rose, and delivered an argument of some length against the constitutionality of this grant.

Mr. REED, of Mississippi, replied in extenso to Mr. COBB, both to his general doctrines relative to the disposition of the public domain, and to the argument that this grant was for a local object.

Mr. CHANDLER, in a few remarks, took the side of Mr. COBB.

The question on ordering the bill to be engrossed and read a third time, was then decided in the affirmative, as follows:

YEAS.—Messrs. Barton, Benton, Clayton, Dickerson, Eaton, Edwards, Findlay, Hendricks, Holmes, Johnson of Kentucky, Kane, King, Lloyd, Marks, Mills, Noble, Reed, Robins, Rowan, Ruggles, Sanford, Seymour, Thomas, White, Willey, Williams, Woodbury.—27.

NAYS.—Messrs. Branch, Chandler, Chase, Cobb, Harper, Hayne.—6.

WEDNESDAY, MARCH 29, 1826.

PROTECTION OF COMMERCE.

The Senate then, on motion of Mr. HAYNE, proceeded to the consideration of the bill from the House, to provide for "the employment of an additional naval force;" (which had been reported this day, by the Committee of Naval Affairs, without amendment.)

Mr. HAYNE said, that, since the passage of the General Appropriation Bill, accounts had been received of war having been declared by the Emperor of Brazil against the Republic of Buenos Ayres. That war, said Mr. H. is still waging, and numerous privateers and pirates are found in those seas. Merchants have received accounts that the exigencies of the trade in that quarter are such, that, unless Government immediately send out an imposing force, serious inconvenience will be experienced by the commerce to those countries, to China, and even to the Coast of Africa. In consequence of a representation on this subject, which had reached the Naval Department, and the members of the other House, a resolution was passed some time ago, directing the Secretary of the Navy to report whether the disposition of the force authorized by law, and the appropriation heretofore made, would enable him to detach such vessels to this station as would be necessary for the service; and from the answer to that resolution, it appeared that the force had been so stationed and arranged, that not a vessel can be detached from it; so that this respectable trade must go without protection, unless means are furnished to the Naval Department to fit out the force which is here proposed. Mr. H. then read various extracts from the printed documents, showing the necessity of sending such a force, and the inadequacy of the means at present in the power of the Naval Department. Mr. H. adverted to the nature of the contest now carrying on; to the character of the persons in the vicinity; and to the nests of pirates recently broken up in Cuba; and said that, as it was manifestly necessary that some force should be sent to those seas, the committee had no hesitation in recommending the appropriation to the extent now asked for. The appropriation conformed to the estimate in every particular, except that the estimate was for twelve months, and the appropriation was for nine months only, which would be sufficient for the purpose proposed, till the first of January next.

Mr. HOLMES rose to make some inquiry as to the amount of the force in the Mediterranean; whether there were not some vessels lying at Gibraltar which could be detached on this service; and whether we had not some frigates at home. There was one, he said, drawn up high and dry; he would ask, if there was no means of getting that vessel off. He was told when she was drawn up, that she might be launched very soon, whenever it should be required.

Mr. LLOYD said he could corroborate the statement of the gentleman from South Carolina; and he felt much indebted to him for the readiness with which he had reported this bill. Mr. L. said he had received several applications on this subject, which were not at this moment in his possession; but there was no doubt we must be prepared either to protect this commerce, or to fight for it hereafter. The commerce to Chili, Buenos Ayres, Peru, to the Pacific, to China, and India, all passes along the borders of this coast; and it has been made known to the merchants of the United States, that numerous privateers, *alias* pirates, are fitting out with the ostensible object of cruising against each other; but, no doubt, in reality, to cruise against any neutral commerce they may fall in with. Six weeks since, Mr. L. said, he had applied to the Naval Department for the protection now provided by this bill, to be sent to that country; and he was answered, that there was not one vessel, or a single dollar, that could be appropriated for this purpose. The squadron in the Mediterranean, said Mr. L. cannot be diminished, with safety to the commerce of that sea, and the interests of the United States. The merchants of the United States are very anxious that this force should be sent out as soon as possible; there can be very little doubt it is to the interest of the Government to send it, and it cannot be detached from any other force. Mr. L. hoped, therefore, the appropriation would meet with no opposition.

Mr. HAYNE, in reply to Mr. HOLMES, observed, that whether the force in the Mediterranean was necessary or not, he was not able to form an opinion. He relied on the statements of those who were well acquainted with the subject, and who were charged with the protection of commerce in that sea. The Secretary of the Navy says it is necessary there, and no part of it can be diverted to any other object. There is something, too, Mr. H. said, in the character of the nations in the Mediterranean, which renders it peculiarly necessary that a force should always be kept there; we have always kept one there since the Tripolitan war. I have no doubt the Secretary is correct, when he says this force is necessary; and I shall not assume the responsibility of interfering, contrary to the opinion of the Secretary, and advise that a portion of this force should be withdrawn. As to the vessels being detained in port, Mr. H. said that circumstance ought not to surprise the gentleman: for the advantage derived from the force stationed there, was from their showing themselves frequently in port. It would take a very long time to detach this force from the Mediterranean, much longer than would be required to fit out the vessels for which the appropriation, now under discussion, was to be made. With regard to the frigate to which the gentleman alluded, Mr. H. said, if he wished it to be launched, he should probably agree with him on that point; but he was not disposed to agree to its being launched for this particular service; because it would cost more money, and consume more time, than to fit out other force.

Mr. HOLMES said he was not opposed to this appropriation, if it was necessary; and there was, no doubt, danger to our commerce, as regarded the war alluded to. Whether the Congress of Panama would settle that question, he did not know.

Mr. LLOYD observed, that Gibraltar was the port of supplies for our vessels; and he did not believe that our vessels would lay there longer than was necessary. They came there often to get supplies, but only remained a few days in that port.

The bill was then passed to a third reading.

Mr. HAYNE moved that it be now read a third time; but the motion requiring unanimous consent, and being objected to, did not prevail.

AMENDMENT TO THE CONSTITUTION.

The resolution proposing an amendment to the Constitution of the United States, "that no person wh
"have been elected to the office of President
"United States a second time, shall again be elig
"that office"—having been taken up for considera

Mr. DICKERSON, of New Jersey, observed, th
proposed amendment had been brought before the S
three years ago, but in connection with other a
ments then proposed, upon which no final vote was
and none was taken on this. At the next session,
again brought forward, as a distinct proposition; i
discussed, and passed, almost unanimously, not mor
three Senators voting against it. But it was not tak
in the House of Representatives. At the last sessi
was not deemed expedient to bring it forward, as th
test that was to take place in the House of Repre
tives upon the Presidential election, forbade the hop
a decision would be had upon any constitutional an
ment. It is to be hoped that it may now receive
Congress, as well as the State Legislatures and th
zens at large, that attention which its importance m

If, by our Constitution, the President of the U
States was elected to hold his office during good
vior, our Government would be, by whatever nam
might be called, an elective monarchy; limited in its
ers, but with sufficient inherent energy to break dow
time, any barriers that a written Constitution could
sent against the encroachment of arbitrary power.
under our Constitution, we adopt the practice of elec
our Presidents, from period to period, until the infirm
of age admonish them to retire, our system will soon
come that of elective monarchy. That the want of
limitation now proposed has not been practically felt, r
be attributed, not to any corrective principle in our
stitution, nor to any rigid adherence to the jealous ma
of democracy on the part of the People, but to the
tives of action, which have governed our Chief M
trates. As yet, there has been nothing to excite al
upon this subject. The limitation proposed has not
been wanted, and, probably, will not be for many yea
come; but it is the dictate of prudence to provide for
danger while it is yet remote.

Fifteen years before the adoption of our Constitu
the People of this country were loyal subjects; admi
of the limited monarchy of Great Britain—the syste
whose Government was considered to be the perfectio
human wisdom.

The oppressions, which led to resistance, rebellion,
volution, and independence, were not to be attribute
the form of government of the mother country; for
publics, no less than monarchies, oppress their colo
Our sufferings, during the Revolutionary struggle,
duced resentment and hatred—not against monarchy,
against England.

From the inefficiency of the old Confederation to
mote the interest of the Union, after our independe
had been established, and after the pressure had ce
that kept us together during our Revolutionary strug
the best friends of the country began to fear that t
would not be found in a Republican form of governm
sufficient energy to cement, in a firm Federative Un
the discordant members of the United States. And,
they no reason to fear? It must be apparent, that it i
the federative principle of our Union, the efficacy of wh
had never before been tested, that we are to be indeb
for the permanency of our democratic institutions, if
deed they are to be permanent. Our safety depends u
keeping up a proper jealousy of State rights, and S
sovereignties, and in distinctly tracing and preserving
lines of demarcation between Federal and State pow
Every step towards consolidation is a step towards mo
chy, and every step towards monarchy is a step tow
consolidation. They will be found to be mutually
cause and effect of each other.

It is not strange, that nearly forty years ago, the approach of an elective and limited monarchy should have been looked upon with less dread than it was fifteen or twenty years afterwards, when we had experienced the advantages and tested the strength of our present system. Nor is it strange, that, as our heads are turned with the magnificence of our General Government; when we are extending our relations to every quarter of the globe; when we are contemplating the making of canals through every part of the Continent, and driving tunnels through the Alleghany Mountains, by the strong arm of the Union: It is not strange that we look with some degree of complacency upon the disappearance of the jealous cautions and calculating principles of democracy, which have a direct tendency to check such magnificence. It is not strange, that we view without apprehension the progress of measures calculated to increase the Executive power, the incipient, insidious steps towards monarchy; and, even the election of a President for the third period, would excite but little alarm.

Although this question excites but little feeling at present, it once created more agitation in the Federal Convention than any other subject that came before them, as will appear by a few extracts from the Journal of that Convention:

On the 1st of June, 1787, in the Federal Convention, Mr. Randolph introduced a resolution, that the National Executive should not be eligible a second time, (page 88) and, the next day it was agreed to, eight States being for the resolution, one against it, and one divided. (page 94.) Seven years was the term then in contemplation.

On the 15th of June, Mr. Paterson submitted a proposition, that the United States in Congress be authorized to elect a Federal Executive for — years, to be ineligible a second time, [p. 125.] The term in contemplation then was also seven years.

On the 18th of June, Col. Hamilton submitted resolutions, that the President and Senate should be elected to serve during good behaviour; that is, for life, with powers nearly as extensive as those of the King and House of Lords of Great Britain, [p. 130.]

Col. Hamilton was one of the greatest men in this country, and, without doubt, believed that his plan was well calculated to promote the happiness and prosperity of the Union. Many of our distinguished citizens thought with him then, who afterwards changed their opinions, on witnessing the success of our present system.

On the 19th of June, the resolutions of Mr. Randolph, as altered and agreed to in the committee of the whole, were submitted, of which the ninth resolution was, "that "a National Executive be instituted, to consist of a single "person, to be chosen by the National Legislature, for the "term of seven years, to be ineligible a second time," [pp. 136, 183.] July 17th, it was moved to strike out the words "to be ineligible a second time," which passed in the affirmative—Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, and Georgia—Nays, Delaware, Virginia, North Carolina, and South Carolina, [p. 185.] On this occasion, Massachusetts, Maryland, and Georgia, changed their votes, which were first in favor of the limitation. Pennsylvania, which was divided before, now voted against the limitation. Delaware, Virginia, North Carolina, and South Carolina, maintained their ground. New Jersey did not vote on the first question.

It was moved to strike out "seven years," and insert "good behaviour;" which passed in the negative—yeas 4, nays 6. It would seem that four States, at this time, preferred an Executive for life.

A motion was made to reconsider, and passed in the affirmative.

On the 19th July, a motion was made to restore the words "to be ineligible a second time." It passed in the negative, [p. 191.]

July 25th, it was moved that no person should be capable of holding the office of President more than six years in any twelve; which passed in the negative—yeas 5, nays 6.

The next day it was moved to amend the resolution, so as to read, for the term of seven years, to be ineligible a second time. It passed in the affirmative—Yeas, New Hampshire, New Jersey, Maryland, Virginia, North Carolina, South Carolina, and Georgia. Nays, Connecticut and Delaware. [p. 203.]

The same day, it was reported to the Convention as one of the resolutions agreed to.

This resolution, together with those offered by Mr. Pinckney, and those offered by Mr. Paterson, were referred to a committee, who, on the 6th of August, reported a draft of a Constitution, the first section of the 10th article of which was, "The President shall be elected by the Le- "gislature. He shall hold his office during seven years; "but shall not be elected a second time." [p. 225.]

The friends of this limitation now considered the question at rest, but they were deceived; it was too important in the eyes of the friends to an Executive for life, to be given up yet.

On the 24th August, a motion was made to postpone the consideration of the two last clauses of the first section of article ten, to wit, the term of years and the limitation. It passed in the negative. It was moved to refer them to a Committee of a Member from each State. It passed in the negative. [p. 288.]

August 31, it was agreed to refer such parts of the plan of a Constitution as had been postponed, and such reports as had not been acted on, to a Committee of one Member from each State. [p. 318.]

On the 4th of September, Mr. Brearly reported certain alterations, &c. the fourth of which was, "The President shall hold his office for four years." In this the limitation was omitted. [p. 324.]

On the 5th of September, it was moved to postpone the report, and take up the following: "The President shall "be elected by a joint ballot of the Legislature. He "shall hold his office during seven years, but shall not be "elected a second time." This was decided in the negative, and seems to have been the last effort in the Convention, in favor of the limitation.

On the ratification of the Constitution, several of the States proposed amendments:

Virginia proposed, that no person should be capable of being President more than eight years in sixteen.

North Carolina proposed the same.

New York proposed, that no person should be elected President a third time. Exactly what is now proposed.

It is not possible to understand precisely the motives which governed the Members of the Convention, in the votes which they gave on this question, from a bare perusal of their Journal. It is evident, however, that the struggle was arduous. The limitation was twice adopted, and finally abandoned. The plan agreed upon was not in accordance with the views of either party. It was an intermediate step; considered by both parties as an expedient. Those in favor of the limitation, believed they would soon attain their object, by an amendment to the Constitution. Those opposed to it, flattered themselves that the Presidents would be elected from period to period, without interruption, until, by usage, our Executive would be considered, when once elected, as elected during good behaviour. That the elections, after the first, would become mere matters of form.

The debates upon this subject, in the Convention, must have been very animated. Of this, we may form some opinion, from the report of Mr. Martin, one of the Convention, to the Legislature of Maryland. He says—

"There was a party who attempted to have the Presi- "dent appointed during good behaviour, without any li-

"mitation as to time; and not being able to succeed in "that attempt, they then endeavored to have him re-eli-"gible without restraint. It was objected, that the "choice of a President, to continue in office during good "behaviour, would be at once rendering the system an "elective monarchy; and that, if the President was to be "re-eligible, without any interval of disqualification, it "would amount to nearly the same thing; since, with the "powers that the President is to enjoy, and the interest "and influence with which they may be attended, he will "be almost absolutely certain of being re-elected, from "time to time, as long as he lives. As the propositions "were reported by the Committee of the whole House, "the President was to be chosen for seven years, and not "to be eligible at any time after. In the same manner "the proposition was agreed to in Convention, and so it "was reported by the Committee of Detail, although a "variety of attempts were made to alter that part of the "system, by those who were of a contrary opinion, in "which they repeatedly failed; but by never losing sight "of their object, and choosing a proper time for their "purpose, they succeeded at length in obtaining the al-"teration, which was not made until within the last twelve "days before the Convention adjourned."

In thirteen of the States, the periods which the Executives can serve are limited, although their powers bear no comparison with those of the President of the United States. These limitations have been found salutary and safe in principle and in practice.

It is the natural tendency of Republican Government to degenerate into elective Monarchy—from elective to hereditary Monarchy, there is but one, but that a certain step. The duration of the Roman Republic was owing to circumstances of a very peculiar character. In the history of mankind, there is nothing like the hatred of the Romans towards Kingly Government, after the expulsion of the Tarquins. For more than four hundred years this hatred was kept up, without abatement. It was a part of their religion. It was that which consecrated the act of Junius Brutus, when he ordered his two sons to execution for their devotion to Monarchy. During the civil wars between Marius and Sylla, Julius Cæsar and Pompey, Kingly Government was still held in detestation. The Romans submitted to Emperors, when they would not tolerate Kings; and kept up the forms of Republicanism, when they were slaves to Augustus Cæsar and his successors. But had the Romans, when they abolished Monarchy, given the Consular power to a single Executive, elected for four years, and re-eligible from term to term, during life, their mighty Republic would have been but of short duration—their liberty would have been lost long before the wealth of Carthage had corrupted them. As their detestation of Kings, immediately before the establishment of the Consular Government, was without bounds, so the precautions they adopted against a return of Royal Government, is without example.

The Executive power was given to two Consuls, with equal authority, that they might be a check upon each other—elected for a single year, and not re-eligible under ten years—to prevent the accumulation of power in the same individual. And, on the erection of the Tribunes, they had a veto put upon the acts of the Consuls, the more effectually to check their power.

Still, the Consular power was great; the office was considered as the summit of all popular preferment, and was eagerly sought for by the ambitious and the powerful.

No one, however, could be a candidate for the Consulship, under the age of forty-three years, nor before he had passed through the inferior offices of Quæstor, Edile, and Prætor; nor could he be a candidate unless he appeared personally in Rome; and, what was of much more importance, in a private capacity.

The restrictions as to candidates for the Presidency, are, that the candidate must be a native citizen, or a citizen at the adoption of the Constitution. He must be thirty-five years old, and fourteen years a resident in the United States previously to the election. Officers holding the most important stations in our Government, can be candidates. Generals, at the head of our armies, may be elected, through the influence their office gives them.

So long as the Romans could preserve the laws first established, as to the Consulship, so long could they preserve their liberties—and no longer. For the period of about 400 years, they adhered to those laws with great firmness—yielding, however, on some occasions, to the ardor of some young Generals, who were elected before the proper age.

About a century before the Christian era, Marius was elected Consul a second time, when absent at the head of his victorious army, and when no more than three years had elapsed from his former Consulship. This infringement of their Constitution, was with the approbation of the whole Roman People. Marius was elected Consul a third, fourth, and fifth time, in successive years. To his election for the sixth Consulship, much opposition was made; but the wealth and power he had acquired by his former Consulships, enabled him to bear down all his opponents. And, although they had the power afterwards to drive him into exile, yet he returned, was again elected, and died in his seventh Consulship. The laws regulating the election of Consuls were now prostrate. Cinna continued himself in the Consulship by his own power. Sylla caused himself to be made perpetual Dictator; and the liberties of Rome were sapped to the foundation, before Julius Cæsar crossed the Rubicon.

An attempt, however, was made to prevent the passing of a law to allow Julius Cæsar to sue for the consulship, while absent, and at the head of his armies. Pompey advocated this law, and Cicero lent the aid of his eloquence in favor of the measure. It led to the civil wars, that terminated in Monarchy. Pompey endeavored to counteract his own measures, when too late; and he, as well as Cicero, were overwhelmed in the common ruin.

There is no portion of the history of mankind, from which the citizens of the United States may derive more important lessons, than from that of Augustus Cæsar and his immediate successors. After he had subdued all his enemies, and put an end to the civil wars, he made an offer of yielding up his authority to the Senate and People of Rome, modestly alleging that, to govern such an Empire, was a task to which the Gods alone were equal. He was, however, persuaded to resume his power, which he consented to do, under the character of Prince of the Senate, for ten years, by which time, as he hoped, peace and prosperity would be restored to the Commonwealth. At the expiration of ten years, he was again appointed for five years; and again for five years: after which he was appointed, for periods of ten years, to the end of his long life. Even in the last year of his life, the ridiculous farce took place of a new appointment for ten years, by those who held their lives and their fortunes at his will and pleasure. And he was able to transfer his empire over to his step-son, Tiberius, who was feared and detested by the Roman People, even before they felt his power. This gloomy tyrant also made a show of resigning his power, but the Senate intreated him, in the most humble manner, as he well knew they would do, to accept the administration of the Government, and not to reject a task to which he alone was equal. Tiberius, overcome by the importunities of all around him, yielded to their intreaties, and condescended to take upon him the labor of the Government, purely to satisfy their wishes, and not his own—adding, that he would keep it only till they should think fit to give repose to his old age. He was fifty-six years old then. He soon found a repose—an infamous repose—in the island of Capræ; but he forgot, to the day of his

death, to ask to be relieved from the cares of the Government.

From this time, the People of Rome murdered their tyrants, one after another, but never again made a struggle for their liberties.

In all countries where elective monarchies have been established, they have soon become hereditary—except in Poland, where foreign Powers have elected their Kings. The German Empire has been an elective Monarchy from the earliest ages, and is yet as hereditary as any other Monarchy in Europe.

About nine hundred years ago, Conrad was elected Emperor of Germany. He died without issue, but was enabled to nominate his successor, Henry the Fowler. He procured a promise that his son Otho should be elected, as he was, at the age of eighteen years; and he was succeeded by his son, at the age of twelve years. The election of an Emperor of twelve years of age must be a farce; the succession must have been by inheritance, not by election.

After a failure of legal heirs to the throne, a real election took place, and Conrad the 2d was chosen. He was succeeded by his son, Henry the 3d; and he caused his infant son to be declared King of the Romans; and this infant son, on his father's death, was elected Emperor, at the age of five years.

In fact, in elective Monarchies, the power of election is never freely exercised, but on the failure of legal heirs. The German Emperors are still elective—yet it would be treason to oppose the legal heir of the throne. As yet, the principle of hereditary succession has gained no force in Presidential elections; nor will it, probably, for many years to come. And yet it is a singular fact, that, in a succession of six Presidents, there has been but a single instance where it was possible to elect the son of a President; and, in that instance, we did elect the son, and at the first time he offered.

Although the principle of hereditary succession has gained no force in our Presidential elections, the principle of a different kind of succession has already become almost irresistible. It is, that the President shall designate his successor, by placing him in the most important office in his gift, and clothing him with such a degree of patronage and power, as to make him an overmatch for any competitor in the walks of private life, whatever may be his merits or his services. The Federal Convention could not have foreseen the operation of this principle as we now see it, or they would have adopted some rule analogous to that most important provision of the Roman law, that no one could be a candidate for the Consulship, unless he presented himself in a private station.

The Romans had a sacred law, that no army should be brought within the bounds of the city. No General of an army could be a candidate, until he had relinquished his command; and, if the army should be devoted to their commander, even after he had ceased to command them, they could render him no service, as he must be within the city, where they could not be admitted. All these precautions were necessary in that Government; and some further, in this particular, is necessary in ours. As yet, we have had no practical experience of the necessity of such precautions, so far as it respects military commanders. We have had but one President, who had commanded the armies of the United States, and he had relinquished his command long before the formation of our present Constitution. We have lately had a military candidate for the Presidency, whose brilliant achievements are unrivalled in the history of this country, but he too had retired to the walks of private life, long before he consented to be considered as a candidate for the highest office in the gift of the People.

Our military force is yet too small to excite alarm. But the time may come, and I think will come, when the case will be reversed; and at some future period, remote, it is to be hoped, armies may be seen marching up from Old Point Comfort and the Rip Raps, and lodging themselves around this Capitol, to keep the peace during a Presidential election.

As no President has yet discovered a disposition to hold his office more than eight years, it may be considered by some as having grown into a law, that no one shall hold the office for a longer period.

The examples of our Presidents have given great force to the rule adopted, and it undoubtedly has the sanction of public opinion. But all this will present but a faint barrier to the career of ambition and power.

None of these Presidents have relinquished their power under the age of sixty-four years, when ambition, it is to be hoped, begins to subside.

A strong desire to end their days in the ease of private life, seems to have governed all our Presidents in their resolutions to retire from office; other motives, no doubt, have had their weight with all.

When President Washington informed the People of the United States that he should not again be considered as a candidate for the Presidency after the expiration of his second period, so far from expressing an opinion that the spirit of our Republican Government required that he should retire—says, that patriotism does not forbid it. His words are, "every day the increasing weight of years admonishes me more and more that the shade of retirement is as necessary to me, as it will be welcome. Satisfied that if any circumstances have given peculiar value to my services, they were temporary, I have the consolation to believe that, while choice and prudence invite me to quit the political scene, patriotism does not forbid it." Thus much it was necessary to say, by way of soothing his friends throughout the Union, who expressed the most anxious solicitude that he should continue in office.

Mr. Jefferson was more explicit. He was solicited, from various quarters, to be a candidate for a third period in the office of President of the United States. To that purpose, he received addresses from different Legislatures. To the Legislatures of Virginia, Pennsylvania, and Maryland, he gave an answer, in his letter of the 10th of December, 1807, in which he says, "That I should lay down my charge at a proper period is as much a duty, as to have borne it faithfully. If some termination to the services of a Chief Magistrate be not fixed by the Constitution, or supplied by practice, his office, nominally for years, will in fact become for life; and history shows how easily that degenerates into an inheritance. Believing that a Representative Government, responsible at short periods of election, is that which produces the greatest sum of happiness to mankind, I feel it a duty to do no act which shall essentially impair that principle; and I should unwillingly be the person who, disregarding the sound precedent set by an illustrious predecessor, should furnish the first example of prolongation beyond the second term of office. Truth also requires me to add, that I am sensible of that decline which advancing years bring on; and feeling their physical, I ought not to doubt of their mental effect. Happy if I am the first to perceive and obey this admonition of nature, and to solicit a retreat from cares too great for the wearied faculties of age."

It was known, long before the expiration of Mr. Madison's second term of office, that he would decline another election. I have not been able to discover that he assigned any reasons for so declining.

Mr. Monroe also gave notice, that he should decline a third election, but assigned no reasons for so doing. In fact, no one of our Chief Magistrates has explicitly avowed the opinion, that the President of the United States could not, consistently with the principles of our Government, continue in office more than eight years, except Mr. Jef-

ferson; and great as that authority is, it will have but little weight, when opposed to the views of ambition and power. I am sorry to say, that many of the sound maxims of that great and good man have become unfashionable, and he may yet live to see most of them exploded.

It is unsafe to rely upon a law sanctioned only by precept and example.

Suppose an ambitious man, of the age of forty, of great acquirements, military and civil, should be elected President. His eight years would expire at a time when ambition takes the firmest hold of the human heart. He would see distinctly, that the motive arising from declining years could not apply to his case. He would consider that if he should serve sixteen years longer, he would not then be older than the preceding Presidents had been, when they thought proper to retire. He would be easily persuaded that the good of his country required that he should not desert his post. A host of officers, dependent upon his pleasure, would represent themselves as abandoned, should he decline a re-election. His family would implore him not to devote them to a life of comparative obscurity. He would yield to these persuasions, flattering himself that, in so doing, he should obey the dictates of tenderness to his family, humanity to his friends, and love to his country. He would continue in office till declining years should admonish him to retire—and would probably forget to attend to that admonition—as Tiberius did, and as many others have done.

Had Washington been no more than forty years old when elected President, and had he possessed the ambition, the art, and dissimulation, of Augustus Cæsar, would he not have remained in office during life? And if he had lived to the age of Augustus, might he not have placed a successor of his own family in his chair, who would also continue in office during life? after which, the elections for periods of four years would be considered as mere matters of form, which might be neglected as useless and troublesome.

One great obstacle to the elevation of an individual to preside over his fellow citizens, with nearly regal powers, is the envy of the equals of such individual, or of those who think themselves to be so. Men are unwilling to raise an equal to a height far above their own level, more especially when such elevation may interfere with their own anticipations of aggrandizement. But this principle which operates so powerfully to prevent the elevation of a person or family from the ranks of private life, produces a contrary effect as to those who have been long in power. As to them, envy ceases to produce opposition to that rank and distinction which at first were highly offensive; and our self love is less wounded by a continuance in power of those already elevated, than in the elevation of any new individual or family from our own level. This operates directly in favor of the individual or family in power, by driving from the contest competitors who might otherwise succeed; and it is to this, more, perhaps, than to any other cause, that elective monarchies become hereditary. Against this principle, as it respects our Presidential elections, we ought to guard, even if we had no fear of monarchy.

The examples of our Presidents show the propriety of the limitation now proposed. It has the undoubted sanction of public opinion. Nine-tenths of the People believe it ought to have been an original provision of the Constitution. Let us, then, so far as our duty is concerned, adopt now, what the Federal Convention should have adopted. The amendment can do no mischief; it may do much good.

Mr. EDWARDS said, I do not rise for the purpose of making a speech, but merely to state, in a few words, some of the reasons why I shall vote against this proposition. When this proposition was before the Senate, on a former occasion, I was one of a very small minority that voted against it: and, on the present occasion, I may be in a minority as small. It is not to be inferred, from the vote I shall now give, that it is my wish to alter that state of things which custom has established. The practice under the Constitution has introduced a kind of law on this subject, in which I acquiesce, and this is just that kind of law, and the only kind, which is either necessary or proper in the case. No person has, as yet, deemed it expedient to suffer himself to be considered a third time a candidate for the Presidential Chair, and no person will hereafter deem it expedient, unless urged and called to it by considerations he cannot, and ought not, to resist.

I feel, said Mr. E. a very great veneration and respect for the Constitution of the United States. This instrument is the work of as enlightened and patriotic a body of men as ever assembled in any country. Under this Constitution we have enjoyed a degree of happiness and prosperity, such as no other country on the face of the earth can boast. Why, then, be altering or changing it? Has any evil or inconvenience been experienced? or is any apprehended from that part of it now proposed to be altered? It appears, that when the Constitution was framed, the limitation now proposed was considered and discussed. The reasons assigned in favor of the limitation, were probably substantially the same as are now offered. It was rejected. Even then, when monarchy was the evil of all others the most deprecated: when the fears and jealousies of the great body of the People of this country were as much awake and as much excited on that subject as they can ever be—this limitation was rejected. It was deemed unnecessary. This was a subject on which it was thought the People of this country might be safely trusted. The time may possibly arrive, in the course of human events, when a limitation of this kind may be pernicious; but I cannot possibly conceive of the existence of a state of things where it can be useful. It may be of some use to aspirants—it may relieve their fears, and give strength and vigor to their hopes. And this class of men, and those who are identified and associated with them, are the only classes in the community who can have any interest in this limitation. The apprehension that any individual can gain such an ascendency in this country, as, by the mere force of Executive power and influence, to retain himself in the office of President, I consider as groundless. And if this time should ever arrive—if the People of this country should ever be so far corrupted and degraded, that a President can continue himself in office, in opposition to the wishes and interest of the People—it will be of but little consequence what may be the provisions of the Constitution: we shall have advanced beyond the period of maturity; decay will have commenced its work, and we shall be prepared to follow that downward course which has led so many nations to destruction.

Limitations on rulers may be necessary, but limitations and restrictions on the People are very different things, and this can be considered as nothing more or less than a restriction on the People—an attempt to guard the People against "*their worst enemies*," as they have been most libellously called, "*themselves*." When the People ask for a restriction of this kind, it will be time enough to pass this amendment; but, unless it is asked for by the People, why disturb the community, why spend the time of Congress, and the different Legislative bodies in the Union, on the subject? Two years ago, this subject was brought forward by the gentleman from New Jersey, who has now introduced it, it passed this House, and nothing more was heard of it. I hoped it would be heard of no more, but it has risen again, and probably will rise, from time to time, at least as long as the honorable gentleman may have a seat here.

I do not, when questions of this kind are presented, consider myself at liberty to take the same course I might if this was a Convention to form a Constitution. By this I do not mean to be understood as admitting that, even in

that event, I should be in favor of the proposition; but if, on every occasion, we are to alter the Constitution, according to our impressions of what may have been for the best, originally, it will soon become a thing of shreds and patches. It will lose that respect and veneration it now has, and which it is desirable it should have. The proper course is this: when experience discovers evils or defects, to apply a remedy; until then, I would in charity presume the great and venerable men who framed this instrument, may be right.

I consider myself fortunate in being placed in a situation where the vote I give cannot be supposed to be influenced in any degree by the existing state of things. I could not, when this subject was before us on a former occasion, justify to myself a vote in favor of it. I cannot now justify such a vote, and shall therefore give it my negative.

Mr. JOHNSON, of Kentucky, said, that the variety and diversity of sentiment relative to this measure, convinced him that there were very few things under the sun in which unanimity could be found in a body of men, even as small as the Senate of the United States. Here a proposition had been made to make the Constitution in letter what it had been made in fact, by the virtues and patriotism of General Washington, by declining a re-election after his second term had expired. We all approved of the practice, we all agree in the safety of the principle of considering an individual ineligible after eight years; yet we had rather permit the Constitution to remain defective, and depend upon the principles or virtue of men, through all time, to follow the virtuous example of General Washington, and his successors, up to the present time, than to put it beyond the power of any man to violate this practice, without an express violation of the Constitution. This doctrine, in his humble opinion, was a strange one, in a country where so much value was placed upon a written Constitution. Although a Constitution might be violated by construction, and extended in its grasp of power by the doctrine of implied powers, yet the value of a Constitution would not be denied, he supposed, although he confessed it was very difficult to fix upon the precise value of written Constitutions. At all events, he had rather depend upon a positive stipulation of the Constitution, than upon even the example of virtuous and immortal men, who had sanctified and consecrated the principle by their practice. It had been said in argument, that no attempt had been made to violate this principle, and he was happy that the virtue of our distinguished men, so far, had never shown the least disposition to violate the practice themselves, or to see it violated in others—nor did he believe that there was any danger of its violation at this period; but is it our duty to look to the present time alone? Do we not act for posterity as well as ourselves? And could any of us say that human nature in this country was so much purified, that we should never find, in time to come, any aspirant who would aim at inveterate power, by attempting to hold his power by a violation of the practice of Washington, Jefferson, Madison, and Monroe, when it is well known that the Constitution does not prohibit the attempt? For his part, he said, he felt much more pleasant, and much more happy, to think that he was acting in a case where no attempt at usurpation had urged us to amend the Constitution, and upon any occasion it was unpleasant for him to act in any case where some would declare that a case had occurred, which proved the necessity of the measure.

Such a ground was invidious and unpleasant, and here we all concurred in what the Constitution ought to be, without any particular inconvenience having arisen to produce that impression; and the object of the amendment was to make the Constitution in letter what it had been in fact, by a refusal, on the part of our Presidents, to serve longer than eight years. But it has been said that the Constitution ought not to be amended for fear of making this instrument worse than it was when it came from the hands of the distinguished statesmen who framed it. This is a very common argument upon all occasions, and it should put us upon our guard, and bring us to a due consideration of every innovation which is proposed. But it is no conclusive argument against amendments; this very case proves this position: because we all now admit, and properly raise our voice in praises to General Washington, for retiring from the Presidency at the close of his second term, and to his successors, who have voluntarily adopted the same practice—the idea is, that this practice has prevented much danger to this Confederated Republic, by stamping with the stigma of usurper and a tyrannical lover of power, any who should, in future ages, attempt to violate this rule of conduct which our illustrious men have prescribed to themselves. Now, if this rule is acknowledged by all to be better than the Constitution itself, which allows any man to continue to be the President of the United States for a term of twenty years, if successively elected to that office; upon what principle do we sanction the practice of this self-disqualification to the highest office in the gift of the People, after a term of eight years, or two terms? Upon the ground of danger to the liberties of the People—on account of the great power which the Constitution has vested in the President, and the advantages given to a single officer of the Government in a contest for a continuance of his power, in a contest with the People for his re-election, and upon the ground that any reasonable man, any distinguished statesman, would be satisfied with public life after his country had elected him in two cases to the first office in the power and gift of the People. Mr. J. said he did not know that we had much danger to apprehend for want of this amendment; certainly we had no reason at this time to fear any danger on that account. But, as he considered that a written Constitution, containing the disqualification, which the practice of the Government had consecrated, would make surety doubly sure, Mr. J. said, that he did hope the amendment would be adopted, with which hope he should conclude his remarks, as he did not rise to make a set speech: for which he had neither time nor inclination, when he recollected that we had been so long in session, about four months, and the vast accumulation of unfinished business.

After a few further remarks on the part of the two first speakers, and an observation or two by Mr. KNIGHT, the resolution was reported to the Senate, without amendment, and ordered to be engrossed and read a third time, by the following vote:

YEAS—Messrs. Barton, Berrien, Branch, Chandler, Chase, Cobb, Dickerson, Findlay, Harper, Hayne, Hendricks, Holmes, Johnson, of Kentucky, King, Lloyd, Marks, Reed, Rowan, Ruggles, Tazewell, Van Buren, White, Willey, Williams, Woodbury.—25.

NAYS—Messrs. Edwards, Knight, Robbins, Seymour.—4.

THURSDAY, MARCH 30, 1826.

EXECUTIVE POWERS.

On motion of Mr. BRANCH, the Senate then proceeded to the consideration of the resolution submitted by him, protesting against the competency of the President of the United States to have appointed Ministers to the Congress of Panama, without the advice and consent of the Senate.

Mr. BRANCH rose, and said: Under the impression that the first and most important duty I owe to the State that sent me here, is to preserve inviolate, and to transmit to posterity unimpaired, the form of government under which we live, I have believed it to be my duty to submit, for the consideration of the Senate, the resolution which has just been read. My opinion is, that a Representative has

performed but a part of his duty, and perhaps the least part, when he discharges the ordinary duties of legislation as delegated to him by the Constitution. I feel, said Mr. B. that we have an important task to execute in resisting the encroachment of ambition on the constitutional powers of this body, whether they be open or covert.

The principle embraced by the resolution is so plain in itself, so obvious in its nature, as to need no argument on my part, to make it plainer. I should conceive it to be an insult to the understanding of the Senate to attempt such an argument. The resolution asserts a constitutional principle. Yes, sir, a fundamental principle, which is, doubtless, properly appreciated by this body.

It may be, however, proper for me to call the attention of the Senate to the opening message of the President of the United States, at the commencement of the present session, and to his Executive communication to the Senate, of the 26th December last. For it will be found that, in these communications, he has assumed a power, and asserted a right, which I boldly contend he does not possess: and in making this denial, I feel confident that I am sustained by the Constitution of the United States. In the opening message he says, "Among the measures "which have been suggested to them by the new rela- "tions of one another, resulting from the recent changes "in their condition, is that of assembling at the Isthmus "of Panama a Congress, at which each of them should "be represented, to deliberate upon subjects important "to the welfare of all. The Republics of Colombia, of "Mexico, and of Central America, have already deputed "Plenipotentiaries to such a meeting, and they have invit- "ed the United States to be also represented there by "their Ministers. The invitation has been accepted, and "Ministers, on the part of the United States, will be "commissioned to attend at those deliberations," &c. &c.

This language, I thought at the time, was unequivocal, and since has been rendered more explicit by the Executive communication before alluded to, of the 26th December, which I will take the liberty of reading to the Senate: "*Although this measure was deemed to be within the "constitutional competency of the Executive*, I have not "thought proper to take any step in it before ascertaining "that my opinion of its expediency will concur with that "of both branches of the Legislature."

Has he not then asserted that he has the right to appoint Ministers independently of the Senate—Ministers, too, of no ordinary character, clothed with powers, admitted, on all hands, to be of the most important and perilous nature? Now, sir, what does the Constitution say —this invaluable and inestimable little book, which I hold in my hand—the commission under which we all act, and from which we derive all our powers; which every officer of the Government takes a solemn oath, in the presence of his God and country, to preserve, maintain, and defend? "That the President shall have power, by and with the "advice and consent of the Senate, to make treaties, "provided two-thirds of the Senators present concur, and "he shall nominate, *and, by and with the advice and consent "of the Senate, shall appoint, Ambassadors, other public "Ministers*," &c.

I shall not, as I said before, attempt, by language, to make this subject more explicit than it is. The wise framers of our Constitution, under the most auspicious circumstances, formed it, and transmitted it to us. It is our duty to preserve it in all its pristine purity and vigor. Although it may not be necessary to illustrate this principle, I hope the Senate will indulge me for a few minutes, while I attempt to give them some additional reasons why I submitted this resolution.

I view the usurpation which it notices, and purports to repel, as a link in a chain threatening the most portentous and calamitous consequences to the liberties of this People. In this light it has made a deep impression on my mind. Isolated, unconnected with any thing else, yet so plainly and palpably conflicting with the letter and spirit of the Constitution, it is truly appalling to the friends of liberty; but, when I connect it with the transactions that have tarnished the page of our history, for little more than a twelvemonth past; when I connect this open usurpation, this wanton trespass on the form of government under which we live, with the covert and insidious innovations which gave existence to, and characterizes the conduct of the present Chief Magistrate, I am decidedly of opinion that every friend of his country should be at his post.

It is time to re-enact Magna Charta. It is time to reassert the principles of the Declaration of Independence.

The danger to be apprehended from precedent, even from what has been termed the harmless ipse dixit of the President of the United States, may be made manifest by a recurrence to a few circumstances of comparatively recent date. Two years ago the immediate predecessor of the present President proclaimed to the European world, that they must not interfere with Old Spain and her revolted Colonies; intimating, if they did, that we might take part. I considered it, at that time, as an unauthorized, unmeaning, and empty menace, well calculated to excite the angry passions, and embroil us with foreign nations. Yet, sir, has *this* declaration been construed into a pledge or guarantee to the South American Republics; and, moreover, has been recognized as being obligatory on this nation, by those now in power. In proof of this, look to the letter of Mr. Poinsett, our Minister at Mexico, to Mr. Clay, dated September, 1825:

"To these observations I replied, that, against the "power of Spain, they had given sufficient proof that they "required no assistance, and the United States had pledg- "ed themselves not to permit any other Power to inter- "fere, either with their independence or form of govern- "ment: and that, as, in the event of such an attempt be- "ing made by the Powers of Europe, we would be com- "pelled to take the most active and efficient part, and to "bear the brunt of the contest, it was not just that we "should be placed on a less favorable footing than the "other Republics of America, whose existence we were "ready to support at such hazards."

See the language of this gentleman, well known and highly estimated for his talents and integrity. Are we not bound to believe that the sentiments he avows, are in conformity with his instructions? Can we attribute to him so gross a violation of his duty? To fortify this opinion, I will call the attention of the Senate to Mr. Clay's letter to Mr. Poinsett, 9th November, 1825, in which he speaks of Mr. Monroe's pledge, in language that cannot be mistaken. When we reflect that the Secretary of State is a gentleman officially and confidentially connected with the President of the United States, shall we, are we at liberty to doubt, that this pledge, given by Mr. Monroe, has been recognized by the present President and Secretary of State? I say we can come to no other conclusion. Does it not then become our imperative duty, when we clearly see the dangerous consequences resulting from analogous usurpations, to protest against it, though he may not think proper, at the moment, to carry the principle into practice?

Again: I contend, if the President is bound to advise with the Senate in ordinary cases, of appointing and sending Ministers where, by the laws and usages of nations, their powers and duties are susceptible of the clearest and most explicit definitions, and where the consequences likely to result are known and properly estimated; much more should he be bound where the objects to be obtained, and the duties to be performed, are not even understood by the President himself, as in this case may be seen by reference to the documents; in which it appears that he himself declined it, in the first instance, until he

could be satisfied on those points. But, strange to tell, this ground was abandoned, without assigning a reason, and the invitations were accepted. Now, sir, as to the objects understood and openly avowed, what are they? to expound and settle important principles of international law—to concert the means for a more effectual resistance to the approaches of European domination, and doubtless to give efficiency to the recognized pledge of Mr. Monroe, in connexion with a wild and enthusiastic crusade against the Roman Catholic religion. Are these legitimate objects, to say nothing more of them? Or, rather, are they not fraught with consequences of the most dangerous and most ominous nature, to the future peace and tranquillity of this country?

I will not trespass on the patience of the Senate, by an argument on this point. My object is to shew that these Ministers to Panama are Ministers of the first and most important character, clothed with powers of awful import, and calculated to excite the well-grounded fears of every lover of his country.

We are called upon to send Ministers to South America to combat the prejudices of the Roman Catholic religion. I should think our labors had better be confined at home.

Furthermore—I contend that, if the President of the United States is not constitutionally bound to advise with the Senate in appointing Ambassadors and Ministers, that the Senate is not bound to act on the subject at all; in truth, has no right to act. Are we dependent on the whim, or caprice, or courtesy of the President, for power? Is it competent for him to enlarge our functions? Can he circumscribe them at pleasure? I trust not, sir.

We rely on higher authority; we rely on the commission given to us by the People themselves in Convention; and, before my country, I protest, most earnestly protest, against all and every encroachment of the kind. Before my God I declare, that I never will be diverted from what I conceive to be the true policy of my country. I never will be *palsied* by any power save the Constitution, and *"the will of my constituents."* Yes, sir, however unfashionable the recognition of this dependence on our constituents may be, I must be permitted to pay my devotion to it, and recognize its obligation on me. They are the early impressions of my youth; they have been riveted on my mind as fundamental republican truths; they have taken the firmest hold. They are such as I have fondly cherished in my bosom, and such as the People of this country never ought, never can, abandon, unless they prove false to themselves.

The Senate was wisely designed to act as a check upon the appointing power, not, I admit, to be exercised capriciously, but fearlessly and independently, when the public good requires it. It, therefore, becomes imperiously our duty to guard well the powers conferred on this body. We are tenants at will, or, rather, trustees for the present and future generations; and it is, comparatively, of very little moment, as regards the few fleeting moments we occupy here. It is as time to eternity, when compared with the fundamental principles contained in this book. This is, I hope, intended for ages to come. It is intended, I trust, to be perpetual. It was so designed; but I have the most awful forebodings that it will not be. I have my fears, although, sir, it has stood the severest storms in a recent contest, and has carried us triumphantly through a war which has covered our country with imperishable renown—a struggle that embraced in its consequences the dearest principles of a free government. But, though it carried us through this struggle successfully, it may not prove an adequate protection against the insidious encroachments of ambitious leaders.

When I take a retrospect of the past history of our Government; when I recur to events of recent date; when I associate them with the manner in which the present President came into office, and the principles avowed by him since; I feel that it is the duty of every patriot to be vigilant. I will not say that he came into office in violation of the letter of the Constitution. He came in under it. He is our President, and, so far as his measures are calculated to advance the general interest, shall have my most cordial, energetic support. And yet, (it is unnecessary to disguise the fact,) he came into office in opposition to three-fourths of the American People, in opposition to seventeen or eighteen States out of the twenty-four. He came in by the prostration of our dearest principles. He came in by a total disregard of the right of instruction, the basis of a Republic. He came in, sir, in opposition, not only to the sovereign will of the People, but he overcome the most formidable of all difficulties: He came in in opposition to the will of the Representative too. This may seem paradoxical, but it is, nevertheless, true. He came in under the influence of precedent; under the influence of the principle I am now combatting; and, if we dont resist it at the outset, he will give it such an impulse as will enable him, not only to nominate, *as he has done*, but to appoint his successor.

And what, Mr. President, is the policy of the present Administration? The original debt of gratitude is to be paid at all hazards; the one-fourth is to become the majority, if the creation of offices, and the patronage of the Government can effect it. Yes, sir, the first appointment made by the present President is conclusive on this point, and his subsequent course is in entire accordance. Merit is proscribed, unless it acquiesces in and subserves the ulterior purposes of the Administration. In the language of the day it will not do to afford to the liberal and intelligent freemen of the country, who happened to differ with the Administration, the means of annoyance; therefore, they are to be placed under the ban of the Empire—they are to be proscribed. All are to be brought into the fold that can be, by hook or by crook; and those who cannot be brought in this way, why, forsooth, are to be coerced.

Am I not justified in saying this? Has it not been openly avowed by the confidential friends of the President and Secretary of State, that the Senate ought to be coerced into a discharge of their duties? Has not the attempt been made in the other House, through the instrumentality of the uninformed populace, operated upon by *confidential knowledge*, to drive this body into an acquiescence with the mad schemes of the Administration, in a way disreputable to this Government, and to the Chief Magistrate of a free, enlightened, and independent People? Sooner than see the patronage of the Government thus employed; the offices bestowed in a manner so detrimental to the public interest; I would do any thing that I could, to relieve the administrators of the Government from such onerous burthens. I would sooner appropriate a million of dollars to the contingent fund, and place it at the arbitrary disposal of the President. For, Mr. President, although I am not a convert to what has been termed the political heresy of the Poet, contained in the following lines:

> "For forms of government let fools contest,
> "That which is best administered, is best"—

Yet the sentiment, all must admit, is founded in great good sense, and is the offspring of a vigorous intellect. The sentiment is the result of the deepest research into the principles of our nature: for, what good will the form or name do us, if the substance is lost? I would not give a fig for it.

Permit me, before I sit down, to ask of the Senate, whether the President has dealt ingenuously with us in relation to the publication of the documents, the mission, and the discussions which grew out of them? When we called on him to know whether the existing negotiations

with any Power would be prejudiced by throwing the doors open and discussing the subject in public, he answered that the documents were asked in confidence, communicated in confidence, and that the rule was based on ancient and well established usage, and if we departed from it in that instance, we must act on our own responsibility. The answer was so little characterized by frankness, so equivocal, and, at the same time, so derogatory to what I conceived to be the constitutional rights of the Senate, that I moved, *instanter*, to throw open the doors, and let the world know what we were about. I regret that my motion did not prevail. I shall ever regret that the arguments made in conclave, with the doors locked on us, and the key in the President's pocket, should be necessarily lost to society.

I avail myself of this occasion to protest against the assumed right of the President to control the Senate in the exercise of a sound discretion in regard to confidential communications. The confidence is official. My responsibility is to my State and country, not to him. And what was the course of the President immediately after the confirmation of the mission by the Senate? Why, sir, to come out to the House of Representatives and to the world, with an elaborate argument, accompanied with some of the documents which had been sent to the Senate, and some that had not been sent, in answer to the objections which had been urged in the Senate against the mission, and of which, at that time, the world knew nothing, and therein essentially changed his ground. I again ask, has he dealt fairly with us? Or, rather, has he not lost sight of that candor which I had fondly trusted would ever mark the conduct of the Chief Magistrate of this free and magnanimous People?

I forbear further remarks on this subject—it is a delicate one. Yet the public must and will be informed.

Mr. RANDOLPH rose, and said: I rise, sir, for the purpose of making an apology to the gentleman from North Carolina, for an unintentional word, ['never'] uttered, involuntarily, whilst he was speaking, although I was happy to see that it caused any thing rather than embarrassment to him. I rise, also, for the purpose of expressing to that gentleman my hearty thanks for having called up his motion, and for having relieved the Senate from that embarrassment, under which we have labored so long as that motion was nailed to that table. The unavoidable absence of the gentleman from North Carolina prevented its being taken up and disposed of; and the subject was thus put out of the reach, even of the Committee of Foreign Affairs, and is, therefore, not embraced in their report. And, whilst I am making my acknowledgments to the gentleman from North Carolina, I will make one more, in which, I believe, sir, another, and not the least member of this body, may participate with me, as an almost equal sharer in the obligation. The gentleman from North Carolina has steered his ship into action with a manliness and decision, a frankness and promptitude, a fearless intrepidity, that scorns all compromise with the foe, the common enemy of every true friend of his country; that will relieve, certainly, one, and, I believe, more than one, of this body from some part of the odium which has hitherto been borne almost exclusively by *two*. He forcibly reminded me of that gallant man, (was he not our countryman by birth, sir?) Hallowell, who so gallantly took the lead in the SWIFTSURE, at the battle of the Nile—the most brilliant and sublime naval conquest—the most important, whether in reference to itself or its consequence, that was ever won by man; when the brave but unfortunate Culloden, the leading ship, got aground; when Trowbridge, for the first time, performed an important but unwilling service, in marking, as a beacon, the channel to the rest of the fleet. I am glad to find that the gentleman from North Carolina has spoken to this House with the plainness that belongs to him, not only as a Southern man, but, emphatically, as a Planter; it belongs to him as a slave-holder; it belongs to him as one who is not bound to electioneer and to curry favor with the driver of his carriage, or the brusher of his shoes, lest, when he shall have driven him to the polls, the one may dismount from his coach-box, or the other lay down his shoe-brush, and annihilate the master's vote at the next election; lest his servant may give him warning that he may no longer consider him as *his* "*help*," and go as a spy into the family of his enemy, if he shall have one, to tell, not only what he may have seen and heard, but what he never saw and never heard, in the family of his master. Master! did I say? No, sir, "*his gentleman*." This *delator* and champion of universal suffrage owns no master—he claims the mastery over you. I thank the gentleman from North Carolina—most sincerely and heartily do I thank him. I trust that it will turn out in the end—whether our adversaries be born to consume the fruits of the earth—*fruges consumere nati*—whether or not they belong to the catterpillars of the Treasury or of the Law; that, of us, it may be truly said, *nos numerus sumus;* that our name, too, is Legion: for, sir, we belong to the cause and the party of the People; we do claim to belong to the majority of this—"*nation?*" No, sir, I acknowledge no nation—of this Confederate Republic. For I, too, disclaim any master, save that ancient Commonwealth whose feeble and unprofitable servant I am. The President himself has confessed that he does not possess the suffrage of the majority, or the confidence enjoyed by his predecessors. He is even desirous of a new trial. He shall have one, and no thanks to him for it. God send him a good deliverance from the majority; and God send us, the majority, a good deliverance from him.

Having thus, sir, disburthened myself of some of the feelings that have been excited by the gallant and fearless bearing of the gentleman from North Carolina, allow me to go on and question some of his positions.

One of them is the durability of the Constitution. With him and with Father Paul (of the Constitution of Venice) I say "*esto perpetua:*" but I do not believe it will be perpetual. I am speaking now of what Burke would call high matter. I am not speaking to the groundlings, to the tyros and junior apprentices; but to the grey-headed men of this nation, one of whom, I bless God for it, I see is now stepping forward, as he stepped forward in 1799, to save the Republic. I speak of William B. Giles. I speak to grey heads; heads grown grey, not in the "receipt of custom" at the Treasury, of the People's money; not to heads grown grey in iniquity and intrigue; not to heads grown grey in pacing Pennsylvania Avenue; not grown grey in wearing out their shoes at levees; not to heads grown grey, (to use the words of the immortal Miss Edgeworth, the glory and the champion of her lovely sex and wretched country) in ploughing the Four Acres. Am I understood? There is a little Court, sir, of the "CASTLE" of Dublin, called the Four Acres; and, there, backwards and forwards, do the miserable attendants and satellites of power walk, each waiting his turn to receive the light of the great man's countenance; hoping the sunshine; dreading the cloudy brow. Spencer has well described the sweets of this life,* and technically it is called ploughing the Four Acres. Now, when a certain character, in one of her incomparable novels, Sir Ulic—I have forgot his

* Full little knowest thou that hast not try'd,
What Hell it is in suing long to bide,
To lose good days, that might be better spent,
To waste long nights, in pensive discontent;
To speed to-day, to be put back to-morrow,
To feed on Hope, to pine with Fear and Sorrow;
To have thy Prince's Grace, yet want *his* Peers;
To have *thy asking, yet wait many Years;*
To *fret thy Soul with Crosses and with Cares,*
To *eat thy heart thro' Comfortless Despairs;*
To *fawn*, to *crouch*, to *wait*, to *ride*, to *run*,
To *spend*, to *give*, to *want*, to *be undone.*

name, but he was a McSycophant; courtier, placeman, pensioner, and parasite—upbraided that kind, good-hearted, wrong-headed old man, King Corny, with his wretched system of ploughing, the King of the Black Islands ("every inch a King") replied, that there was one system of ploughing worse even than his; and that was ploughing the Four Acres. This was a settler to the McSycophant.

Sir, I shall not detain the Senate long. We are now making an experiment which has "*never*" yet succeeded in any region or quarter of the earth, at any time from the deluge to this day. With regard to the antediluvian times, history is not very full; but there is no proof that it has ever succeeded, even before the flood; one thing, however, we do know, that it has never succeeded *since* the flood; and, as there is no proof of its having succeeded before the flood; as, *de non apparentibus et non existentibus eadem est ratio;* it is good logic to infer, that it never has succeeded, and never can succeed any where. In fact the *onus probandi* lies on them that take up the other side of the question: for although *post hoc ergo propter hoc* be not good logic—yet when we find the same consequences generally following the same events, it requires nothing short of the scepticism of Mr. Hume, to deny that there is no connection between the one and the other; whatever, metaphysically speaking, there may be of *necessary* connexion between cause and effect. I say, then, that we are here making an experiment which has never succeeded in any time or country; and which, as God shall judge me at the great and final day, I do in my heart believe will here fail; because I see and feel that it is now failing. It is an infirmity of my nature—it is constitutional—it was born with me—it has caused the misery (if you will) of my life—it is an infirmity of my nature to have an obstinate constitutional preference of *the true* over the *agreeable;* and I am satisfied, that if I had an only son, or what is dearer, an only daughter—which God forbid! I say God forbid! for she might bring her father's grey hairs with sorrow to the grave; she might break my heart—but worse than that—what! Can any thing be worse than that? Yes, sir, I might break hers. I should be more sharp-sighted to her foible than any one else.

Sir, as much as they talk of filial ingratitude, how, sharper than the serpent's tooth, it is to have a thankless child—how much more does it run counter to all the great instincts of our nature, planted for good and wise purposes in our bosoms—not in our heads, but in our hearts—by the Author of all good—that the mother should be unkind to the babe that milks her; the father cruel to his own child. They are well called unnatural parents: for it is a well known law of nature, that the stream of succession and of inheritance, whether of property or affection, is in the descending line. I say, in my conscience and in my heart I believe, that this experiment will fail—if it should not fail, blessed be the Author of all Good for snatching this People as a brand from the burning which has consumed as stubble all the nations—all the fruitless trees of the earth; which before us have been cut down and cast into the fire. Why cumbereth it the ground; why cumbereth it? Cut it down—cut it down. I believe that it will fail; but, sir, if it does not fail, its success will be owing to the resistance of the usurpation of one man by a power which was not unsuccessful in resisting another man of the same name, and of the same race. And why is it that I think it will fail? Sir, with Father Paul, I may wish it to be perpetual, *esto perpetua*, but I cannot believe that it will be so. I do not believe that a free republican Government is compatible with the apery of European fashions and manners—is compatible with the apery of the European luxury and habits; but if it were, I do not know that it is entirely incompatible with what I have in my hand—a base and baseless paper system of diplomacy, and a hardly better paper system of exchange. I speak of paper money under whatever form it may exist; whether in the shape of the old continental Spanish milled dollar, printed on paper, or in the promise to pay, which promise is never intended to be redeemed—of the sound significant [a word] for the thing signified, [dollars]—of the emblem, multiplied at will, for the reality, which has an actual, if not a fixed, value: for there is, and can be no unchangeable standard of value—it is worse than shadow for substance: for shadow implies *some* substance; while promises to pay *dollars*, imply neiply ability nor inclination to pay cents.

I have another objection to make to the position advanced by the gentleman from North Carolina, towards whom I feel no unfriendly sentiment or wish; it is this; I hope that he will pardon me, and I hope for the pardon of the Senate—at least I feel that *you*, sir, ought to pardon me—it is this: the unreasonableness of the gentleman from North Carolina, in attempting, at this time of day, to alter the form of our Government, "*as established by the practice under the Constitution.*" Now, sir, the practice under the Constitution was settled, in the two first instances, in this way: That the Vice President succeed the President. At that time the President opened Parliament (or Congress) by a speech from the throne; but, since that time, the practice has been settled another way. Since the revolution of 1801, the practice has been settled, that the Secretary of State shall succeed the President; hence it is that the Secretaryship of State has been the apple of discord under all administrations succeeding that of Mr. Jefferson. It was the bone of contention between Mr. Gallatin and Mr. Robert Smith. There are more here besides myself [looking at Mr. MACON] that know it. It has been the apple of discord, aye, and of *concord* too, sir, since—it has been the favorite post and position of every bad, ambitious man, whether apostate federalist or apostate republican, who wishes to get into the Presidency, *per fas aut per nefas—rem quocunque modo, rem—recte si possis—* "*honestly if they may; corruptly if they must.*" It has been that which Archimedes wanted to move the world: πυ στω (*pou sto*) "a place to stand upon;" aye, and to live upon too, sir; and with the lever of patronage to move *our* little world. Now, sir, the gentleman from North Carolina is so extremely unreasonable as to wish—he will bear with my reproof, I hope—as to wish to break the lineal succession of *our* monarchs, and to reduce us to something like the barbarism of Russia, where they haven't yet perfected themselves in the A B C of legitimacy; a regular indefeasible succession of tyrants; although they claim the head of the Table of the Holy Alliance—where there is hardly one instance of the lineal heir succeeding to the throne without regicide and parricide, (which the case implies) from the time when Muscovy first became an European power—from the time of Peter Alexiovitch, (or Alexiowitz, as I was taught in my youth to call him) who was the slayer of his son, and who transmitted his power to Catharine, the Livonian peasant girl, first his strumpet, then his Chamberlain's; then an Empress; whom I have heard more than once confounded with her namesake Catharine, Princess of Anhalt, the second of that name, who, by the murder of her husband, Peter 3d, usurped the throne. With some "variation of the mode, not of the measure," it is the case in this our day of Constantine Cæsarovitch—which means, I believe, Fitz-Cæsar—as it was with his father, Paul Petrovitch, and with *his* father, Peter, the son of somebody—nobody knows who—who went before Paul, not by the same instrument; no, sir. In the case of Peter, the red-hot poker—the actual cauterie—supplied the place of the new *Pahlen-tie* of the twisted cravat—*a la Pichegru*—and it was only the day after the news arrived of the deliverance of the world from the autocracy of Alexander the Deliverer—as well as I remember the date—I know that it was on the 9th of February—three days before the unavoidable departure of my colleague, that I endeavored, and, as I then thought, not without some show of success, to impress the Senate with the important bearing of the recent event at Tagan-

rock (recent as to us) upon the new, wild, dangerous, and, as I fear, fatal policy, now, for the first time, if not announced, attempted to be practised upon by this rash and feeble Administration. Elizabeth and Burleigh were cautious and powerful. The Stuarts and the Buckinghams profligate, feeble, and rash. It was then that I forewarned the Senate that the red-hot poker of some Orloff the *Bulafre*, or Orloff, the other FAVORITE—(it was a regular household appointment of Catharine la Grande ——— — somewhat irregularly filled occasionally—a la Cossaque.) It was on that day that I suggested to the Senate that the poker or the bowstring of a Zuboff, or the something else of somebody else—some other Russian or Russian in *off*—the instrument and the mute nearest at hand in the Caprean styes of tyranny and lust—was ready to despatch this new successor of the TSARS—of the Constantines—of the Byzantine Cæsars.

But, sir, I, the common libeller of great and good men, did injustice to both these legitimates; to St. Nicholas and to Cæsarovitch. I thought too ill of one of them, and too well of the other. I thought that Commodus would "show fight." But, sir, let us not despair of the Russian. In spite of Montesquieu's sneer, he "*can feel*" for a brother, at least, even *although he be not flayed alive;* except now and then, under the autocracy of the knout. He has not, indeed, yet learned "*to make Revolutions with Rose Water*"—that is the political philosopher's stone, which is yet in the womb of time, to be brought forth by some modern *Archimedes*-reformer. But he shows signs of capability that are quite encouraging. He cannot, indeed, redeem his paper, neither can the Bank of *Kentucky* redeem its paper; but the red-hot poker is replaced by a box of sweet-meats—the bow-string by a medal hung around the neck—the badge, not of Death, but of ideocy and cowardice. Commodus is brave no where, but in the arena, with kittens, and puppy dogs, and women, for his antagonists; a *veritable* master Thomas Nero—see Hogarth's progress of cruelty. An Ukase, backed by a hobby-horse, or a medal, and a box of sweet-meats; *goody goodies*, as the overgrown children say, is the full consideration paid, had, and received, for the surrender of the autocratical crown of the largest Empire in the world, and some say the most powerful—of the proud eminence of the Umpire of Europe. How vastly amiable and sentimental! A Ukase now does what was formerly done with a red-hot poker, or a bow-string; a Ukase, with a most affectionate fraternal letter, a box of sweet-meats, a hobby-horse, or a medal—as we, in our barbarous slave-holding country, do, sometimes, hang a quarter of a dollar round a child's neck to keep it in good humor—all *cooled*, however, with the blood of a few real adherents to legitimacy—in the persons of the guards of the Empire, faithful among the faithless—to make the charm firm and good. Would the gentleman from North Carolina reduce us to worse than this Russian barbarism? Will he contend, that even Judas was not entitled to the thirty pieces of silver—to the consideration money.

This is the first Administration that has openly run the principle of patronage against that of patriotism—that has unblushingly avowed, aye, and executed its purpose, of buying us up with our own money. Sir, there is honor among thieves—shall it be wanting then among the chief captains of our Administration? I hope not, sir. Let Judas have his thirty pieces of silver, whatever disposition he may choose to make of them hereafter—whether they shall go to buy a Potter's-field, in which to inter this miserable Constitution of ours, crucified between two gentlemen, suffering for "conscience sake," under the burthen of the two first offices of this Government—forced upon one of them by the forms of the Constitution, against its spirit and his own, which is grieved that the question cannot be submitted to the People—or, whether he shall do that justice to himself, which the finisher of the law is not, as yet, permitted to do for him, is quite immaterial. Judas, having done the work, ("it is finished!" No, sir, it is not finished:) was, on the principle that the laborer is worthy of his hire, entitled to all that they who employed him to do the work could give as wages; he was, at least, entitled to what they had stipulated to give, even at the eleventh hour; and, whatever promises may have been made to him, it is the bounden duty of the promiser to see that they are made good to the promisee. The gentleman from North Carolina must not complain that they are working in their vocation.—"'Tis my vocation, Hal! 'tis your vocation." Be it our vocation, sir, to call them to a more suitable vocation. I, sir, have no personal resentments against these unhappy People; these unfortunate gentlemen, as they say of every man who is unmasked—I disclaim all personal feelings. My resentments are entirely political—they are for my country's enemies, not mine. Sir, let these unhappy persons retire to the obscurity that becomes their imbecility, and befits their shame, and they shall never hear from me the language of sarcasm or reproach. I should as soon think of setting out to Paris, to scald the vermin that annoyed me there near two years ago—to have the fleas catched, cracked, or boiled, in revenge, or, in experiment, to ascertain whether or not they are lobsters. Sir, I would not "d—n even *their* souls," if they had them. I should surely be put into the Institute, for my devotion to science, and the cause of humanity.

This Panama mission, is no new thing, as I shall now proceed to show: "January 20th, 1824. House of Representatives. On motion of Mr. *Webster*, the House "resolved itself into a Committee of the Whole, on the "state of the Union, Mr. *Taylor* in the chair. It was well understood, that our present Minister to Mexico—to the Government, I presume, of Mexico—(I don't say *near* Mexico, because a man who is at a town must certainly be more than near to it)—was to offer a string of resolutions, and did offer them; but Mr. *Clay*, who was then Speaker of the House of Representatives, and who could not make a motion except in Committee of the Whole, by the rules of the House, anticipated Mr. *Poinsett* by moving this resolution, Mr. *Webster* having first enabled him to do so, by moving for the committee, whereupon Mr. *Taylor* was called to the chair. [Here a member of the Senate apprised Mr. R. that a lady, for whom he feels much respect, as he does for the whole class of ladies, was in the House. It was not Mrs. ——, for whose character Mr. R. feels peculiar admiration and reverence.] Mr. R. said, I cannot help it, sir; I shall and must go on and do my duty at every hazard, howsoever unpleasant or invidious it may be. Then, checking himself, he smiled, and asked, "Is Mrs. T. also in the House?"

"*Resolved by the Senate and House of Representatives of "the United States of America in Congress assembled*, That "the People of these States would not see, without serious inquietude, any forcible interposition, by the Allied Powers of Europe, in behalf of Spain, to reduce to "their former subjection those parts of the Continent of "America which have proclaimed and established for "themselves, respectively, Independent Governments, "and which have been solemnly recognized by the United States."

"The Committee of the Whole having resumed the "consideration of the resolution recommending an appropriation to defray the expense of a mission to Greece,

"Mr. *Poinsett*, of South Carolina, rose, and addressed the House, in a speech of some length, which "he concluded by moving the following amendment:

"*Resolved*, That this House view with deep interest "the heroic struggle of the Greeks to elevate themselves "to the rank of a free and independent nation; and to "unite with the President in the sentiments he has expressed in their favor; in sympathy for their sufferings, in "interest in their welfare, and in ardent wishes for their "success.

"*Resolved*, That this House concur in the sentiments

"expressed by the President, in relation to this hemis-
"phere, and would view any attempt to oppress or con-
"trol the free governments of America, South of us, by
"the Allied Powers of Europe, as dangerous to the
"peace and happiness of the United States; and that such
"measures as may be deemed expedient to protect them
"from the attacks of any power, other than that of Spain
"alone, and unassisted, will meet its cordial support."

[The latter resolution was withdrawn by Mr. P. in consequence of a resolution to a similar effect having been laid upon the table by the Speaker.]

I shall not read more. I say now, sir, that the House went into Committee of the Whole, on motion of Mr. *Webster*—that Mr. *Taylor* was in the chair—(I beg your attention to the names)—that Mr. *Poinsett* had resolutions to offer on the subjects of South America and Greece, in which he was anticipated by the then Speaker, now Secretary of State. I am speaking from the record—from the book. Is my date noted?—January 20, 1824. I must remark, (in passing) that a proposition was brought forward by Mr. *Webster*, at that very identical time, if my memory don't deceive me, in reference to interference of the United States in behalf of Greece. The "*nation?*"—no, sir, the United States, the People of the United States, can never forget the zeal, the more than parental zeal, with which the present Secretary of State then hovered over the resolution—aye, and over the personal and political character of the mover, (Mr. *Webster*)—with all the tender anxiety of a parent hen with her one chicken. There was full as much bustle, and the object of at least equal value; for, little things are great to little men. We all know the gentleman, (Mr. *Bartlett*) from New Hampshire—Portsmouth, New Hampshire—unfortunate Portsmouth!—*haud ignarus mali, miseris succurrere disco*—thrice unhappy Portsmouth—*infelix Dido*—she who stands again almost alone, as in the days of John Langdon, for our rights—how was she treated on that occasion, and by a former Representative of Portsmouth too, as well as by his new ally—in defence of what? In defence of the proposition of Mr. *Webster*, and of his political character, as a federalist of the true Boston stamp; and by whom? By the then Speaker, now Secretary of State. Now, sir, I do not pretend to be a man of more than ordinary sagacity. I never pretended to be able to see farther into a millstone than other People, and not so far as those that look through the eye—but I did, immediately after this transaction, write a letter to a friend, which letter, with its postmark and date, can now be produced, stating that, according to my view of things, an alliance, offensive and defensive, had been got up between Old Massachusetts and Kentucky—between the frost of January, and young, blythe, buxom, and blooming May—the eldest daughter of Virginia—young Kentucky—not so young, however, as not to make a prudent match, and sell her charms for their full value. I had been an eye and ear witness of the billing and cooing between the old sinner and the young saint, and had no doubt that the consummation would, in a *decent* time, be effected. I wrote that letter then, in the month of January, 1824; and, therefore, when I came here in the month of December, 1824, on my return from Europe, I wanted no ghost to tell me about the future movements of certain "*distinguished public characters*," and consequently of the evolutions of the forces, whether the heavy phalanxes, or active legions, under their command. I wanted nobody to tell me, what I thought it required not more than half an eye to see. I put myself, therefore, calmly into winter quarters, at Dowson's, No. 2, and hybernated very quietly during the session, taking no part in what was done, legislatively or otherwise. Almost the only time that I took a part, I was acting, like the rest, a very selfish part; I was taking care of number *one*; and having put number one *reclus in curia*, I left number two and number three and four to play out the game, and to divide the spoil in the ratio that they might deem equitable—to have "a settlement upon equitable principles—not at the Treasury—such accounts could never pass there—but on the new fashioned principles—"equitable principles," by which accounts of anomalous character, without voucher or law, except the act of settlement, are cast and paid out of our money—the People's money.—Here were the knowing ones addling their pates, and cudgelling their brains, and wearing out their shoes, and wasting their money, their whole *per diem*, some of them in hackhire, driving from one end of this interminable and desolate city to the other, intriguing about the Presidency; trying, perhaps, to make some dirty bargain for the Presidency, when the question was settled as far back as in January, 1824. I have not proof positive, but I think I have what the lawyers call a *negative pregnant*, that this election was not conducted as it ought to have been conducted—that it was managed, not conducted at all. The great Mr. Pitt once said in his place in Parliament, that if any man, gentle or simple, should put the direct question to him, whether or not a corrupt influence was used in elections there and exercised ("through the means of patronage") "over both Houses of Parliament?"—(aye and over the body of the People too, and over the press)—he should laugh in such gentleman's or simpleton's face, and say, "Sir! is not so."****

[Here ends Mr. R.'s revision of these remarks. What follows is furnished from the notes of our Reporter.]

I intended, sir, to have gone into some other considerations more at length. I must reserve them for a future time. I believe that they have vital warmth in them sufficient to preserve their animation till that time shall arrive. I believe they will stand a Russian frost.

Now, sir, the election being over, about which I shall say nothing—I bring no sort of innendo against great men—great let me call them, since they have conquered me, my constituents, my People—and so, having conquered that People, that is the affair of that People—I deal with them only as the half Representative of the State of Virginia—but there are some curious coincidences, sir, in regard to this matter. Not only do we find one of these gentlemen, almost the avowed confidential organ of the Executive and Manager of the House of Commons—I beg pardon—the House of Representatives—another, in the Secretaryship of State; a third, in the Speaker's chair; but we find the fourth, Minister to Mexico. Now, sir, what better could be done for a gentleman, avowedly well qualified for the mission, than to make him some reparation for this cruel decollation of his motion? The reparation was due to him—it has been made. At that time—I mean in 1824—I took something of an active part in the House of Representatives; I was forced on in the Greek question, and we put the Greeks on the shelf, mover and all—*pro hac vice* I mean. But at that time the mover of this resolution, which I have just read, about South America, says, in reply to the gentleman from Virginia, to whom it does not become me to allude if I could possibly avoid it, that, when that discussion should come up, he pledged himself to show, I don't know how many fine things; and the gentleman said he had been too long acquainted with his promises to rely on them, and he looked for performance—which never came from that day to this—for that resolution has never been called up—it slept—it took a dose of Turkey opium—a dose from the Levant, brought in a Greek ship—it fell sound asleep, and has not waked from that day to this—did I say from that day to this? Yes sir. It waked up like the man in the Arabian Nights Entertainments, who, having fallen asleep a groom, waked up in the palace of the Grand Vizier, with the Vizier's daughter for his wife—it waked up in the Department of State—while the friendly genius who had metamorphosed him, had put the bridegroom in a place not to be named before gentlemen, much more before ladies.

So much for the Presidential question, out of the House; now, one word of coming in. Sir, it was on that very oc-

casion—[Here Mr. HAYNE said something, in a low voice, to Mr. R.]—I beg pardon, I must go on. Well, sir, this alliance between the East and the West being consummated by a new species of Congress—not the Congress between the sexes, but a different one—this alliance being consummated, do you wonder that the President of the United States should, from his new ally, learn to play at the political game of brag? The gentleman from North Carolina complains of the President coming here with a plan of his powers: he imitated the wise man at Rome, who *could* jump thirty leagues at a leap, but took care not to go through it there—they buried the hatchet, and, with it, the pledges they had given to prove each other to be —what, I shan't say.

Sir, in what book is it—you know better than I—in what parliamentary debate was it, that, upon a certain union between Lord Sandwich, one of the most corrupt and profligate of men in all the relations of life, and the sanctimonious, puritanical Lord Mansfield, and the other ministerial leaders—on what occasion was it, that Junius said, after Lord Chatham had said it before him, that it reminded him of the union between Blifil and Black George? I, who am no professional man, but only a planter: I, whose reading has not gone very deep into black letter, though I do know some little of that too: I do believe there is more wisdom—after the Bible, Shakspeare, and Milton—I do believe that, in Don Quixote, Gil Blas, and Tom Jones, there is contained a greater body of wisdom than is to be found in the same number of pages in the whole collection of English and foreign literature. I might have added to them, the famous Thousand and One Nights: for, though they are fabulous, they are human nature, sir. It is true it is Eastern nature, but it is the same thing that Fielding served up—it is human nature. I remember very well, one of the numerous heroes of Gil Blas, the son of Coscolina, our old friend Scipio—I recollect very well, an adventure that befel him. Towards the close of that inimitable and immortal romance, Scipio is called on to tell the story of his life. He begins by saying that he—it is a remarkable coincidence—he was born in infancy to indigence, ignorance—and, sir, the son of Coscolina might have kept up the alliteration, by adding, to impudence; and that, if he had been the author of his own being—if he had been consulted on the occasion, he would have been a grandee of the first class. Who doubts it? Who doubts Scipio or any one else, when he says he should wish to have been born of a good family, to a good estate, and to have been brought up in good habits, and with the manners and principles of a gentleman? Who doubts it? It was Scipio's misfortune that he was not; and I would take even Scipio's evidence in this case, or any other man's. Among other adventures that befel the son of Coscolina, he entered into the service of a certain Don Abel, who carried him to Seville, in Andalusia; and, on a certain occasion, coming home with very bad luck from a card table—*that* will sour the temper even of the mildest—I have seen ladies themselves not bear heavy losses at cards very well—he gave Scipio a box on the ear, because he had not done something which he had not ordered him to do, but which it was the part of a good servant to have done, without being ordered. Scipio goes to tell his story to a bravo, and tells him that his master is going to leave Seville, and that, as soon as the vessel runs down the Gaudalquiver, he shall leave him. If this is your plan of revenge, says the bravo, your honor is gone forever—not only do this, but rob him—take his strong box with you. Scipio, at that time, had not conceived the atrocious idea of adding robbery to breach of trust; but he agreed to the proposition. But, as they were descending the stair-case, the bravo—strong as Hercules, to carry off other men's goods—with the strong box on his shoulders, they are met by Don Abel. The bravo puts down the coffer, and takes to his heels, and Scipio awaits the issue of his master's wrath. He can tell his story and put a face on the matter. What are you doing with my coffer? I am going to take it to the ship. Who told you to do so? Nobody. What is the name of the ship? I don't know; but, having a tongue in my head, I can inquire. Why did you carry my coffer off? Did you not chastise me the other day for not having done something without being ordered? Did not I know you were about to embark, and was it not my duty to see your luggage safe on board the ship? Abel's reply was, "My good friend, go about your business I "never play with those who sometimes have a card too "many, and sometimes a card too few." It shall be my business (said Mr. R.) to prove, at a future time, that this is the predicament in which our present Ministry stand; whereas, on a certain occasion, they had a card too few, on another, they had a card too many, or *e converso*. I believe I can prove it both ways. I, like Don Abel, am ready to bid them go their ways in peace, and to determine that they shall never play again, with the power and the money of the People that I represent, with my leave. I say I will prove, if the Senate will have the patience to listen to me—I will prove to their satisfaction that the President has Jonathan-Russelled himself. I have as good a right to coin compound verbs as other People. I say the President of the United States has Jonathan-Russelled himself—has shown that, in the execution of a great public trust, he has done that which has damned Jonathan Russell to everlasting infamy, and enabled him to put his foot on Russell—to clap an extinguisher on him. If I don't prove it—it is a pledge that shall be redeemed—not like the pledge about the navigation of the Mississippi—not like the pledge about this Spanish American resolution—it shall be redeemed, or I will sit down infamous and contented for the rest of my life. And how, sir, has he Jonathan-Russelled himself? He has done it by the aid and instrumentality of this very new ally. I shall not say which is Blifil and which is Black George. I do not draw my pictures in such a way as to render it necessary to write under them "this *is* a man, this is a horse." I say this new ally has been the means of Jonathan-Russelling him; and for what? Sir, we hear a great deal about the infirmity of certain constitutions—not paper constitutions—we hear a great deal of Constitutional infirmity—seven years is too long for some of us to wait; and if the President can be disposed of at the end of three years, then, being Jonathan-Russelled, may they not, by some new turning up of trumps, expect to succeed him? I shall suggest to my good friend from Missouri, whether there is not in fact a Trojan horse within the walls of the Capitol—no, not of the Capitol, but of the Executive Palace. I would suggest to him whether there is not an enemy in the camp, who, if I should fail in blowing any body sky high, will put them—below not only the sky, but the ground—bury them. But, whatever the motive may have been, the fact is as I have stated it, that there is a discrepancy in the communications of the Executive to Congress; and I will state another thing when I come to it. It is, that I do believe—though I do not pledge myself to prove—but I will pledge myself to make out a very strong case, such as would satisfy a jury in the county of Charlotte—and I would put myself on that jury, and be tried by God and my country—I then say, sir, that there is strong reason to believe that these South American communications, which have been laid before us, were manufactured here at Washington, if not by the pens, under the eye of our own Ministers, to subserve their purposes. Sir, though in one respect, I am like the great Earl of Warwick the King-maker, and a little unlike him in unmaking one King—though between two hawks I can tell which flies the higher pitch—between two dogs, which has the deeper mouth —between two horses, which bears him best—between two blades, which hath the better temper—between two girls, which hath the merrier eye—yet, in matters of law,

I am like the unlearned Earl Goodlack. One thing has my attention been turned to—language—words—the counters of wise men, the money of fools—that machine and material with which the lawyer, the priest, the doctor, the charlatan of every sort and kind, pick the pocket and put the fetters upon the planter and upon the slave-holder. It is by a dexterous cutting and shuffling of this pack that the business is done. They who can shuffle the whole pack, are often quite ignorant of any foreign language, even of their own, and, in their attempts to write and talk finely, they only betray their poverty, like the fine ladies in the Vicar of Wakefield, by their outrageous attempts to be very genteel. The first thing that struck me in these documents was, how wonderfully these Spaniards must have improved in English in their short residence in the United States. It reminded me of a remark in one of Scott's novels, in the part about old Elspeth of the Craigburnfoot: "Aye," says old Edie, "she's a well educate "woman; and an' she win to her English, as I hae heard "her do at an orra time, she may come to fickle us a'." These Spaniards have got to their English, and we are all fickled. But I shall be told—not as I have been told—but as I am prepared to be told—because I have kept this thing locked up here to bring it out here in this Senate—I shall be told that these English letters were translations from the Spanish, made in the office of the Secretary of State. I hope not—I should be sorry to see any such tokens of affinity, and consanguinity, and good understanding; but they have the foot-prints and the flesh marks of the style of that office, as I shall show on a future occasion. I cannot show it now—it would be unreasonable—but show it I will, and in a manner that shall satisfy any honest jury on the South side of the Ohio, and on the South side of Mason and Dickson's line—any honest jury—and I will bring the presumption so strong, that he must possess more than Christian charity (which covereth all things) who will deny that there exists strong presumptive evidence—and, sir, against the honor of a man, as against the honor of a lady, strong presumptive evidence is a fatal thing—it is always fatal when that presumptive evidence cannot be cleared up and done away. Do you read the letters of these South American Missionaries over again, and compare them with the tone of the messages and letters which we have received—put them in columns one against the other, and mark the similitude. My suspicious temper may have carried me too far—if it has, I beg pardon—but I will show enough—not a handkerchief—not to justify the jealousy of Othello—yet I believe that the jealousy might have been pardoned to the noble Moor, certainly by me, had he not been a black man; but the idea to me is so revolting of that connexion, that I never can read that play with any sort of pleasure—see it acted I never could.

Now, sir, John Quincy Adams coming into power under these inauspicious circumstances, and with these suspicious allies and connexions, has determined to become the apostle of liberty, of universal liberty, as his father was, about the time of the formation of the Constitution, known to be the apostle of monarchy. It is no secret—I was in New York when he first took his seat as Vice President. I recollect—for I was a school boy at the time, attending the lobby of Congress, when I ought to have been at school—I remember the manner in which my brother was spurned by the coachman of the then Vice President, for coming too near the arms blazoned on the scutcheon of the Vice-Regal carriage. Perhaps I may have some of this old animosity rankling in my heart, and, coming from a race who are known never to forsake a friend or forgive a foe—I am taught to forgive my enemies, and I do from the bottom of my heart, most sincerely, as I hope to be forgiven; but it is *my* enemies—not the enemies of my country: for, if they come here in the shape of the English, it is my duty to kill them; if they come here in a worse shape—wolves in sheep's clothing—it is my duty and my business to tear the sheep skins from their backs, and, as Windham said to Pitt, open the bosom, and expose beneath the ruffled shirt the filthy dowlas. This language was used in the House of Commons, where they talk and act like men—where they eat and drink like men, and do other things like men—not like Master Bettys. Adams determined to take warning by his father's errors, but in attempting the perpendicular, he bent as much the other way. Who would believe that Adams, the son of the sedition-law President, who held office under his father—who, up to Dec. 6, 1807, was the undeviating, staunch adherent to the opposition to Jefferson's Administration, then almost gone—who would believe he had selected for his pattern, the celebrated Anacharsis Cloots, "orator of the human race?" As Anacharsis was the orator of the human race, so Adams was determined to be the President of the human race, when I am not willing that he should be President of my name and race; but he is, and must be, till the third day of March, eighteen hundred and—I forget when. He has come out with a speech and a message, and with a doctrine that goes to take the whole human family under his special protection. Now, sir, who made him his brother's keeper? Who gave him, the President of the United States, the custody of the liberties, or the rights, or the interests of South America, or any other America, save only the United States of America, or any other country under the sun? He has put himself, we know, into the way, and I say God send him a safe deliverance, and God send the country a safe deliverance from his policy—from his policy. Sir, it is well known to you, that, up to the period of getting this message from Adams, I was the champion here of his rights as a co-ordinate branch of the Government. I was the person who rose immediately after the gentleman from New York, and protested against our opening the doors, for reasons with which I will not trouble the Senate. On the question of a call on the Executive, for other information than the treaties, &c. I said, the President is a co-ordinate branch of this Government, and is entitled to all possible respect from us. It is his duty to lay before us information on which we must act—if he does not give us sufficient information, it is not our business to ask more—I never will ask for more, and to be given confidentially, &c. [Mr. R. here briefly adverted to the history of the resolutions in the secret session.] I did maintain the rights of the President, (said Mr. R.) but from the moment he sent us this message—from that moment, did my tone and manner to him change. From that moment was I an altered man, and I am afraid, not altered for the better. [Here Mr. R. read the Executive Message, of the 16th February, as follows:]

"In answer to the two resolutions of the Senate, of "the 15th instant, marked (Executive,) and which I have "received, I state, respectfully, that all the communica- "tions from me to the Senate, relating to the Congress at "Panama, have been made, like all other communica- "tions upon Executive business, in *confidence*, and most "of them in compliance with a resolution of the Senate "requiring them confidentially. Believing that the es- "tablished usage of free confidential communications be- "tween the Executive and the Senate, ought, for the "public interest, to be preserved unimpaired, I deem it "my indispensable duty to leave to the Senate itself the "decision of a question"—Sir, (said Mr. R.) if he would leave to the Senate the decision of the question, I would agree with him; but the evil genius of the American House of Stuart prevailed—he goes on to say, that the question "involves a departure, hitherto, so far as I am "informed, without example, from that usage, and upon "*the motives for which*, not being informed of them, I do "not feel myself competent to decide." If this had been

prosecuted for a libel, what jury would have failed to have found a verdict on such an inuendo? that we were breaking up from our own usages, to gratify personal spleen? I say nothing about our *movements*, because he was not informed of them; the inuendo was, that our *motives* were black and bad. That moment did I put, like Hannibal, my hand on the altar, and swear eternal enmity against him and his, politically. From that moment I would do any thing within the limits of the Constitution and the law: for, as Chatham, said of Wilkes, I would not, in the person of the worst of men, violate those sanctions and privileges which are the safeguard of the rights and liberties of the best;—but, within the limits of the Constitution and the law, if I don't carry on the war, whether in the Peninsula or any where else, it shall be for want of resources. Mr. R. went on to speak of the motions to which this message of the President's had given rise; one of which described the nature and character of the message. To the resolution, said he, I objected. I said, I would have all the nakedness of the Greek statue; I would even take off the skin, that the muscles might be developed, and that we might have the naked fact. After further observations on the resolutions moved in conclave on this subject, Mr. R. repeated what he had then said, in reference to the message of the President. Who made him a judge of our usages? Who constituted him? He has been a professor, I understand—I wish he had left off the pedagogue when he got into the Executive Chair. Who made him the *censor morum* of this body? Will any one answer this question?—Yes or no?—Who?—Name the person. Above all, who made him the searcher of hearts, and gave him the right, by an inuendo black as hell, to blacken our motives?—blacken our motives—I did not say that, then—I was more under self command; I did not use such strong language—I said if he could borrow the eye of Omniscience himself; and look into every bosom here—if he could look into that most awful, calamitous, and tremendous of all possible gulfs, the naked unveiled human heart—stripped of all its coverings of self love—exposed naked as to the eye of God—I said if he could do that, he was not, as President of the United States, entitled to pass upon our motives, although he saw and knew them to be bad. I said, if he had converted us to the Catholic Religion, and was our Father Confessor, and every man in this House at the footstool of the confessional had confessed a bad motive to him, by the laws of his Church, as by this Constitution, above the law and above the church, he, as President of the United States, could not pass on our motives, though we had with our own lips told him our motives, and confessed they were bad. I said this then, and I say it now. Here I plant my foot—here I fling defiance right into his teeth, before the American People. Here I throw the gauntlet to him and the bravest of his compeers, to come forward and defend these miserable dirty lines: "Involving a de- "parture, hitherto, so far as I am informed, without ex- "ample, from that usage, and upon the motives for "which, not being informed of them, I do not feel myself "competent to decide!" Amiable modesty! I wonder we did not, all at once, fall in love with him; and agree, *una voce*, to publish our proceedings—except myself—for I quitted the Senate ten minutes before the vote was taken. I saw what was to follow—I knew the thing would not be done at all, or would be done unanimously. Therefore, in spite of the remonstrances of friends, I went away, not fearing that any one would doubt what my vote would have been, if I had staid. After twenty-six hours' exertion, it was time to give in. I was defeated, horse, foot, and dragoons—cut up—and clean broke down—by the coalition of Blifil and Black George—by the combination, unheard of till then, of the puritan with the black-leg.

Having disposed of this subject, I shall say one word more, and sit down. I said, on the subject already adverted to, let the Senate take a dignified stand—don't let them say, we sent to you for that thing, you sent us this; therefore, we shall not go any farther—we shall stop. Let them behave like Romans, like Conscript Fathers. I am sorry I was prevailed on to withdraw my motion, even to make way for that of the gentleman from Portsmouth, New Hampshire. But she once went with us—we rode through the equinoctial gale together—Portsmouth overcame the first Adams, and Portsmouth, New Hampshire, I trust, will overcome the second. I should not have made this allusion but for a toast I heard lately of from a friend of mine—"Those who fell with the first Adams rise with the second." Very true—*c'est vrai*. Agreed—they who fell under the wrath and desperation of the first Adams—the dust and ashes men—have risen too. I saw one of them this morning. We too have risen, and the strife is to come. North Carolina has started forth boldly and manfully, like the fine fellow at the battle of the Nile—I believe he was an American—he led the van, and I humbly follow in the wake. It is skirmishing with the light armed troops—with the Voltigeurs—I hope we shall here form a phalanx, a legion—I hope to see, not only Hector in the field, but Troilus, and a host of worthies with him. If not, we too shall have to sing *Fuit Ilium*—we too shall have to sing, Where the Capitol stood, there grows the harvest. We must put our shoulders to the wheel—having put our hand to the plow, we must not fall back. How men can find time to be sick I can't conceive—I must be dead before I could refrain at a call like this.

I never write out speeches. I am glad I am singular in that respect. But I would not lose those that have been published, and those that are about to be published very soon, (on the Panama mission,) for all the books that have been written in defence of Constitutions—that on the British Constitution (De Lolme) included. We poor narrow-minded wretches believed that it was not our business to go on a crusade to Terra del Fuego, to prevent somebody making a settlement where man cannot live, or to the North Pole. Our business is to attend to the interests and rights of the American Confederacy here. Like Hector's wife, who was found spinning amongst her maids, we did believe that the care of our household was our main concern. The card-table has gone out of fashion now—even lotteries are denounced—I don't mean such a one as that granted to Jefferson by the Legislature of Virginia—I should have voted for that bill if I had been there—Horse-racing and billiards are no longer in vogue—all these having been discarded, what is got up in their place? The same meddling, obtrusive, intrusive, restless, self-dissatisfied spirit shows itself in another way. The ennui breaks out in a new place—the *tedium vitæ* appears in Sunday Schools, Missionary Societies, subscriptions to Colonization Societies—taking care of the Sandwich Islanders, free Negroes, and God knows who. It is the same spirit which drove men from home to the card-table, to the billiard table, and the horse race. It is a matter of fact, that a gentleman told me, that, going to visit a very pious lady and gentleman in Virginia, the little Negroes were so ragged as to be obliged to hide for shame, and the women of the family were employed in making pantaloons and jackets for the free Negroes at Liberia. Whenever any of these Ministers, male or female, come to me with their complaints and petitions for aid, I never can forget Gil Blas and Senor Manuel Ordonnez, who got rich and lived comfortably by administering the funds of the poor. If we cannot get here an account of the money we vote by appropriation, I should like to see a settlement of the accounts of the Otaheitans. I should like to see the vouchers of the expenditures for these Sandwich Islanders, and these Liberian People—I am afraid we should have to settle them on equitable principles—they would never pass the Treasury. When I cannot get an account from my own steward, as a private man; when, as a public

man, I do not know what has become of the millions of the People's money; should I not be the veriest ass that ever existed, to expect a proper application of money when there is half the diameter of the globe between me and the applicant? I hold out this as a hint to all benevolent gentlemen and ladies, whose good hearts are imposed on for the support of sturdy beggars, who would rather beg than work. Begging is gone out of fashion for one's self—it is for some miserable establishment—we must convert the Catholics at Panama—we must convert the Jews—"Give me the money, my dear madam, and I will see it properly applied." We are now doing in this country what has been done in every country under the sun—as the old cheats wear out, new ones spring up. As the old Faro Banks wear out, Banks of Discount spring up. When, in Virginia, we had billiard tables, and cards, and races, and not half the population we now have, I could produce you two honest men where we can now show one. We have no Faro Bank, no Billiard table—we have hardly a Race—we have got too good to run races—but we are not too good to embezzle the money entrusted to us, or to do any thing that is covered up under the garment of Religion. Hypocrisy is the only sin that walks abroad that cannot be discerned, except by the eye of God alone; yet, when you see a man's whole conduct at variance with his religious profession, you will not be defective in charity alone if you do not come to the conclusion that, like Manuel Ordonnez, he is pretty much of a cheat.

I find, sir, that the regular speech I had been preparing for the Senate, has not arrived at its due term of parturition. But, in due time, I trust it will make its appearance. I will trespass no longer on the time and patience of the Senate—but there is more behind—come out it shall—redeem the pledge I will—I will show that this Panama mission is a Kentucky cuckoo's egg, laid in a Spanish American nest. I will show that the President of the United States and his Ministers have Jonathan-Russelled the Congress of the United States—that he has held one language at one time, on the same subject, to one House of Congress, while to another House he has held a different language on the same subject. I will not bring it here in notes. I will have the letters printed in parallel passages, that they may be compared with the style of the Department of State—whether the Department of State be, in this case, the President of the United States, or whether it be the officer who presides over that Department, it will show sufficient to satisfy any man of common penetration that these things were manufactured here, and that this Don Salazar, or whatever he is, had just as much hand in it as the Grand Inquisitor had in the commission with which Don Raphael and broker Ambrose de Lamela, in company with Gil Blas, made a visit to the Jew, and rifled his coffers. I will prove to any man—they may write what Spanish they please—carry it to an indifferent translator, and there shall be no similarity in style, grammatical construction, or any thing else, between the letter they write, and the letter which it is alleged they have written, and which has been translated and sent to us. Why were not the originals sent? Is the name of the translator given? No. They are not sent as purporting to be translations.

This is a strange world. The man who is whistling over the furrow, at the time he is turning in corn to give bread to his wife and family, knows no more of what is doing here than a man in South America. He does not know that they who never did plant corn, or never shall plant corn again, are to take the best part of his crop. He does not know, while his horses are poor because he cannot afford to keep them fat, that horses are driven in this City that are fed out of his crib—he does not know this, because you get the money from him *turifically*—he is *tarified*, as we say in Virginia. He is taxed for all the real necessaries of life—and how does his money go? I wish he could come here to see. If every man in the United States could spend one day in Washington—if every woman could spend one hour here—and God forbid that my wife or daughter should spend more—then you would have salvation for the Republic. It must be some special interposition of Providence, though working by secondary causes, that will snatch this nation from the downhill progress it is making, not merely to bankruptcy, but to perdition. We may flatter ourselves as long as we please, and think, and talk, and brag, and boast, in fourth of July orations and others, of being the most enlightened People under the sun—we may be all that, and yet be radically ignorant. We are going the road that has ruined nations before us—we are copying, as far as we are able, the worst parts of the British system, leaving out the best—and who are we, that we should be exempt from the law which the Author of the being of all mankind has imposed on them? What is the history of man, and what is he? The young lady who thinks so highly of her Philander, her Werter, her Sylvio, who will go with him to a certain point—who will go with him to the bottom of the garden, and listen to the nightingale and the mocking-bird, and talk sweet sentiment—but if she goes so far as that she is lost—she had much better go to her grandmama, and not Philander. So it is with a nation—the man who says, this is but a trifle—a peccadillo—I was absent for a few days from the Senate, but none will think of it—*c'est le premier pas qui coute*—the moment a man leaves the path of religion or virtue—the moment he takes Paley and the Jesuits to ascertain how far he may go on the border line of villany without overstepping it—that man, or woman, is lost. Our situation is awful beyond conception—we are in a state of utter ignorance of ourselves, and perhaps I may be supposed at this time worrying the patience of the Senate, when they would rather I should take my seat. It is my duty to leave nothing undone that I may lawfully do, to pull down this Administration. I see it, and only wait till the third of March, 1829—this month three years—and, if the People do not step in to correct the procedure, I am much mistaken if I ever take their part again—and why, sir? I do not think the honor of a daughter is to be preserved at the expense of bars and bolts: for, where the mind is polluted, what care I who has the worthless possession of the body? He who goes out *animo furandi*, is a thief, whether he exacts a purse or not. So it is with a nation. They who, from indifference, or with their eyes open, persist in hugging the traitor to their bosom, deserve to be insulted with different messages than this; they deserve to be slaves, with no other music to soothe them but the clank of the chains which they have put on themselves and given to their offspring.

Mr. BRANCH then varied his motion to the following form:

"The President of the United States, in his opening Message at the commencement of the present session, informed Congress that invitations to this Government to attend and take part in the deliberations at the Congress of Panama had been given and accepted, and that Ministers on the part of the United States would be commissioned: And, having further, in his Executive communication to the Senate of the 26th of December last, accompanying the nomination of Richard C. Anderson, of Kentucky, and John Sergeant, of Pennsylvania, to be Envoys Extraordinary and Ministers Plenipotentiary to the Assembly of American Nations at Panama, and William B. Rochester, of New York, to be Secretary of the Mission, thus expressed himself: "Although this measure was "deemed to be within the constitutional competency of "the Executive, I have not thought proper to take any "step in it before ascertaining that my opinion of its ex"pediency will concur with both branches of the Legis"lature," &c. Therefore,

Resolved, That, in the opinion of the Senate, the proposed measure was not within the constitutional compe-

tency of the Executive. And, also, *Resolved*, As the opinion of the Senate, inasmuch as the claim of power thus set up by the Executive, might, if suffered to pass unnoticed by the Senate, be hereafter relied upon to justify the exercise of a similar power, they owe it to themselves, and to the States they represent, to protest, and they do hereby, solemnly but respectfully protest, against the same."

On motion of Mr. MILLS, the resolution was postponed to, and made the order of the day for, Monday next.

AMENDMENT OF THE CONSTITUTION.

The engrossed joint resolution proposing to amend the Constitution of the United States, so as to render any person ineligible for the Presidency after a second term, was read the third time, and the question stated on its passage.

Mr. RANDOLPH said, he hoped he should not be called on to vote on the resolution now: for, if so, he should be obliged to vote against it. He was opposed to all amendments of the Constitution, of every sort and kind, and he hoped he should not be called on now, to vote on this. He would vote to restore the Constitution to what it was, because, in stopping up one hole we made two. He should therefore move to lay the resolution on the table, at least till to-morrow.

Mr. DICKERSON objected to laying the resolution on the table, unless the gentleman from Virginia wanted time to examine into its merits—and was about to add some remarks, when he was reminded by the CHAIR, that the motion now pending, to lay the resolution on the table, did not admit of debate, and Mr. D. took his seat.

Mr. RANDOLPH then rose and said: I will tell the gentleman at once—it is unreasonable, after having spoken an hour and thirty-five minutes, to speak again to-day—I will tell him at once, in my plain, old-fashioned, outright, downright, and I hope, upright manner, that I am against all amendments of the Constitution that are nugatory: they are therefore hurtful. I believe the Constitution to be better now, than it would be with this amendment. I believe that we have got this thing on the very footing of security: this is my firm belief. Your tenure now is copyhold—with a *fine certain*, and that fine is the public indignation against any man who would attempt to break the custom of the manor. You are not obliged to resort to title deeds, in which the lawyers can and will find a flaw—it is equal to freehold, or better. I put up no fences against usurpation, made up of paper or parchment. Power is the only thing that limits power. This thing will go back again to the blue book, and the articles of the Constitution *are* so numerous, that nobody now knows what the Constitution is. A Constitution which the People every day exercise by serving as jurors, as magistrates, by electing their Representatives, by claiming the privilege of the writ of habeas corpus,—this is a free Constitution; but a Constitution on paper, which leads us to inquire what is the Constitution—this is a Constitution which some quibbling lawyer, or quibbling planter, or merchant, or artizan, makes the paper speak in order to curry favor with People in power. I am for *ne quid nimis*—for the old doctrine of doing nothing—for a wise and masterly inactivity about the Constitution. I am almost glad the gentleman objected to my motion, because I shall be able to supply what I just now omitted to say. We altered the Constitution to guard against that scoundrel Aaron Burr, though not greater than him, who, after that event, formed the union of honest men of all parties. We altered the Constitution to guard against Aaron Burr—we altered it, and what sort of an alteration was it? It did guard against him; against whom there was no necessity to take any precaution at all, for he was *civiliter mortuus*—he was politically dead; but in this general resurrection of the dead; in this gathering together of the dry bones, I do not see why he may not be dug up and placed in office as well as some other people. The true evil consists, not in the Constitution—I am no worshipper of this Constitution—I think it was made by men, and at an evil time, when the great laxity of the old system had begot a great itch for an energetic government. But suppose every time that a man was to meet with a dishonest man, he went home and took a dose of calomel; it is the alterative of his constitution—how long would his constitution stand? Every time any thing happens in this House or the other House, to disappoint this wish or that wish, take a little more of the blue pill—of the blue book, [holding up a copy of the Constitution, bound in blue paper.] I would put the Constitution back to where it was, because every alteration made in it—except the amendments at the end—and I am not sure they do any good—I wish these amendments and provisions *ex abundanti cautela* were not in the Constitution—it is their being there which has given a color to the claims and usurpation under the Constitution. If I run a fence around my field, leaving down so many pannels, I might as well have no fence at all: So it is with these cautions on the Constitution—The moment any thing happens, call in the doctor and give a little more medicine. We have now got the thing on a safe footing; and because it is so, I don't want it any better—a good title is good enough for me—I don't want a better. I hold my land under the order of the King in council, and perhaps that is the reason that Orders in Council did not appear so terrible to me as they did to other people, and that I was not in favor of going to war about them. Do you think I would surrender this title to take another from the War Office, engrossed on the fairest parchment that ever came from that office? If my title was originally bad, it is now good by prescription—the best possible title.

The moment this resolution shall not pass, what is the inuendo then? Sir, the resolution is not going to pass—and if it does not, where are you? Just where you were. It is as bad as to say, you will go into jail to be let out again; why not stay out? You go into the Constitution that it may be amended; why not amend it before you go into it?—that would be the part of wise men. I will vote for no alteration of the Constitution that does not take away some power from the General Government specifically to give it to the States.

The States have usurped one power from the General Government, which I should be willing to take from them, that is, the banking power. I would take it from the States—but it should be on the condition that it is taken from the General Government also. I shall not agree that you shall do it when the States shall not. The Constitution is just as safe in that behalf—the third election of any President—as the Rock of Gibraltar; and it would be just as wise in the British Government, instead of looking at home to their paupers and misery, to place the whole of their care on Gibraltar. It would be just as wise, as in their wisdom, instead of going to Ireland, they take care of the New Zealanders, the Otaheitans, and the Sandwich Islanders. If the question is pressed, vote against it I will.

Mr. DICKERSON again rose, but, it not being in order to debate the question, he requested Mr. R. to vary his motion to a postponement until to-morrow, which Mr. R. assented to; and

The resolution was, accordingly, postponed until to-morrow.

FRIDAY, MARCH 31.

No legislative business of importance was transacted this day. The Senate adjourned to Monday.

MONDAY, APRIL 3, 1826.

AMENDMENT OF THE CONSTITUTION.

The joint resolution proposing to amend the Constitution so as to prohibit any person from being elected Presi-

dent of the United States for more than two terms, was called up by Mr. DICKERSON, and the question was stated on its passage.

Mr. RANDOLPH rose and opposed the resolution in a speech of three hours.

The question was then taken on the passage of the resolution, and decided in the affirmative, as follows:

YEAS—Messrs. Barton, Berrien, Branch, Chandler, Chase, Cobb, Dickerson, Findlay, Harper, Hayne, Hendricks, Holmes, Johnson, of Ken., Kane, King, Lloyd, Macon, Marks, Mills, Noble, Reed, Rowan, Ruggles, Sanford, Smith, Tazewell, Thomas, Van Buren, White, Willey, Williams, and Woodbury—32.

NAYS—Messrs. Benton, Eaton, Edwards, Johnston, of Lou., Randolph, Robbins, and Seymour—7.

So the resolution, having two-thirds of the votes in its favor, WAS PASSED, and sent to the House of Representatives for concurrence therein.

The Senate then, on motion of Mr. SMITH, resumed the consideration of the bill "further to amend the act of March, 1799, to regulate the collection of duties on imports and tonnage."

Some further amendments being made to the bill, (adding the words "in addition to the liabilities to which he (the Collector) is now subjected") Mr. LLOYD said his objections to the bill were now removed; and

The bill was ordered to be engrossed for a third reading.

TUESDAY, APRIL 4, 1826.

DUTY ON SALT.

The Senate then resumed the consideration of the resolution reported by the Committee on Agriculture, proposing to repeal the duty on imported Salt.

Mr. HOLMES moved to strike out the obligatory instructions "to report by bill," and insert, "to inquire into the expediency of providing," the effect of which would be, to leave the Committee of Finance a discretion on the subject, instead of instructing them specifically to report a bill; and after a discussion of near three hours' duration, between Messrs. KING, LLOYD, SMITH, HOLMES, BRANCH, FINDLAY, WOODBURY, SANFORD, HAYNE, RANDOLPH, MACON, and CHANDLER, the question was taken on Mr. HOLMES' amendment, and carried, by the following vote:

YEAS—Messrs. Barton, Bell, Benton, Bouligny, Chandler, Chase, Clayton, Dickerson, Eaton, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnson of Ken. Johnston of Lou. Kane, Lloyd, Marks, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Buren, Willey—28.

NAYS—Messrs. Berrien, Branch, Cobb, Harper, Hayne, King, Macon, Randolph, Reed, Rowan, Tazewell, White, Williams, Woodbury—14.

Thus amended, the resolution was agreed to.

WEDNESDAY, APRIL 5, 1826.

The Senate proceeded to consider, as in Committee of the Whole, the bill "for removing the existing obstructions in the river Savannah."

[This bill appropriates the sum of $50,000, to be applied, under the direction of the Secretary of the Treasury, for removing certain hulks sunk in the river Savannah during the Revolutionary War, for the defence of the city.]

Mr. LLOYD (the Chairman of the Committee on Commerce) explained the present situation of the river Savannah, and the injurious consequences which resulted to the extensive commerce with the City of Savannah, from the obstructions formed by the hulks which had been sunk, and the sand which had accumulated on them. He dwelt upon the advantages which would result to the commerce of the United States at large, by the removal of these obstructions, and urged the justice of granting to Georgia that assistance, in this case, which had been granted to so many other States on similar occasions.

Mr. BERRIEN supported the bill with great force, and at some length.

Considerable discussion then took place, in which Messrs. BERRIEN, CHANDLER, BRANCH, HOLMES, HARRISON, COBB, FINDLAY, RUGGLES, EDWARDS, and KANE, took part. The bill was supported on the ground that the People of Savannah and Georgia claimed, and were entitled to be restored to, the advantages they enjoyed in the unimpaired navigation of the river anterior to the time when, on considerations of public benefit, they were deprived of them, by the obstructions placed, for the public defence, in the principal inlet of the State. It was the interest of the United States itself to restore to its natural condition this inlet of a great agricultural and commercial State, and an act of justice to the State. It was argued that, wherever the Government of the United States, in prosecuting a war, had destroyed or injured private property, there never was an instance of their withholding payment for it; and wherever the enemy had destroyed property in consequence of its having been used against them by the forces of the United States, this Government had always made compensation; and, on these, and other grounds, urged in the debate, the bill ought to pass. Mr. BERRIEN, in particular, supported the bill earnestly and repeatedly, in answer to objections made to it.

The bill was opposed on the ground that the obstructions were partly placed in the river by the enemy, and the claim could not therefore be well sustained, as it was not incumbent on the United States to repair injuries done by the enemy in particular portions of the country—and that Georgia had received her share of the funds which had been appropriated for settling Revolutionary claims, &c.

In the course of the debate, Mr. CHANDLER moved an amendment, which was carried, confining the expenditure of the appropriation to the raising of those vessels only which were sunk by the American Commander, and not to those sunk by the enemy; and then the bill was ordered to be engrossed for a third reading, by yeas and nays, as follows:

YEAS—Messrs. Barton, Bell, Benton, Berrien, Bouligny, Branch, Chandler, Chase, Clayton, Cobb, Dickerson, Edwards, Findlay, Harrison, Harper, Hayne, Hendricks, Holmes, Johnson of Ken. Kane, King, Lloyd, Marks, Noble, Reed, Robbins, Rowan, Ruggles, Sanford, Seymour, Smith, Thomas, White, Willey, Williams, Woodbury—36.

NAYS—Messrs. Macon, Tazewell, Van Buren—3.

THURSDAY, APRIL 6, 1826.

Mr. BENTON rose to ask the leave, of which he yesterday gave notice, to introduce a bill "to authorize the President to dispose of certain lead, the property of the United States, in Missouri."

Mr. B. said a brief statement of the facts might be necessary, and would save time hereafter. The bill supposes, said Mr. B. that there is lead in Missouri, belonging to the United States. These are the facts: The United States have received lead for the rent of certain lead mines, and it appears, from the report of the Commissioner, that the lead is in his hands. Not having any authority to dispose of it, by the laws of the United States, he proposes, in his report, to send it to some of the Arsenals of the United States. Of the two nearest Arsenals, one is at the distance of 1000 miles, and the other 1200 miles, from the place where the lead is. The expense of sending 2000 dollars worth of lead such a distance as this, independent of the chance of losing it, will be nearly worth the thing itself. I therefore propose, that this lead shall be given for the object specified in the bill; that object is to give it to the State of Missouri for the purpose

of making a road from the lead mine to the river Mississippi. My reason for asking to make this disposition of it is this. The United States are the great landholders of all the new States. In the lead mine district, this is particularly the case: for the mineral lands are reserved by law, and cannot be sold. They are found, as elsewhere, in the poorest parts of the country: for, though there are some tracts of rich ground, the body of the country is poor. The mineral lands, which are valuable, are reserved by law; they cannot be sold—and the inferior lands, which are not mineral, are held up at a price which they will not command in some hundreds of years to come. The consequence is, that the United States is the absolute landlord of the great mineral district. There is no person to make roads. It is the landholders in every country who make roads. In all parts of the world, where a landlord possesses an estate, he expends a large proportion of the proceeds of that estate in making roads to it. Where he owns a coal mine, or a lead or copper mine, he expends a portion of the proceeds in making roads to it, for the benefit of his own property. Taken in this point of view, it is the duty of the United States to lay out part of the proceeds to make a road through their own lands. It is also advantageous to do so, because, making a road from the river to the mine, a distance of thirty miles, will give a value to the country itself. I therefore propose to introduce a bill with provisions to this effect.

And leave having been granted, Mr. B. introduced the bill; which was twice read, and referred.

FRIDAY, APRIL 7, 1826.

THE JUDICIAL SYSTEM.

The Senate proceeded, according to the order of the day, to the consideration of the bill from the House of Representatives, "further to amend the Judicial System of the United States."

The Senate Committee on the Judiciary, to which the bill was referred, reported a substitute for the second section of the bill. This section of the bill, as it came from the House, is, in substance, as follows:

"That the seventh Judicial Circuit of the United States shall, hereafter, consist of Ohio, Indiana, and Illinois; and Kentucky and Missouri shall form an eighth Circuit; Tennessee and Alabama a ninth Circuit, and Louisiana and Mississippi a tenth Circuit; and the Justice of the Supreme Court now assigned or allotted to the seventh Circuit, shall, until the next term of the Supreme Court, and until a new assignment or allotment shall be made by said Court, be assigned to the eighth Circuit; and the three additional Justices, whose appointment is provided for by this act, shall be severally assigned by the President of the United States to the said seventh, ninth, and tenth Circuits, until the next term of the Supreme Court, when it shall be the duty of the Justices thereof to assign or allot themselves to the several Judicial Circuits of the United States, and to make record thereof according to law."

The substitute for this section, recommended by the Committee of the Senate, is as follows:

"That the seventh Judicial Circuit of the United States shall hereafter consist of Ohio and Kentucky; and that Indiana, Illinois, and Missouri, shall form the eighth Circuit; Tennessee and Alabama shall form the ninth Circuit; and Mississippi and Louisiana shall form the tenth Circuit; and the Justice of the Supreme Court appointed for each of said seventh, eighth, ninth, and tenth Circuits, shall reside therein."

On the question of agreeing to this amendment, Mr. VAN BUREN rose, and addressed the Senate as follows:

In noticing the proposed amendments, I shall give my own views, and, as far as I understand them, the views of the majority of the committee, in relation to the bill under consideration. The ample discussion which the subject has so recently undergone elsewhere, and which, though not heard, has been seen, by the Senate, will induce me to omit many observations which I might otherwise have felt it my duty to make.

The committee propose two amendments to the bill from the House of Representatives. They consist of an alteration of the seventh and eighth Circuits, and a provision requiring the new Judges, as is now required of the present Judges, to reside in their respective circuits. In the bill as it stands, Kentucky and Missouri form one circuit, and Ohio, Illinois, and Indiana, another. The amendment connects Kentucky with Ohio, and forms the other circuit out of the districts of Missouri, Illinois, and Indiana. The amendment relative to the residence of the Judges shall be noticed in the course of my remarks on the general subject. Of the other amendment I shall say but little. I was absent, on account of indisposition, when that amendment was discussed and decided in the committee. The explanation of its reasons will therefore be left to those by whom it was made, and who are more conversant with its merits. A bill was reported by me, in behalf of the committee, early in the session, by which the circuits were arranged as they are in the bill from the House. Subsequent to the report, it was ascertained that, out of the ten Senators representing the States included in the two circuits, seven were dissatisfied with that arrangement. They contend that it is unnatural, with reference to localities, unnecessary as it respects the state of the business, and will be inconvenient in its operation.

The question is exclusively of a local character, and the reasons for the opinion sustained by the amendment will be given by those particularly interested.

The bill proposes an alteration of the existing legislative provision on the subject of the Judicial system, by adding three additional Judges to the Supreme Court, and to increase the number of circuits from seven to ten. It is admitted that the change is important, and ought not to be made except upon the most urgent inducements. It is my object to state briefly and distinctly, the nature and extent of those inducements.

The grounds of complaint are:—

1st, The unavoidable accumulation of business in the Supreme Court:

2d, The great amount of unfinished business in the Seventh Circuit, composed of the States of Ohio, Kentucky, and Tennessee, which cannot, it is alleged, be disposed of under the present arrangement:

3d, The exclusion of the six States last admitted into the Confederacy, viz: Illinois, Missouri, Indiana, Alabama, Mississippi, and Louisiana, from the benefit of the Circuit System.

Our first inquiries should be directed to the facts upon which these complaints are founded, and the character and extent of the alleged evils.

I obtained, last year, a certificate from the clerk of the Supreme Court, which has been mislaid, but the amount of which, as far as my recollection serves me, was, that of the causes on the calendar for the last ten years, one-half were left undisposed of at each term.

This is an evil that is every where felt and complained of. Its existence is universally admitted, and in many cases it amounts to a denial of justice.

The seventh circuit, as I have already stated, is composed of the Districts of Ohio, Kentucky, and East and West Tennessee. The mischief complained of arises partly from the great extent of country embraced in the circuit, the immense distance from court to court, and partly from the great amount of litigation in that portion of the Union. Upon the first branch of the subject—the great extent of the circuit, remarks are unnecessary; the facts are open to the observation of all. In one of the memorials on the

table, the extraordinary extent of travel which the Judge has to perform, and the difficulties of doing so, are fully stated. Upon the second, a few remarks may not be unprofitable. It is said, and upon good authority, that there are now pending in the Kentucky District, 950 causes; in Ohio, about 200 or 250, and in East and West Tennessee, about 300; in all about 1,500 causes. Although these facts are doubtless as stated, still, to many of us the statement, unless explained, would present an exaggerated and deceptive view of the *real* business in the circuit referred to.

By the laws of the United States, and the rules of the Supreme Court, made in pursuance thereof, the practice in the Circuit Courts of the *United States* has been assimilated to that of the Superior Courts of the States. That of the latter is various. Whilst in some of the States every *pending* cause, whatever be its nature or condition, is placed upon the docket, in others, such only as are to be tried upon issues either of law or fact: the former appears to be the practice in the seventh Circuit. Of the 950 causes pending in the Kentucky District, there are, therefore, in all probability, not more than 250 which require to be tried; the others pass by default, or are otherwise disposed of; and the same estimate may, with safety, be made of the business in the other districts in the Circuit.

That there is, notwithstanding, a greater amount of business in those districts than the Court can perform, constituted as the Circuit now is, appears from representations which have been made from time to time to Congress, coming from sources deserving entire confidence. It may appear strange to gentlemen that a Circuit so little commercial, and of a population inferior in point of numbers to several of the old Circuits, should be so greatly overburthened with business, whilst in the others, the Judges cannot only do all the present business, but might, without much inconvenience, do more. The fact is in part attributable to the great length of time necessarily employed by the Judge in travelling, but chiefly to another cause. By the Constitution of the United States, jurisdiction is given to the Federal Judiciary, among other things, in "all cases between citizens of the same State, claiming lands under grants of different States." A very great proportion of the causes pending in these Courts concern the title to lands thus circumstanced. The United States Court derive from this branch of their Judicial power an incomparably greater access of business in the Circuit in question, than they do in any portion of the old States. Such is briefly the actual condition of things in the seventh Circuit. Of the Courts, its inhabitants do not, nor have they any reason to complain—as much has been done for them as the number of the Judges and the situation of the Judicial system would admit of. From Congress they have had the assistance that has been given to the same, and even larger number of citizens, in other sections of the country, and more than has been given to some. They have, therefore, no ground for any thing like clamorous complaint, nor am I aware that they have made it—to us they certainly have not. But as they clearly suffer inconvenience—as the cause of the evil is without their fault and beyond their control, they have a right to ask present redress; and the bill on the table proposes to give it as far as that can be done consistent with the interests of the other States. The remaining ground of complaint is the condition of the six States to which the Circuit system has not been extended. The following is the state of this part of the case:—The other States have District Courts, which are held by District Judges, receiving salaries of from eight to sixteen hundred dollars. They have also Circuit Courts, held by one of the Justices of the Supreme Court, together with the District Judge. In all judgments and decrees in civil suits, for an amount over fifty dollars, a right of appeal is secured from the District to the Circuit Court, and a similar right to appeal from the Circuit to the Supreme Court, where the matter in controversy exceeds two thousand dollars. In all cases, civil or criminal, where a difference of opinion exists between the Circuit and District Judge, the matter is certified to the Supreme Court, and decided by them, and such order taken in the Court below, as the Supreme Court shall direct. No imprisonment is allowed, or punishment inflicted, when the Judges are so divided. Such is the provision made for the States which have been admitted to a full participation of the Judicial system of the United States.

In the petitioning States, the situation of things is very different. Instead of the Circuit Courts thus constituted, provision is made by law to vest the District Courts with Circuit Court powers, so far at least as it relates to the original jurisdiction of the Circuit Courts. The appellate jurisdiction of the Circuit Court could not of course be vested in the District Court. An appeal lies from the District Court directly to the Supreme Court, similar to that allowed in other States from the Circuit Court to the Supreme Court, which it has been seen lies only where the matter in controversy exceeds the value of two thousand dollars. The injustice and inconvenience resulting from this system to the States in question, is supposed to consist—

1st, In depriving them in the *first instance* of the talents, experience, and learning, of a Judge of the Supreme Court, who, from the higher duties he is expected to perform—from the greater inducement held out to men of talents, by larger salaries, and increased respectability, it is but reasonable to presume, would be far superior in point of capacity and respectability to the District Judge.

2d, In cutting them off from an appeal in all matters in controversy between fifty dollars and two thousand dollars—an evil which, they say, cannot be redressed without the establishment of Circuit Courts, as it would not be a relief to suffer causes of a less amount to be carried from remote parts of the Union to the City of Washington.

3d, That, although they have a right of appeal in all cases of over two thousand dollars, they can only have it to the Supreme Court in the first instance, and are thus deprived of the benefit of the first appeal to the Circuit Court, by which justice might be obtained at less expense.

4th. That, in criminal cases, in which no appeal is provided in any case, and which may involve life, character, and liberty, they are deprived of the advantage of a Judge of the Supreme Court, and of the humane provision requiring the assent of two Judges before punishment.

5th. That they have been admitted into the Union upon equal terms with the Old States—that one of the great advantages secured to them by the condition of their admission is a full participation in the perfect administration of justice, now enjoyed by their sister States, and that the withholding it is an act at once hostile to their best interest, and, what is equally interesting, humiliating to their pride.

This subject has been frequently before the Senate, and the Judiciary Committee. I have bestowed upon it, at different times, that deliberation and dispassionate attention, which the wishes and the interests of so many members of the Confederacy imperiously require. The result is a strong conviction, that there is, at least, some justice in each of the grounds of complaint made by the petitioning States, and enough in all of them, to make it the duty of Congress to make some suitable provision for their relief.

Whilst, however, I concede thus much, I am not willing to be understood as uniting, or even so much as acquiescing in the vehement complaints, which it has of late become fashionable to make, for having, as it is alleged, withheld from those States, rights which ought long since

to have been granted to them. The petitioning States have been treated in this respect (circumstances considered) with as much favor, and have received as full a measure of justice as has been meted to those of their sister States, which have been admitted into the Confederacy since the adoption of the Constitution.

The right of an ultimate participation of every new State in all the privileges and immunities enjoyed by the other States under the Constitution as far forth as her situation enables her to enjoy them, and from which she is not precluded by the condition of her admission, is undoubted. But the immediate and entire extension of those privileges has never been regarded as a matter of imperative duty. The courtesy of the States, and general justice of their citizens, (if other considerations have not,) have, from the beginning, induced an acquiescence in a different rule, viz: that the measure should be a progressive one, to be completed as soon as a due regard to circumstances would admit. On a reference to the history of the Government, in this particular, it will be found, that the States now in question have fared as well, and better, than those admitted before them. Vermont and Maine, it is true, had the benefit of the Circuit system soon extended to them. But it was because their local situation enabled the Judges to hold Circuits there without creating a necessity for increasing the number of the Judges, or unreasonably increasing their duties. But towards States differently situated, a different course has been pursued, without producing any of those acrimonious complaints, of which we have lately heard and seen so much. Kentucky was admitted fifteen years before the Circuit system was extended to her—Ohio four years, and Tennessee eleven. Missouri has been admitted but four years—Alabama but four—Illinois but seven—Mississippi but eight—Indiana but nine—and Louisiana but thirteen.

Nor has the matter been looked upon by the States in question in so grievous and offensive a light. As far as my knowledge extends, the States of Louisiana, Missouri, Illinois, and Alabama, have not, as yet, memorialized us upon the subject, and the representations of Mississippi and Indiana have been precisely such as they should be.

I mention these circumstances, not only to vindicate the Government from supposed injustice to so large a part of the Western States, but to allay whatever of censure and contagious excitement the collisions of opinion elsewhere may have produced, and which is always adverse to that calm and dispassionate consideration which this subject, above all others, demands.

The committee are all of opinion that relief of some sort is required, and that it should now be given. The next question is, what should that relief be—what can it be? The States asking our interference, point out no specific mode in which their wrongs should be redressed, but submit themselves to the wisdom of Congress.

It may with great truth be said, that there has not, for many years, been any subject presented to Congress of greater difficulty. It is admitted to be so by all. No less than four different plans have, for the last three years, been submitted to the Senate without success. The present bill was reported at the last session, received the assent of a majority of the Senate, but did not pass for want of time.—The great difficulty arises from the extent of country to which the system must be made to apply. If you do justice to the Circuit Courts, you are unavoidably met by the danger of making the Judges on the Supreme Bench too numerous.

I speak of the system that now exists, a system established by those who formed the Constitution—departed from in 1801, but restored by the act of 1802, and persevered in to the present day. As the subject on which the system was to operate extended, Congress have extended it. Nothing is clearer than that for the old thirteen States, a better plan has not been needed, if the wit of man could have devised one. It is certain, that existing enactments do not carry the system over the whole ground. It must be so extended, or a new one established. The question is, whether that can be done—whether the country has not so far outgrown the system, as to render it necessary that it should be abandoned, and a new one substituted, more capable of extension.

Shall we do as was done in 1807, when Circuit Courts were provided for Ohio, Kentucky, and Tennessee, or shall we strike out a new path? But little reflection can be necessary to convince the most superficial observer, that to do so would be a matter of great delicacy. To change the entire Judicial system of a country, and especially of a country whose form of Government is so complicated as ours, can never be a matter of light import. If there be a case in which, more than any other, the hand of innovation should be watched with lynx-eyed jealousy, this is surely that case. A total change was made in 1801, but the measure met with a total overthrow in one short year. Strong as the feelings then produced were, time and experience have demonstrated the wisdom of the act of 1802, by which the system of 1789 was restored and improved. Men who then saw, or thought they saw, the prostration of the fairest and firmest pillar in the edifice, have been enabled by observation and more dispassionate reflection, to see the error of impressions made by the excitements of the moment, and, what is of equal value, have had the wisdom and the honesty to acknowledge their conversion to better and sounder opinions. But let us, instead of submitting ourselves to the influence of general opinions, examine into, and consider, the substitutes which have, from time to time, been proposed.

The plans proposed at different times have been the following:

1st. To continue the present system, and appoint Circuit Judges for the six new States, with a provision for their ultimate advancement to the Supreme Court, as vacancies occur on the bench.

2d. To revive the old system of 1801, appoint Circuit Judges, and confine the Judges of the Supreme Court to the discharge of term duties.

3d. To direct the Circuits to be held by the District Judges, allotting three to a Circuit.

4th. To increase the number of the Judges of the Supreme Court, and of the Circuits, according to the provisions of the bill upon the table.

Each of the three first mentioned schemes has advantages, but, upon careful consideration, they have all been found liable to insurmountable objections. I will briefly consider the plan of having Circuit Judges for the six Western States only. A bill to that effect was, a session or two since, reported by the Judiciary Committee of the other House, and has been proposed by way of amendment in this. So far from being received as a measure of favor to the States interested, it produced nothing but excitement of the most unpleasant character. The earnest dissatisfaction manifested by the Western Members was certainly not without cause. They reasoned thus—We have done without the Circuit system until this time, and we have not complained, because it has not been the course of the Government to extend that system at once, but gradually, and according to circumstances. As long as a compliance with our request is found impracticable, or so greatly inconvenient as to amount to an impracticability, we will still wait. But when you make provision, covering the whole ground, and by that provision place us permanently, or nearly so, upon a footing inferior, in point of utility and respectability, to our sister States, who are but our equals, then our State pride is justly alarmed, and we cannot, in justice to the States we represent, submit to what they will regard as a degradation. So, sir, they

reasoned, and it was soon seen that the measure ought not to be persisted in. It has, therefore, been abandoned in both Houses.

I will next notice *the Circuit System of* 1801. Some seven or eight years ago, a bill to that effect passed the Senate, and was fortunately not acted upon in the other House. Independent of the paramount objections which exist against this and every other plan, which, either directly or by probable consequence, separates the Justices of the Supreme Court from the Circuits, there are others deserving consideration. A less number of Circuits than ten would not be thought of. There are now, I think, twenty-seven District Judges. They hold their offices during good behavior, and many of them have spent the best portions of their lives in that situation, and become, more or less, dependent upon their places for their support, and that of their families. To remove them, therefore, by abolishing their Courts, if a consolidation of the District and Circuit Courts should be thought desirable, could not fail to be regarded as a harsh measure. To keep them in office, receiving salaries without performing service, is so hostile to the character and genius of our Government and the sentiments of the People, that public opinion would not tolerate it. It would, therefore, be necessary to appoint ten new Judges at least, which, added to the District and Supreme Court Judges, would make forty-four Judges of the United States' Courts, independent of the Territorial Judges. It is certainly true, that the business of the Courts would not furnish employment for this great number of Judges. The high duties imposed upon them, imperiously require that men of talents of a particular order should be selected for the new appointments. To obtain them, fair salaries will be indispensable; for men of such character could not, and would not, give up their business without an equivalent. It is, therefore, highly probable, that the expense of this system, the circumstance (always looked upon with much jealousy,) of creating so many offices of so stable and irresponsible a tenure, and the seal of condemnation once placed upon this measure, would excite, indeed could not fail to excite, great dissatisfation. At the same time, it is due to the subject to state, that if there were no other objections to the system, and if the business of the Courts would furnish sufficient employment, the expense ought not to be regarded, as there is nothing more true than that the Judicial Department of the Government is, by far, the least expensive. Upon a reference, it will be found, that the whole expense of the Judiciary, including Marshals, &c. &c. does not exceed the sum of about three hundred thousand dollars per annum.

The remaining scheme is that of directing the Circuit Courts to be held by the District Judges. A plan to this effect was digested, and a bill reported to the Senate two sessions ago. It was explained, considered, and laid over. As far as inferences could be drawn, it did not meet with favor. A leading objection was, the supposed incapacity of the District Judges, arising from the circumstance that they had originally been selected for the performance of duties supposed to be of an inferior grade, and that they were allowed salaries of so limited an amount, that the selection had, of necessity, been more confined than was desirable. I confess, that, if I could consent to any system which separated the Justices of the Supreme Court from the Circuits, I would prefer the one now referred to. Much may be said to obviate the objection raised, but as the Committee have abandoned it, as no such proposition has been, or, as far as I can judge, is likely to be made, and as I am, for the reasons I shall hereafter give, opposed to that, or any other system like it, in the great point I have alluded to, I will not, at this time, detain the Senate by further comment upon it.

But there are objections of a more general character to the adoption of either of the plans I have spoken of.

By the present Judiciary act it is provided, "that the "laws of the several States, except where the Constitu- "tion, treaties, or statutes of the United States, shall "otherwise require or provide, shall be regarded *as rules* "*of decision* in trials at common law, in Courts of the "United States, in cases where they apply."

In many, if not most, of the controverted cases between individuals, of which the Federal Courts derive jurisdiction from the character of the parties, the titles under which they claim, or from other sources, the local or State law forms the rule of decision. An intimate knowledge of that is, therefore, an indispensable qualification for a Judge of the Supreme Court. The difficulty of acquiring and retaining it is infinitely greater than would, on first impression, be supposed. Of the twenty-four States, there are not two whose laws, affecting the rights of persons and property, are, in all respects, the same. Between many the differences are as great as is usual between States on different continents. Each has an established system, wholly unconnected with its sister States. This system is composed of portions of the English common law, adopted with various modifications and alterations, of more or less of the principle of the English Equity system, of the statutes of the States, and the constructions which have, from time to time, been put upon them by the State Judicatories. It is true that these are all to be found in books, but we well know how little apt men are, when they can avoid it, to study subjects of this description, and men of experience in these things know the extreme difficulty, not to say impracticability, of making one's self at all familiar with them in any other way than by actual practice in the Courts, either in examining them for argument, or in deciding them from day to day.

The importance of a full knowledge of the local law is greater in the Western States, than in the rest of the Union. This arises from the fact of so great a portion of the territory of those States having recently belonged to foreign Governments, and so many of the titles to lands, of consequence, dependent upon the laws, colonial as well as those of the mother country, before their cession to the United States. It arises, also, from other peculiarities in the titles to land in such of the Western States as are not thus situated. The addition of three Justices, therefore, from that portion of the country, would bring to the bench of the Supreme Court a stock of valuable knowledge, of which it would be deprived, if either of the plans spoken of were adopted. Again: by compelling the Judges of the Supreme Court to hold the Circuits, the knowledge they have acquired of the local laws will be retained and improved, and they will thus be enabled, not only the better to arrive at correct results themselves, but to aid their brethren of the Court who belong to different Circuits, and are, of course, deprived of an opportunity to acquire such information, except in that manner. There is another consideration belonging to this branch of the subject, entitled to great weight. It is impossible, with the best intention on the part of the Executive branch of the Government, to avoid bad appointments. Influence and favoritism sometimes prevail, and to a want of correct information the Government is always exposed. Incompetent men, therefore, will sometimes be appointed. If confined to the discharge of term duties only, the country may be saddled with them during their whole lives. They might assent or dissent at terms, and the kindness of their brethren, and their respect for the character of the Court, would induce them to do the rest. But the case is greatly otherwise, if they are obliged to preside at Circuits, to discharge their high duties in the face of the people, unaided by their brethren of the bench. There is a power in public opinion in this country—and I thank God for it: for it is the most honest and best of all powers —which will not tolerate an incompetent or unworthy man to hold in his weak or wicked hands the lives and

fortunes of his fellow-citizens. This power operates alike upon the Government and the incumbent. The former dare not disregard it, and the latter can have no adequate wish that they should, when he once knows the estimation in which he is held. This public ordeal, therefore, is of great value; in my opinion, much more so than what has, with some propriety, been called the *scare-crow* of the Constitution—the power of impeachment.

But there is still another view of the subject, bearing, with irresistible force, against the separation of the Justices of the Supreme Court, under any circumstances, from the Circuit Courts, and against the adoption of any system, which, though it does not directly, may, ultimately, lead to that result.

By the act of 1792, the Justices were left at liberty to distribute themselves among the different Circuits annually. By the act of 1802, they were attached, by law, with a single exception, (Judge Washington,) to the Circuit in which they resided; and the act of 1807, adding one Justice to the number, made it his duty to reside in the seventh Circuit. Time and experience, the best of all tests, have shown that this provision, also, of the much abused act of 1802, was a wise and salutary one. The amendment proposed by the committee preserves that feature of the acts of 1802 and 1807, by requiring that the three new Judges shall reside in their respective Circuits. To its propriety, I believe, no serious objection will be made, here or elsewhere.

Hitherto, the Justices of the Supreme Court have resided in the States, and with a single individual exception, within their respective Circuits. Before the act of 1802, because the principal part of their business was there; since 1802, because the law made it their duty. If other provision is made for holding the Circuits, the whole business of the Justices of the Supreme Court would be done here, and, sooner or later, they would, in the natural course of things, all move to, and permanently reside at, the seat of Government.

From that result, inferences, of a contrary character, but uniting in deprecating its policy, are drawn. Some think they see in it danger to the Court, others apprehend danger from the Court. In my judgment both are right.

It has been justly observed elsewhere, that "there exists not upon earth, and there never did exist, a judicial tribunal clothed with powers so various and so important" as the Supreme Court.

By it, treaties and laws, made *pursuant* to the Constitution, are declared to be the supreme law of the land. So far, at least, as the acts of Congress depend upon the Courts for their execution, the Supreme Court is the Judge, whether, or no, such acts are *pursuant to the Constitution*, and from its judgment there is no appeal. Its veto, therefore, may absolutely suspend nine-tenths of the acts of the National Legislature. Although this branch of its jurisdiction is not that which has been most exercised, still instances are not wanting in which it has disregarded acts of Congress, in passing upon the rights of others, and in refusing to perform duties required of it by the Legislature, on the ground that the Legislature had no right to impose them.

Not only are the acts of the National Legislature subject to its review, but it stands as the umpire between the conflicting powers of the General and State Governments. That wide field of debatable ground between those rival powers is claimed to be subject to the exclusive and absolute dominion of the Supreme Court. The discharge of this solemn duty has not been unfrequent, and, certainly, not uninteresting. In virtue of this power, we have seen it holding for naught the statutes of powerful States, which had received the deliberate sanction, not only of their Legislatures, but of their highest Judicatories, composed of men venerable in years, of unsullied purity, and unrivalled talents—statutes, on the faith of which immense estates had been invested, and the inheritance of the widow and the orphan were suspended. You have seen such statutes abrogated by the decision of this Court, and those who had confided in the wisdom and power of the State authorities, plunged in irremediable ruin. Decisions—final in their effect, and ruinous in their consequences. I speak of the power of the Court, not of the correctness or incorrectness of its decisions. With that we have here nothing to do.

But this is not all. It not only sits in final judgment upon our acts, as the highest legislative body known to the country—it not only claims to be the absolute arbiter between the Federal and State Governments—but it exercises the same great power between the respective *States* forming this great Confederacy, and *their own citizens*. By the Constitution of the United States, the States are prohibited from passing "any law *impairing the obligation of contract.*" This brief provision has given to the jurisdiction of the Supreme Court a tremendous sweep. Before I proceed to delineate its tendency and character, I will take leave to remark upon some extraordinary circumstances in relation to it. We all know the severe scrutiny to which the Constitution was exposed. Some from their own knowledge—others from different sources. We know with what jealousy—with what watchfulness—with what scrupulous care its minutest provisions were examined, discussed, resisted, and supported, by those who opposed, and those who advocated its ratification. But, of this highly consequential provision—this provision which carries so great a portion of all that is valuable in State legislation to the feet of the Federal Judiciary, no complaints were heard—no explanations asked—no remonstrances made. If there were, they have escaped my researches. It is most mysterious, if the Constitution was then understood, as it now is, that this was so. An explanation of it has been given—how correct I know not.

The difficulties which existed between us and Great Britain relative to the execution of the treaty of peace, are known to all. Upon the avowed ground of retaliation for the refusal of England to comply with the stipulation on her part, laws were passed, between the years 1783 and 1788, by the States of Virginia, South Carolina, Rhode Island, New Jersey, and Georgia, delaying execution, liberating the body from imprisonment on the delivery of property, and admitting executions to be discharged in paper money. Although those laws were general in their terms, applicable as well to natives as to foreigners, their chief operation was upon the British creditors, and such was the leading design of their enactment. England remonstrated against them as infractions of the stipulation in the treaty, that creditors, on either side, should meet with no impediments to the recovery of the full value, in sterling money, of all debts previously contracted, and attempted to justify the glaring violations of the treaty, on her part, on that ground. An animated discussion took place between the Federal Government and Great Britain, and between the former and the States in question, upon the subject of the laws referred to, their character and effect. It was during this time that the Constitution was formed and ratified. It is supposed that the difficulties, thus thrown in the way of adjustment with England, through the acts of the State Governments, suggested the insertion in the Constitution of the provision in question, and that it was under a belief that its chief application would be to the evil then felt, that so little notice was taken of the subject.

If it be true, that such was its object, and such its supposed effect, it adds another and a solemn proof to that which all experience has testified, of the danger of adopting general provisions for the redress of particular and partial evils. But, whatever the motive that led to its insertion, or the cause that induced so little observation on its tendency, the fact of its extensive operation is

known and acknowledged. The prohibition is not confined to express contracts, but includes such as are implied by law, from the nature of the transaction. Any one, conversant with the usual range of State Legislation, will, at once, see how small a portion of it is exempt, under this provision, from the supervision of the seven Judges of the Supreme Court. The practice under it has been in accordance with what should have been anticipated.

There are few States in the Union, upon whose acts the seal of condemnation has not, from time to time, been placed by the Supreme Court. The sovereign authorities of Vermont, New Hampshire, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Missouri, Kentucky, and Ohio, have, in turn, been rebuked and silenced, by the over-ruling authority of this Court. I must not be understood, sir, as complaining of the exercise of this jurisdiction by the Supreme Court, or to pass upon the correctness of their decisions. The authority has been given to them, and this is not the place to question its exercise. But this I will say, that, if the question of conferring it was now presented for the first time, I should unhesitatingly say, that the People of the States might, with safety, be left to their own Legislatures, and the protection of their own Courts.

Add to the immense powers of which I have spoken, those of expounding treaties, so far, at least, as they bear upon individuals, citizens, or aliens, of deciding controversies between the States of the Confederacy themselves, and between the citizens of the different States, and the justice of the remark will not be questioned, that there is no known judicial power so transcendently omnipotent as that of the Supreme Court of the United States!

Let us now, for a few moments, consider the influence which this ought to have upon our legislation. It would not be in accordance with the common course of nature to expect that such mighty powers can long continue to be exercised, without accumulating a weight of prejudice that may, one day, become dangerous to an Institution which all admit to be of inestimable value. It is true, as has elsewhere been said, with apparent triumph, that the States, whose legislative acts have successively fallen under the interdiction of the Court, have excited little or no sympathy on the part of their sister States, and, after struggling with the giant strength of the Court, have submitted to their fate. But, sir, it is feared that this will not always be the case. Those who are most ardent in their devotion to this branch of the Government, knowing the feelings produced by these decisions in the States affected by them—sensible that those feelings are rather smothered than abandoned, upon conviction of their injustice, fear that, by adding another and another State to the ranks of those who think they have reason to complain, an accumulation of prejudice may be produced, that will threaten, if not endanger, the safety of the Institution.

Seeing, and feeling, and fearing this, they, with wise and patriotic foresight, wish to adopt every measure which will retain and increase, as far as practicable, the general confidence in the Court, and to avoid such as may, by possibility, have a tendency to weaken it. No reflecting man can doubt, that the residence of the Judges of the Supreme Court in the States, being subject in their persons, family, and estates, to the laws of the State—portions of their families, as is frequently the case, members of the State Governments, and themselves only temporarily absent—going in and out before the People of the States, and commanding their confidence by the purity of their lives, and the modesty of their demeanor—enforcing and expounding their own decisions in the face of the different classes of the community at the Circuits, and in free and familiar intercourse with those who have such great influence in giving a proper direction to public opinion on legal subjects—must have an infinitely greater tendency to enable the judges to sustain themselves in the honest discharge of their high duties, than if they were cut off from all connection with the States. Greater than if they were settled in this metropolis, and to the great mass of the People of the States unheard and unseen, but felt in their power, through the remotest borders of the Union—and how felt, sir? Not as is the case with the other branches of the Government—in extending favors, in munificent grants, and all the various measures of relief—no, sir, always on one side, and not unfrequently on all sides, their measures are regarded as harsh and vindictive. Their business is to punish the guilty, to restrain the vicious, to curb power, and to correct its excesses. Such acts are necessary to the well-being, to the very existence of society, but are not those which have the strongest tendency to conciliate popular favor. It is to effect this object, in part, that the friends of the bill, as I cannot but think wisely so, zealously resist every measure which will or may separate the Justices of the Supreme Court from the Circuits, and bring them to this city.

But this is not the only, or the most interesting view, which may be taken of the subject. The political character of the Court, so far as it becomes its duty to pass on the laws of the respective States, affecting personal rights, has already been referred to. A few cursory observations upon the character and tendency of its jurisdiction, so far as it relates to the powers of the General and State Governments, considered as independent, and, in many respects, rival States, will conclude my remarks on this branch of the subject.

The unfortunate extent of the grounds of collision between the respective Governments, has already been referred to. It was beyond the wit of man, in the constitution of a Government like ours, to have wholly avoided it, and it can only be lessened by mutual forbearance and explanatory amendments. He must be but a superficial observer of events, who is not sensible that it is a subject which is every day attracting more of public attention and solicitude. There are those, sir, and they are neither small in number, nor light in character, who think that the uniform tendency of the political decisions of the Supreme Court has been to strengthen the arm of the General Government, and to weaken those of the States. Such men think that danger to the State Governments is to be apprehended from permanently fixing the Judges of the Supreme Court at the seat of the Federal Government. They fear (to use an expression, though not literally applicable here, still so well conveys the idea) that it would be "establishing a power behind the throne stronger than the throne itself." Thus thinking, they commenced, as far back as the now vindicated, but formerly much abused, act of 1802, to confine the Justices of the Supreme Court to their respective Circuits, and that course has been persevered in to the present day. They think the inevitable tendency of a change would be for the worse—that, if the Judges come here under the eye of the Government, prominent parties as they always must be to all collisions between the respective Governments, they could not fail to embark more strongly in the feelings of men in power here, than they now do.

Sir, this has become a subject on which it is difficult for one to speak without unpleasantly encountering the strong opinions entertained on different sides of the question. On the one hand, expressions of distrust and dissatisfaction are heard, of a character so strongly marked, as to defeat their object and recoil upon their authors. On the other, a sentiment, I had almost said, of idolatry for the Supreme Court, has grown up, which claims for its members an almost entire exemption from the fallibilities of our nature, and arraigns with unsparing bitterness the motives of all who have the temerity to look with inquisitive eyes into this consecrated sanctuary of the law. So powerful has this sentiment become—such strong hold has it taken upon the press of this country, that it re-

quires not a little share of firmness in a public man, however imperious may be his duty, to express sentiments that conflict with it. It is nevertheless correct, sir, that in this, as in almost every other case, the truth is to be found in a just medium of the subject. To so much of the high-wrought eulogies (which the fashion of the times has recently produced in such great abundance) as allows to the distinguished men who now hold in their hands that portion of the administration of public affairs, talents of the highest order and spotless integrity, I cheerfully add the very humble testimony of my unqualified assent. That this uncommon man who now presides over the Court, and who I hope may long continue to do so, is, in all human probability, the ablest Judge now sitting upon any judicial bench in the world, I sincerely believe. But to the sentiment, which claims for the Judges so great a share of exemption from the feelings that govern the conduct of other men, and for the Court the character of being the safest depository of *political power*, I do not subscribe. I have been brought up in an opposite faith, and all my experience has confirmed me in its correctness. In my legislation upon this subject, I will act in conformity to those opinions. I believe the Judges of the Supreme Court, (great and good men as I cheerfully concede them to be) are subject to the same infirmities, influenced by the same passions, and operated upon by the same causes that good and great men are in other situations. I believe they have as much of the *esprit du corps* as other men: those who act otherwise, form an erroneous estimate of human nature; and if they act upon that estimate, will, soon or late, become sensible of their delusion.

I conscientiously believe, that, to bring the Judges of the Supreme Court to the Seat of the General Government, and making them, as it were, a part of the Administration—for such, it is to be feared, would soon be its effect—would bode no good to the State Governments. With feelings for the General Government, as I humbly hope, purely catholic, I firmly believe, and my daily experience confirms that conviction, that much, very much of the present prosperity of the country and its institutions, depends upon the successful action of the State Governments, and that the preservation of their rightful powers is the *sine qua non* of our future welfare. I will not, therefore, give my assent to any measure which may still further disqualify the States to sustain themselves in those collisions of power which are unavoidable, and in which the situation of the parties is already so unequal. I believe a different disposition of the Judges of the Supreme Court from that provided by this bill, would have such effect, and I am, therefore, most decidely opposed to it. Sir, it would be strange if the tendencies of this high tribunal were not such as I have supposed; unless, indeed, they were more or less than men. It is not only made by this Government, and sustained by this Government—its members not only owe to it all they have and are to be, but they are the only portion of it that is permanent, that is beyond the reach of any power known to the Constitution. The billows of faction may run mountain high, and yet reach not them. The indignant voice of an abused People may, at stated periods, sweep by the board every other portion of the men in power—may take from them the little brief authority under which they have strutted their busy hour upon the stage, and cause them to be seen no more—but the Supreme Court alone, "can never be palsied by the will of its Constituents." And, sir, all things considered, it is best that it is so.

I know well, that the opinion that the tenure of the office of the Justices of the Supreme Court is the rotten part of the Constitution, is entertained by men who have established for themselves imperishable claims to the characters of saviors of their country, and benefactors of the human race. Of men, whose opinions on other subjects must save this Government, if it be saved at all. I am not of that sentiment—my pursuits in life, and early and constant connection with the Courts, may have given an undue bias to my opinions: but, from whatever cause it may proceed, such are my views. Whether it might not have been wise, so far to have imitated the example of the country from which we have derived so much of our jurisprudence, as provides for the removal of the Judges on the application of a certain and great portion of the Legislature, is another question; but I have no hesitation in saying, that rather than adopt the sentiments I have referred to, and which have sometimes been broached upon this floor, I greatly prefer that things should be as they are. But whilst I do so, I cannot forget what the experience of all ages has demonstrated, the tendency of power to its abuse, and the consequent duty of those entrusted with its investment, to keep its possessors as far as practicable from temptation.

I have done with this branch of the subject. My argument leads to the conclusion, if it be correct, that no bill which separates the Judges from the circuit duties can be correct; the bill under consideration avoids that supposed evil, and the question is—does it effect what is desired? and is it, or is it not, obnoxious to objection of an insurmountable character?

By lessening the duties of the Judge in the seventh Circuit, he will be enabled to do what he cannot now do, attend at Washington one month sooner, and unite with his brethren in holding the Supreme Court one month longer. The duties of the other Judges, old and new, will be such as to enable them to do the same. The consequence cannot, therefore, I think, fail to be, that, if this bill, and the other bill on your table, pass, all delay in the Supreme Court will soon be removed. As to the Circuit system, there exists not to my knowledge any complaint against it in the Atlantic States. I am sure there is no good ground for any. If additional circuits should be necessary in the Western districts of New York and Pennsylvania, the present Justices of those circuits can easily hold them. All that the Western States want is, to have the circuit system extended to them as we have it. No one doubts that, with the addition of these additional Judges, a sufficient number of Circuit Courts can be held in all the Districts in the Union to do all the business.

It has been supposed, that at some future day the exigencies of the country will require a different system. I see no good reason for such an opinion. I do not understand why this system may not well be looked upon as calculated to secure the purposes of its institution in all time. At all events, it will for our day; and for what is to come after, "sufficient unto the day is the evil thereof." There is, in my judgment, but one objection to the system or the Bill, and that is the number of the Judges. I wish they could be less, but they cannot. If the number is an objection, it is an unavoidable one. But I confess that this objection does not loom half so large to my eyes as it once did. Perhaps it is because I have made myself more familiar with its observation than before. Perhaps from more accurate reflection. For some purposes, such as the decision of constitutional questions, and the acquisition on the bench, of a perfect knowledge of local law, the number will certainly be a positive advantage. For others, possibly an objection, but we are consoled with the reflection that we have safe precedents, entitled to great weight, that should serve to allay our apprehension.

In England, whose judicial system and jurisprudence is supposed by many to be the best in the world, the twelve Judges have, for time out of mind, met in the Exchequer Chamber for the decision of cases and questions of law; and their number has never, to my knowledge, been complained of as an inconvenience. In Scotland, whose judicial character also stands high, the Court of

Dernier Resort is composed of fifteen judges. England allows appeals and writs of error to the House of Lords; and to come nearer home, my own State has for its court of final resort, the Senate of the State, composed of thirty-two members, its President, the Chancellor and Judges of the Supreme Court. It might not do so well for me to speak of the character of the administration of justice in that State under its old and present system, which, in this respect, are alike; others will judge of that—our light has not been hid; but this much I will say, that our citizens are now well satisfied with it, and that, in a Convention held a few years since, no attempt was even made to change that feature of the system—the Court of Errors as it now exists, and has from the foundation of the Government. I have, therefore, made myself easy upon this point. I believe the bill will not only do well, but will do all that is desired from it, and I sincerely hope it may pass.

Mr. RUGGLES, of Ohio, followed, in opposition to the amendment, and in favor of the bill, as it came from the other House; and it was opposed also by Mr. HARRISON.

The amendment was supported by Messrs. ROWAN, NOBLE, KANE, and BENTON, each at considerable length, and Mr. RANDOLPH also advocated the amendment, and addressed the Senate in a speech of more than two hours' duration.

The question was then taken on agreeing to the amendment, and carried by the following vote:

YEAS.—Messrs. Barton, Benton, Berrien, Bouligny, Branch, Chandler, Chase, Clayton, Cobb, Dickerson, Eaton, Edwards, Findlay, Hayne, Hendricks, Holmes, Kane, King, Macon, Marks, Noble, Randolph, Robbins, Rowan, Smith, Tazewell, Thomas, Van Buren, White, Willey, Williams, Woodbury—32.

NAYS.—Messrs. Harrison, Johnson, of Ken. Ruggles, Sanford—4.

Mr. ROWAN then moved further to amend the bill, by adding thereto the following sections:

"4. *And be it further enacted*, That the Supreme Court shall, in no instance, decide that the Constitution of any State, or any provision thereof, or the law of any State, or any law of Congress, or any part or portion thereof, or of either or any of them, is invalid or void, by reason of any supposed collision between them, or any part or portion of them, or any or either of them, and the Constitution of the United States, or any article, section, or clause thereof, unless at least seven of the Justices of said Court shall concur in that decision—in which case it shall be the duty of the Justices who shall concur therein, to make out each his opinion in writing, separately, and deliver it to the Clerk, whose duty it shall be to spread the same upon the record of the court.

"5. *And be it further enacted*, That, hereafter, until it shall be otherwise provided by law, such kind of process only shall be issued, and in such order only, upon the judgments or decrees of any of the Courts of the United States, as are authorized and permitted by the laws of the State wherein such judgment or decree shall be pronounced, to be issued upon the judgments or decrees of the highest judicial tribunals of that State; and the marshal, or other ministerial officer of such Court of the United States, shall be governed by, and conform to, the laws of the said State, in his execution of the said process, as well in relation to the property or person subject thereto, as to his proceeding therewith: *Provided*, That nothing in this section shall be construed to extend or apply to any judgment or decree pronounced by any of the said courts, in cases affecting the public revenue, or to the process which may issue thereon, or the management and execution thereof, by the ministerial officers of the said courts."

The amendment was ordered to be printed; and then

The Senate adjourned to Monday.

MONDAY, APRIL 10, 1826.

JUDICIAL SYSTEM.

The Senate resumed the consideration of the Bill further to amend the Judicial System of the United States: the amendment proposed by Mr. ROWAN, on Friday last, pending.

Mr. ROWAN rose and addressed the Senate as follows:

Mr. PRESIDENT: The two sections which I had the honor to offer as an amendment to the bill now under consideration, contain, each, a distinct proposition. Both, as I conceive, of very great importance, in their import, to the People of the States of this Union. By the first, it is proposed that seven of the ten Justices of the Supreme Court, shall concur in any judgment or decree, which denies the validity, or restrains the operation, of the Constitution, or any law of any of the States, or any provision or enaction in either. By the other, it is proposed that the ministerial officers of the Federal Courts shall be governed, in levying, and carrying into effect, the executions which issue from those Courts, by the Execution Laws of the States respectively, in which those Courts shall respectively be holden.

Every amendment, Mr. President, implies a defect in the subject proposed to be amended. Every remedy presupposes the existence of an evil. It therefore behooves him who proposes the remedy, not only to point out the evil but to show the fitness and competency of the remedy. I solicit your indulgent attention, and that of the Senate, while I attempt to point out some of the evils which are expected to be alleviated, at least, if not remedied, by the amendments which I have proposed.

And first, of the evils on which it is hoped the first section will have a remedial effect. They are those which result from the exercise of implied powers by the Judges of the Supreme Court. From an enlargement of the powers of the General Government, by inference and construction, through their instrumentality.

To distinguish between the powers which may be legitimately exercised by that tribunal, as the organ of the General Government, and those which they have derived, and are in the habit of deriving, by implication, a short inquiry into the nature, origin, and *extent*, of the powers which justly belong to the Government of the Union, may not be inappropriate. I promise you, sir, not to be tedious: I will just premise, that a little attention to the import of some of the terms, which are necessarily employed in political discussion, and which I shall be constrained to use, may save from some confusion, in the progress of this inquiry, and enable us to comprehend more clearly the subject embraced by it.

I feel that it is necessary: Because the terms to which I allude have, in the discussions of much abler persons than myself, for the want of this precaution, run into each other, and somewhat obscured their arguments. There is nothing more common than to call a Government a State, and, *e converso*, a State a Government; and the General Government is almost universally called the National Government, the Government of the Nation, &c. The indiscriminate use of these terms tends to confuse the ideas which they import; and their import, thus indiscriminately applied to the *States*, the State Governments, and the General Government, tends to confound distinctions of the utmost importance to the People of the States.

State is a word of technical import in the nomenclature of politics. I understand it to mean civil society, as incorporated by the social compact; and by social compact, I do not mean, as many do, the constitution of a State—no two words differ more in their import. The social compact, I understand to be that contract by which men pass from a state of nature, to a state of civil society; that contract in which each agrees with all, and all with each—

that each will surrender to all the control of himself, his powers, and his property, and that all shall protect each, in his person, property, and possessions. Anterior to the formation of this compact, every man was, *sui juris*, in the fullest meaning of those words—exempt from the control of others, and without the right to control any body; he was subject only to the control of his own will; every man was independent of every other man. By this compact, civil society was not only formed but incorporated, became a body politic, a moral agent, a *State*. The *State* thus formed, by the consent of all its members, expresses its will, by the voice of a majority, which will is, by the compact, to be the rule of their conduct, the law of their rights, the arbiter of their disputes.

Civil society, thus formed by the social compact, is denominated a *State*. The will of the People who compose that society, is the sovereign power of the State. But how that power shall be exercised, most beneficially for the People, is the question presented to the State, immediately after its formation. It has to settle upon the plan, by which its will shall be exerted in regulating the conduct, defining the duties, and protecting the rights, of its members. This plan of Government is ordained by the State, in its Constitution: So that, instead of the Constitution being the social compact which *forms* the State, the State *forms* the Constitution; which is but a diagram of the manner in which the will of the People is to be exercised in governing; that is, managing the concerns of the State, by the functionaries to be employed for that purpose. Those functionaries are legislative, judicial, and executive, according to the Constitutions of the States of this Union, and constitute what I call, and what I think can only be properly called, the *Governments* of the *States*, or *State Governments*.

The State, by the Constitution, confers on those functionaries the *authority* to exercise the governing power. The *power* which is exercised in governing, is neither created, nor specifically conferred, by the Constitution. The authority, *only*, to exercise that power, is specifically conferred by that instrument.

The Constitution and laws of the State are formed by the will of the majority. In the formation of the State, unanimity was required. To the formation of the Constitution, and the enaction of laws, the will of the majority is competent. The competency of the majority, to the formation of the *Government*, was derived from the unanimity which had existed in the formation of the *State*—in its formation, all assented that the majority should be competent to the formation and administration of the *Government*. The State derives its existence, and its power to *govern*, from the social compact, and forms its plan of exercising that power, by its Constitution, which is properly called its *Government*. So that the *State* is as distinct from its *Government*, as the Creator is from his creature. The former can alter, amend, or abolish, the latter, at pleasure. It still exists, whatever may be the mutations of its government, upon the firm, unaltered, and inextinguishable basis of the social compact. It is upon this principle that the debt of a State, or Nation, cannot be *cancelled* by any revolution whatever in its Government. The debt was not due from the Government, but from the People, in their corporate State capacity; and nothing but their extinction could extinguish the debt. If we define liberty to be the right of the citizens to do, each, what he ought to *will* to do, and not to be constrained to do what he ought not to *will* to do, the social compact furnishes, in the *will* of the majority, the *rule* of that right, and the *power*—the *moral force*, which guaranties its enjoyment. And this is the sense, Mr. President, in which *liberty* is *power*: it is the *power* created by the *social compact*—which constitutes the *liberty* of the citizens. The controlling power of the will of the majority, is not only the power, but the essence of liberty. The control of this will, by the functionaries of the Government, whether Executive or Judicial, is any thing but the *power* of *liberty*. Liberty is power, when the People of the State govern themselves, by their *own will*, according to *their own* plan of government; by functionaries of *their own* appointment. Thus it is evident that the States were, anterior to the formation of this Union, independent Sovereigns: aliens in their *nature*, as all sovereigns are, to each other. That each had an organized Government—its Constitution; that the *People*, and their *property*, belonged exclusively to the *States* of which they were citizens.

Now the question is, by whom was the Government of the United States formed? By the *People*, by the *States*, or by the *State Governments*? Does it emanate from the States in reference to the social compacts by which they were created? Or in reference to the Constitutions which they formed? Or from the People of all the States, without regard or reference to either compacts or Constitutions? This is a question of great import, as it relates to the extent and character of the powers of the General Government.

That the Constitution of the United States was not formed by the aggregate People, absolved from the social compacts, whereby they had incorporated themselves into States, we know—because, in that case, they must not only have dissolved those compacts, and thereby annihilated the States; but, after having done so, they must, as *one People*, have incorporated themselves by social compact, in order to get the power of forming the Constitution by the voice of the *majority*. For, without this compact, the dissentients from the Constitution could not, on any conceivable principle, be bound by it: for *assent* is the only rational *basis of obligation*.

Without this compact, either express or *tacit*, the control of the minority by the majority, would be tyranny. Besides, the existence of the States is not only recognized by the *Constitution*, but many of its provisions are predicated upon their co-existence; and some of its machinery upon the co-existence of the *Governments* of the States. It was not formed then by the People in their naked character as such. It was not formed by the Governments of the States. It does not purport to have been formed by them: they had not been invested by the States with the powers requisite for that purpose; the State Constitutions were not only not adapted, but opposed to its formation by the functionaries of the State Governments. How, then, was it formed? I answer that it was formed by the People of the States, in their corporate capacity—in that corporate capacity which is inseparable from civil society—which capacity can be conferred by the social compact alone, and which alone exalts the People of that society into citizens, and enables them to act as a moral agent—as an unit—as a State.

The Constitution, then, of the United States, was formed, not by the People, but by the People of the States, in their corporate State character. The People of each State, separately and distinctly, resting on the basis of the social compact, by which it was formed, and by the exercise of that sovereign power, which that compact created—by the exercise of which, it could *alone* participate in the formation of that instrument.

The power of the State is commensurate with the volume of the will of the People who compose it. The power of the *Government* is *less* than the power of the *State*, by the extent of the restrictions, imposed in its Constitution and bill of rights upon its functionaries. They exercise the power of the State in the manner prescribed, and subject to restrictions, imposed upon their exercise of it in that instrument.

If, then, the Constitution of the United States was formed by the People of the States, and the People acted in their corporate State capacity, in its formation, it must be

a Federal, and cannot be a National Government, and the powers of which it consists must necessarily be specific. For if, as I have asserted, (and I do not repent of the assertion,) the governing power is a moral force, and consists exclusively in the will of the People, and the People belong to the States, then there is no source whence this power can be derived to the General Government, by implication or inference. The power of the General Government consists exclusively in its Constitution. It is a *mere government*, consisting of designated functionaries, permitted to exercise *specified powers*. It does not consist of the People, and, therefore, cannot legitimately use their will, except as concocted by the States.

The Legislative power of the General Government is exerted on the floor of Congress by the Representatives of the People of the States; and on the floor of the Senate by the Representatives of the Governments of the States, respectively. The first represents the People of the States, in reference to their incorporation by the social compact; the second represents the Governments of the States, in reference to their Constitutions. Hence it follows that the States are, directly or indirectly, the constituents of all the functionaries of the General Government, and, being the constituents of Members of Congress, have the exclusive right to instruct them; whether in relation to matters merely legislative, or to the choice of President, when the election of that officer devolves on Congress. The districts from which the Members are elected, in any State, belong to the State, and were created by it, for the convenience of its People, in the exercise of the elective franchise. The Members, when elected, are the Members of the State, elected by the People of the State, and bound to represent the will, not of the People of this, or that district, but of the State. The State can only express its will through its Legislature, and the Representatives from the counties, which compose the districts, compose the Legislature; which enables the State to express the will of every portion of its citizens, in its corporate capacity, by the voice of the majority, according to its organized plan of agency.

If a Member from a particular district should attempt to screen himself behind the supposed will of his district, against the known and expressed will of his State, he acts upon the principle of consolidation: he detaches the People of his district from the State, in violation of its corporate character, and attaches them to the General Government, in violation of the principles of that Government. He incurs, by that single act, a complicated delinquency: he violates the will of his State, and he contravenes the principles of its Government, and those of the General Government. He violates the laws of physics, as well as the laws of civil polity, by attempting to substitute either his own will, or that of his district, for the will of the State, and thus to control the power of the whole, by the power of a part. This, Mr. President, is one of the many inferences which may be drawn from a just view of the principles of our Government, in refutation of modern, but prevalent errors. But, as the inferences to which I allude are not necessary to my argument, I forbear to trespass upon the time of the House, by running them out; and return to the subject, with the assertion that, if my views are correct, and if every State is the sovereign of the soil, and the citizens within its limits—if its power is its will, subject *only* to the restrictions which it has imposed upon itself in its Constitution, and by the concessions expressly made in the Constitution of the United States, then it is obvious that any power exercised by any of the functionaries of the General Government, which is not expressly conceded in the Constitution to that Government, must be an usurpation of power, which belongs to the *State Governments*, or to the *People*, in their corporate capacity; and endangers liberty, in the degree in which the reserved power is necessary to its maintenance and enjoyment.

It is not my purpose to inquire whence Congress inferred the power to cut canals and make roads in the States, or any of them; or to exact, by any mode of taxation, money from the People of the States, for that purpose. I have been tedious in attempting to be explicit. My special object is, to show that the Judges cannot legitimately infer power to themselves, or to the General Government; that they can only exercise the power expressly accorded to them in the Constitution of the General Government. If I shall have succeeded in relation to them, the same reason which denies to them the exercise of *implied* power, denies it alike to the Legislative and Executive functionaries of the Government.

It is, Mr. President, I believe, a just dictate of reason, that the zeal to guard against an evil, should be in proportion to its magnitude. What is the magnitude of the evil apprehended from the exercise, by the Judges, of *implied* powers: and what are the reasons for apprehending it? The evil apprehended is the absorption of the powers of the States by the General Government, through the instrumentality of its Judges: the reasons for this apprehension are to be found in what they have already done. It is fair, Mr. President, to judge of the future from the past; the *past* is, in fact, the only medium through which we can look into the *future;* the *present* will not stay with us long enough to be examined; it is the only portion of time which always seems to be in a *hurry*. We see, in the humiliation of a majority of the States, the triumphant encroachments which the General Government has made, by judicial construction, upon State rights. It is impossible, Mr. President, to depict either the extent or the magnitude of the evils inflicted upon the States, by the Judges, in the exercise of implied powers. I have attempted to show, *not* that *liberty* is *power*, but that *power* is *liberty;* if I am correct in the position that liberty consists in the right of every citizen to do whatever he ought to will to do, and that the guarantee of that right is in the *power* of the *State*, then any diminution of the power of the State is a correspondent abridgment of the liberty of the citizen; and, consequently, the prostration of the power of the State is the vassalage of its citizens. The magnitude of the evil, then, in its extreme, is neither more nor less than the loss of their liberty by the citizens. But if we define liberty to be the right of every citizen to do what the laws *permit* him to do, and the power of the State to consist in the will of its citizens, then the code of the State, regulating the conduct of its People, is but the will of the citizens, regulating their own conduct. Hence, the liberty of the People of each State consists in the power of self-government: and the abstraction of that power is the destruction of liberty. The denial to a State of the power to make laws, in relation to the social intercourse, conduct, or interests, of its own citizens, is, in so far, a paralysis of the power in which their liberty essentially consists. This paralysis has been inflicted by the Judges upon a majority of the States which compose this Union. They have been successively stripped, by that tribunal, of their sovereign power, to an enfeebling and degrading extent. These instances are past; they cannot be recalled. The mortification they inflicted can only be compensated by the lessons of caution which they inculcate—the admonitions which they give to the States, to guard against their recurrence. To maintain the power of a State is to maintain the efficacy of its laws: for its power consists in the enaction and enforcement of such laws as its condition may require, conformably to its Constitution. The importance of the free and unhampered exercise of this power to the freedom and happiness of the People, must be obvious to the most superficial observer.

This power, Mr. President, consists, as I have already perhaps too often repeated, in the will of the People. This will, to be beneficially and efficiently exercised,

must, from its nature, and the nature of man, be exerted within a limited sphere. To be efficient, it must be confluent; to be beneficial, it must be harmonious. But there is a territorial extent, beyond which the People cannot mingle sympathy and sentiment—beyond which, that confluence and compaction of the People's will, which is necessary to their liberty and their comfort, is impracticable—beyond which, if its confluence were even practicable, its harmonious *interfluence* is denied by physical, and, of course, invincible causes. The climate and the soil, occupied by any People, have a powerful influence upon the complexion of their will. The same climate, and the same kind of soil, produce substantially the same kind of pursuits, the same customs, habits, and manners; and, of course, the same complexion of will. If they occupy the seaboard, they are commercial, as well as agricultural, (unless the soil forbids agriculture,) and those pursuits accommodate themselves to each other by the kindliest reciprocation of their respective facilities. If they occupy the bosom of a continent, their pursuits are less diversified, and their habits and manners more simple; because, the climate has been uninterrupted in the concoction of their will, by the interference of the ocean. But, whether in the bosom of a continent, or on the margin of the ocean, they can only be free to the extent in which they can exert their mingled will, in the *exclusive* management of their own interior concerns. Upon this theory, Mr. President, the States of this Union should be maintained, with their powers undiminished from any quarter. The States are happily suited, in their territorial dimensions, to the practicable exertion of the confluent will of the People who compose them, in the enaction of laws for the regulation of their own concerns, suited not only in their dimensions to *compaction* of will, but to those physical causes which, by producing *sameness*, give strength to that compaction.

Is this theory illusive? Is it not verified by the history of civil societies, in all ages, and in all countries? What instance, Mr. President, does history furnish, of a free Government covering a great extent of territory? Has freedom ever been the entire occupant of a continent, or of a great portion of a continent? No, sir; entire continents are the property of despots; and, of course, the abodes of slavery and wretchedness: and that, not because the People are less fond of freedom than the People within more circumscribed limits: for the love of liberty is natural to man—but because of the impracticability, resulting from territorial extent, combined with physical causes, of producing and maintaining in a lively and active condition, that concert, that compaction of will, in which alone consists the power which is liberty; in which alone consists the liberty which is power. For, I repeat that *liberty* is *power* in that sense only in which power is liberty.

The Government of a continent must be, of physical necessity, a despotism. It cannot be even a monarchy. And why? Simply because the will of the People cannot circulate in volume, actively and wholesomely; that is, in compact confluence throughout the mass. It cannot be confided in, farther than its effects can be seen and felt. They cannot be seen and felt throughout. Its circulation becomes languid; stagnancy succeeds to languor, apathy to both. Sensation usurps the place of intellection, and fear succeeds to the place of volition, and becomes the principle and the power of the Government. The People cease to govern themselves by the power of their own will, and permit the despot to govern them by the power of their own fears. He keeps up their fears; and exacts their obedience by employing, coercively, the physical force of the extremes against each other. He keeps every portion in awe by the force of the whole, and the whole by the force of every portion.

Such, Mr. President, must be the condition of the People of these States, when, through the instrumentality of the Federal Judiciary, or any other means, the States shall have been destroyed, or reduced to consolidation. Their condition will be even worse: for the machinery of the State Governments, which were formed by the will of the People, to suit their wants, will be employed as the coverts and conduits of oppression. Those corporate devices, by which the refreshing streams of public will were conducted to the vine and the fig-tree, under the comfortable shade of which every citizen sat, when there was none in all the land to make him afraid, will be organs through which official tyranny and misrule will inflict fear and misery upon the once happy abodes of peace, security, and comfort; and for this there is no remedy, while the dominion of the despot retains its territorial extent. The only remedy is, in cutting the continent up into Governments, no one of which will be too large for the energetic circulation of the governing will of the People. In that way, they may establish and maintain their freedom, until they are *construed* by their *functionaries* out of their right to govern themselves.

Mr. President: there is not any thing beneath the sun but mind and matter: one or the other of those two substances must govern. Matter cannot; mind, of course, must. And the question must always be, whether the will of *all*, of a *few*, or of *one*, shall govern. The People can only govern by their *united* will, when they are so situated as to be able to *unite* their will for that purpose. When that is the case, their happiness is in their own power: for the power of the united will of the People of a State is almost indefinite. In England, when the will of the People has, through the Representative principle, been employed as the governing force, it has, though encumbered with rotten boroughs and with royalty, achieved wonders. It has secured to the People as much happiness and liberty as were compatible with their condition and form of government.

In Rome, in Greece, and wherever else the People have been free, they have been happy and powerful while their freedom continued. But, in those places, and wherever else, in all time past, freedom has been found, it has been found in the possession of a People occupying a comparatively small territory.

While, therefore, the States can maintain the free and unfettered exercise of their own will, in the management of their own interior concerns—while the Federal Government will be content to exercise the powers conceded to it by the States, in the Constitution of the United States, and leave to the States, respectively, the exercise of their will as sovereigns in the regulation of their internal polity, the People of the States will be free and happy; and the States will be strong in the vindication of the rights of the Union, in proportion to the freedom and happiness of their citizens. Their strength, upon an emergency, will be the strength of giants refreshed by sleep.

And, Mr. President, permit me to ask if it is not more in accordance with the nature of our complex Government, that the Union should depend upon the States for its vigor, than that the States should look to the Union for their strength. Does not the theory of our Government enjoin that we should look rather to the good of the whole, by taking special care of the parts, than that we should look to the good of the parts, by taking special care of the whole? Can we hesitate upon this question, when we consider that the liberty and prosperity of every citizen is in the exclusive keeping of his State, and not of the Union? That the citizens owe their happiness to their respective States, and derive their liberty from them? That it is in the States that patriotism, to whatever extent it may exist, must be found? It is in the States, and under their protection alone, that the family altars are reared, and the family fire-sides consecrated by family endearments; and that it is under the protecting toleration of the States that temples are erected to the living God, and

public and social devotion conducted. The Federal Government does not possess, in any of the States, nor has it the capacity to procure, the ground on which to erect a temple, unless as lessee of the United States' Bank. It has no country. It has, I repeat it again, no people, no citizens. Let it, then, look to the States for its wealth, its strength, its prosperity. They are the true and only source of them all. It is a mistake, to suppose that the wealth of a State consists in the richness, in the redundance of its exchequer. It is rich only in proportion as the money of the country is in the pockets of its citizens. It is impoverished by every dollar unnecessarily taken from their pockets. Its true wealth consists in the wealth of its citizens—in their industry and enterprise. Its strength, in their freedom. No State can be strong, or even wealthy, whose citizens are not free. No State can be weak, or poor, whose citizens enjoy liberty. Take notice, Mr. President, that I am speaking of States, or Nations, and their citizens. The Federal Government is neither a State, nor a Nation; nor has it citizens. It is a Government, merely: rich, in the true political sense of that word, only in the wealth of the States; strong, only in their strength. It is to guard the General Government from enfeeblement, by encroachments upon the powers and rights of the States, that I made you the propositions, the first of which I am now, feebly, I fear, attempting to support.

Mr. President: the vigilance of no State has been able to give perpetuity to its liberty. There is a proneness in power to the enlargement of itself: no State has been able to resist that fatal proclivity. Its progress has been so gradual, and so disguised, under the appearances of official duty and patriotic zeal, as to elude detection, until it had acquired a resistless momentum.

Confidence is the cement of society; it is the principle of its cohesion: and never, in that character, fails to perform its function. There is no instance on record in which distrust has usurped its place, and dissolved the bands of civil society: while history is clouded with instances in which the public functionaries have most perfidiously abused the confidence reposed in them by the People, and betrayed their dearest interests.

There is no lodgement of power, in the making of which there has been so much difficulty experienced by the statesmen of all countries, as that of the Judiciary. There is none which has been exercised, by those who were invested with it, more oppressively to the People, and with more obliquity by the fiduciaries. The history of Rome and of England abound in instances of judicial malversation, bribery, and corruption.

At Rome, as we learn from the oration of Cicero against Verres, the bribery of the Judges was matter of course; and that those who were wealthy enough to do it, spoke of it with the same indifference with which they spoke of the common and ordinary dispositions of their money. From the history of that country, we learn, that the moment a man became an informer, he was put under guard, lest he should *bribe* the *Judges* or the witnesses.

In England, the reigns of Edward the 1st, Richard the 2d, Henry the 8th, James the 1st, Charles the 1st, and Charles the 2d, were marked by judicial tyranny, obliquity, and corruption. Sir Ralph de Hengham, Chief Justice of the King's Bench; Sir Thomas Wayland, Chief Justice of the Common Bench; and Sir Adam de Shallon, Chief Baron of the Exchequer, were convicted and punished, and that heavily too, for their corrupt exactions in the administration of justice. The Earl of Suffolk; M. D. la Pole, Lord Chancellor of the Kingdom; the Duke of Ireland; and the Archbishop of York, were declared guilty of high treason; and a number of Judges, who, in their *judicial capacity*, had acted as their instruments, were involved in their condemnation: among whom were Sir Robert Belknap and Sir Robert Treselean, the latter Chief Justice of King's Bench. The crime of those I have last named, consisted in their attempt to subvert the liberty of the People: some of them were hung, and the rest were banished. To these may be added the names of Sir Thomas Empson and Edmund Dudley, guilty of exactions; Lord Bacon, of corruption; nor ought the names of Chancellor Finch, Keeper of the Great Seal; Judges Davenport, Crowly, and Berkly, who were guilty of attempts upon the liberty of the People, to be pretermitted.

Sir William Scroggs, Lord Chief Justice of King's Bench; Sir Francis North, Chief Justice of the Common Bench; Sir Thomas Jones, one of the Judges of King's Bench; and Sir Richard Weston, one of the Barons of the Exchequer, were all impeached by the Commons of England for partialities in the administration of justice. These instances show, that no influence nor dignity could secure the Judges, either from corrupt practices, or from the vigilance of the Representatives of the People of England. Other instances, Mr. President, might be adduced, from the English history, or judicial corruption; but these will suffice to prove, what, in fact, needs no proof, namely, that Judges are but men; that the ermine furnishes no security against the force of temptation, or the frailties of human nature; that they are as liable to err, as any other description of public functionaries; and, from some unhappy fatality, are, in the organization of almost every Government, made more irresponsible: while, from the comparative paucity of their numbers, and the nature of their powers and duties, they are greatly more exposed to temptation than their co-ordinate fiduciaries.

Happily, the Judges of the Supreme Court of the United States—I mean the present incumbents—are men upon whose integrity suspicion has never scowled. They have suffered only—if they have suffered at all, in the discussion of this bill—from a profusion of injudicious eulogy in the House of Representatives. The ermine should never be tarnished with the spatterings of fulsome adulation. There is a sanctity about the judicial, like that about the matron character, which ought not to be profaned, even by well-meant declamatory praise. The matron should be content with the affectionate confidence of her husband, the Judges with the approving confidence of the People. Clamorous praise is injurious to the character of either: neither, if they do their duty, need it; and, with the intelligent, it is apt to be suspected to be but a fig-leaf expedient, kindly got up to conceal violated duty. The absence of murmurs and discontent is the most substantial commendation of both.

I feel emboldened, Mr. President, by the unsuspected integrity of the Judges, to speak the more freely of their encroachments upon the rights and powers of the States, by decisions merely erroneous. For, if irreparable injury may be done to the liberty of the People by *mere* error of judicial opinion, what may not be apprehended from judicial corruption? And what right, Mr. President, have the People of these States to hope for a greater exemption from judicial obliquity and corruption, than the People of Rome or of England? The present incumbents are not immortal; they cannot remain upon the bench forever. I have shown you, by reference to the history of England, that Judges in that country, loaded with wealth, encumbered with honors, and distinguished for their intellectual attainments, were convicted, some of them for corruption in office, and others for what was worse, if possible—combining with the ambitious and unprincipled to destroy the liberty of the People. I urge, Mr. President, not that our Judges are bad men, (for I believe them to be good men) but that we may have bad Judges; but whether we shall or not, that it is wise to guard against those errors and indiscretions to which, as men, they must be subject. What has been, may be again. There not only have been bad Judges, but the world has been infested with them. The country whose history I have just quoted, was harassed

by them for centuries, and would have continued to be so, had she not learned wisdom from experience, and coverted her punitory into cautionary vigilance; and, instead of hanging and banishing her Judges, placed them in a posture of dependence upon, and responsibility to, the will of the People. This was done by an act of Parliament, in the thirteenth year of William 3d, which fixed the salaries of the Judges, and provided that the King should remove them, upon the request of a bare majority of that body. By this act, the Judges were brought within the reach of the Representative principle, and thereby made accountable to the People, and dependent upon their will. Since that time, the Judges of England have been pure, upright, and independent. Since that period, the People of that country have enjoyed, so far as related to their Judges, what no other People ever enjoyed for the same length of time, namely, that tranquillity, peace of mind, and security of person and property, which constitutes the essence of human comfort, and which alone can be enjoyed under a just and impartial administration of the laws. Since that period, the Judges, instead of lending themselves to the King, as the avenues and instruments whereby to oppress the People, have become, by being made dependent upon their will, and independent of the crown, the impregnable bulwark of the liberty of that country.

The English are the only People in the Old World who have found out the *great secret* wherein judicial independence consists. It was a precious discovery. They knew its worth, and availed themselves of it, by the provisions of the act to which I have just alluded. Before that time, the King appointed and paid the Judges. They were his Judges—so called. The King's Judges—of course his creatures. By that act they became the *Peoples' Judges;* dependent upon the will of the People for their salaries, and the tenure of their offices. Before that time, they were dependent upon the will of the King for both; they were commissioned by him during his pleasure. By that act, it was provided that they should be commissioned during good behaviour; that is, during the pleasure of the People, instead of the pleasure of the King. Before that time, the nation was repeatedly agitated, and sometimes almost convulsed, by the efforts of the People to get rid of corrupt, oppressive, and tyrannical Judges. They had no mode of doing it, but by banishment and hanging.

There the Judges had the protection of the King, whose pliant instruments they frequently were. Since they have been made dependent upon the People, and responsible to them, there has been no attempt to remove any of them; no agitations; no convulsions. And why, Mr. President? Because, knowing that they could be deprived of their salaries and offices by the People, whenever they should please to exercise that power, they have administered impartial and even-handed justice; and the People are not so capricious as the advocates for judicial infallibility are in the habit of representing them to be. For a People who govern themselves, to require their Judges to be independent of their will, or even to permit it, is to surrender their liberty.

The Judges, therefore, should be constrained to carry the laws into effect. The power of the law, and the power of constraining the Judges to carry the law into effect, consist alike in the will of the People; the Judges, therefore, should be dependent upon the will of the People, and independent of every other will whatever, except that of Heaven. And this *dependence* upon the will of the People constitutes (strange as it may seem to superficial observers) the *independence* of the Judges—so much talked about, and so little understood. The independence which, since its discovery and reduction to practice, in England, has secured to the People of that country the enjoyment of as much liberty as is compatible with their form of Government, and shed a lustre upon their judiciary, which excites the admiration and envy of surrounding nations.

The patriots who framed the Constitution of the United States were strongly impressed with the multiplied evils which had resulted to mankind, from the want of integrity and independence, in the judicial departme t of their various Governments. The cruelties and corr ptions which had marked the dependence of the English Judiciary upon the King, were vivid in their minds; the fate of Sidney, Russel, and other votaries of liberty in that country, was no doubt ascribed, and justly too, to the servility of the Judges to the King. They overlooked, unhappily, the discovery which the English had made, at the epoch to which I have alluded, and in their zeal to render the Judges independent, have made them absolute. They have placed them by the Constitution more independent of the Executive Department than they were of the King anterior to the 13th of William 3d, and even less responsible to the People than they were there; for there, when the People could neither remove the Judges, nor regulate or reduce their salaries, they could reach and punish their obliquities by an act of attainder—a measure, to which the enormity of judicial malversation constrained them sometimes to resort—a measure resulting from the power created by the social compact, and not interdicted, either by the form of their Government, or their magna charta; a power never used by that nation, but for the protection of the liberty of the People against official encroachment; a desperate remedy, administered only in the case of a desperate disease: a remedy which has fallen into disuse, in that country, since their Judges have been *tamed*, and made the *guardians*, instead of the *assailants*, of the rights and liberty of the People. The exercise of that power is wisely negatived in the Constitutions of the States.

The Judges of the United States, then, Mr. President, are, unhappily for the States, more independent of the People than were even the Judges of England, while they belonged to the King. There the *punitory* power of the People, when they were agonized by judicial iniquities, and only then, could reach the Judges. Here they cannot be reached effectually by either the *punitory* or restraining power of the People. There is, Mr. President, a peculiarity in the Government of the United States; it has all the energy, and aims at all the grandeur and magnificence of a National Government, without being really so. It is a great corporation, removed from the People by the intervention of other corporate structures. The State Governments are between it and the People. The judicial functionaries of the General Government, removed, as they are, from the People, by the intervention of the machinery and functionaries of the State Governments, and created, as they are, without any *immediate* agency, on the part of the People, cannot be expected to regard the People of the States with any very peculiar sensibility, or to be regarded by them with the vigilance necessary to the preservation of their rights. The attention of the People must be engaged in superintending the agency, and in restraining the official vagrancy, of their own immediate State functionaries. And when was it, that any People were known to be able to preserve their liberties from the encroachment of those to whom they had confided the administration of their Government? The powers delegated by the People to their official agents, for the purposes of one Government, have always been perverted to the destruction of their liberty, in despite of all the vigilance they could use. How then can it be expected, that they can guard their liberties against the encroachments of two sets of functionaries; between one of which, and themselves, there is no intimacy of relation; indeed, no relation, but that which consists in the exercise of power, on the one side, and submission on the other; power on the side of the Judges, and submission on the side of the People.

The Judges of the General Government are subject to

no legal responsibility; and they cannot be under the influence of moral responsibility. They are the Judges of a *Government* that has no People, no citizens. There is, between them and the People, the State Governments, and the State functionaries. They are not on the *level* of human agency, and human sympathy. They *visit* that level *clad* in the panoply of power. Their contact with the People, is marked by authority; is marked only by the display of power on the one side, and submission on the other. For, although the General Government and its functionaries are the property of the People of the States, yet, emboldened by their irresponsibility; secure in their *salaries*, and their offices; conscious that neither can be affected by the People, or Governments of the States, they treat both as *their property;* they can, therefore, be under no moral responsibility—there is no medium through which it can act upon them. They occupy an exalted corporate theatre; they are seated upon *an eminence* of power, which, though erected by the People of the States, cannot be affected by them. To talk of the moral responsibility of Judges placed by their installation beyond the reach of the will of the People, is to betray a want of knowledge of human nature; the *manners*, the customs, habits, and moral sentiments, of the People, cannot be expected to control those Judges, who are not only not controlled by, but have the absolute control of, the People.

It is true that there is implanted in the nature of man, a fine sense of feeling; a *nice* and delicate sensibility, which has a mighty influence upon human conduct. If these feelings do not constitute, they have an intimate connexion with, the *moral sense*. It is through their agency, that shame restrains from ignoble, and honor quickens us to noble deeds. But it is the man, and not the Judge; it is the moral, and not the corporate agent, who is constrained *by* these feelings. It is also true, that the absence of those fine feelings, is as likely to characterize the man who is the official agent, as their presence. Jefferies was a Judge, as well as Hale. The latter was an *ornament* and a blessing to society. The former a disgrace and a pest. The latter was accessible, if I may so speak, to moral responsibility, by the fine sensibilities of his heart. The former was destitute of those sensibilities; and of course inaccessible to that kind of responsibility. Both were the Judicial organs of a *nation*, and sustained toward the People of the nation, the same relation which the Judges of the States sustain towards the People of the States respectively; they were within the circle of social sympathy on the theatre of social agency; they were the *custodes morum*. They were accessible to moral influence, and of course moral responsibility might, from their relative posture to the People, be predicated of them. They were in unceasing contact with the People; they gave to the rules of conduct and of property their practical application. Not so, Mr. President, with the Judges of whom we are speaking; they are the Judges of a corporation, which, for want of connexion with the People, may as properly, as any other corporation, be said to have no heart; their Ministry is not the *custodia morum*. They minister, not in giving effect to the will of the People, but in controlling their will; in denying to them the right to manage their own concerns by their own agents, according to their own will; in divesting the States, by tortuous construction, of those powers and rights in which the liberty and happiness of the People consist.

Sir, while the Judges came down from the King, the People of England were afflicted, oppressed, agonized; when they ascended from the People, and were rendered, politically as well as morally, responsible to them, they became tranquil and happy. The Federal Judges come down upon the People of the States, from the Federal Government, as did the Judges from the King upon the People of England; with this difference, that there was a moral responsibility *there: here* there can be none. There Judicial obliquity was visited upon single individuals, and *mostly* upon those who had been so unfortunate as to incur the displeasure of the throne; upon individuals who, inspired by the love of liberty, dared to oppose the extension of the royal prerogative. The pecuniary exactions made by the Judges, in the indulgence of avaricious impulses, were comparatively of little importance. The People were saved from frequent and extensive *visitations* of that sort; by the moral restraint of which I have just spoken; by the moral responsibility of the Judges. But here, the Judges may visit States; may visit the whole People of a State, in their corporate character, in obedience to what they may choose to consider their official duty; and thereby swell the power of the Government, whose organs they are. They may neutralize, or even paralyze, the power of the States, without being conscious of intending to inflict an injury upon them. Influenced by that love of power, which is natural to man, when invested with it, and habituated to exercise it, they may diminish the happiness and endanger the liberty of millions of freemen; and if, without intending to do more than to display the splendors of judicial intellect; if, when they are only endeavoring to excite public admiration, by the exercise of their powers of construction, they may inflict injuries so vital upon the States: What may not Judges, wholly irresponsible as they are, not do towards the degredation of the States, and the vassalage of the People, when they shall design to do so?

Mr. President: The present incumbents are above all suspicion; obliquity of motive has never been ascribed to any of them; their successors may not possess, or deserve, public confidence to the same extent. But, let it be remembered, that the Judges against whom injurious imputations were not made, even when the fervor of party politics was at its highest, sustained and enforced the *alien* and *sedition laws*. American citizens were fined heavily, and imprisoned too, under the sedition law: such was the *proneness* of those Judges to swell the power of the Government whose functionaries they were. Although the liberty of speech, and of the press, were guarantied by the Constitution to all the citizens of the States; yet *they* fined and imprisoned several of our citizens for exercising that liberty. That law, which struck at the *very root of liberty*, was gravely decided to be constitutional by the Judges of the Federal Government, while laws, enacted by the States, in relation to the soil within their limits; laws, enacted to give repose to occupancy, by limiting the period within which suits should be brought for the protection of the honest occupants, have as gravely been decided by them to be unconstitutional and void. But what power is it, which any of the States has exercised, which tended at all to assert its sovereignty, and vindicate the rights, real or personal, of its citizens, which those Judges have not either disparaged or vacated by their decisions?

And, Mr. President, what law of Congress has been enacted which tended to trench upon the rights of the States, or of the citizens of the States, which that Court has not affirmed to be constitutional and valid? The Congress, in an *evil hour*, enacted a law, creating a Bank, with a capital of $35,000,000, with power to plant offices of Discount or Deposite in any, and all, of the States, without their consent. The power to enact this law was not given to Congress in the Constitution—I have, I trust, shewn, that the powers of the General Government exist in grant; that they are, and must necessarily be, express, and cannot be implied; that the People of a State, or Nation, may, through the agency of their functionaries, create a Corporation; but that the Corporation, when created, must be content with the powers granted; that its powers, necessarily, consist in grant, and that it cannot create another Corporation—and that, too, with powers not conceded to itself.

I need not here repeat the reasons; I need not state

that the Constitution, itself, negatives, expressly, the exercise of any power by the Federal Government, not therein granted; that all the power, not granted, remained with the People and the States; consisted in the will of the People, and they belonged to the States. Yet the Judges of the Federal Court decided that this law was Constitutional and valid. Here we have all the power of construction, which is usually exerted to vacate a State law, employed to sustain this. It was in vain to urge that this Bank could not be authorized by the General Government to do, what that Government itself could not do: namely, to become a *land holder*, a *land speculator*, *within* the States; to become a *landlord* to an enormous—in effect, to an unlimited—extent. The General Government could not, itself, by any means whatever, own, even with the consent of the States, more land in any of them than should be necessary for the erection of forts, magazines, dock-yards, &c.; and yet the Judges of that Court determined, that the Congress could, lawfully, create a Corporation, and invest it with power to hold lands in any of the States, not only for its immediate accommodation, in the transaction of its business, but to become the mortgagee of lands, to any extent, and to receive them in payment of debts. The Judges of that Court, also, as gravely determined that the same Bank, which might lawfully thrust itself into any and every one of the States, and become a freeholder and landlord in each of them, in addition to its other privileges, should have the special privilege of suing, and being sued, in the Courts of the United States.

So that you see, Mr. President, what are the construing powers of these Judges; they first construe this Bank, with all its enormous powers, into existence, and then construe themselves into exclusive jurisdiction of all its causes. They confer upon it the power of drawing the citizens, whom it shall sue, or by whom it may be sued, from the extremest parts of the State, into the Federal Court. Nor is it unworthy of observation, that, in construing this monster into legitimacy, they construe the States out of their sovereign taxing power, at least so far as related to the money it employed within the State for banking purposes. Yes, sir, the States of Maryland, Ohio, and Kentucky, were successively trodden down by this Political Jugernaut. There is scarcely a State in this Union, whose power of self-government has not, at one time or other, been denied and resisted by the Judges of that Court. It is vain to urge that, by the genius and structure of our Governments, the citizens, and their property, belong, exclusively, to the States. That their conduct and their tenures are, of course, subjects of exclusive State Legislation; that the object of the erection of the Federal Government was the regulation of the exterior concerns, and foreign relations, of the States; that it was to regulate the intercommunion of the States with foreign nations, and with each other; that it was not to act upon the citizens individually, except in special and specified cases. Judicial *construction* must be employed, and whether employed by the Judges, in the derivation of power to themselves, or in its application to others, has achieved wonders. It is a new and mighty agent—boundless in its strength, indefinable in its structure, and terrible in its operations. It has the faculty of enveloping certainty in doubt, and, eventually, substituting judicial discretion for law—for rule.

What may not be apprehended from the exercise of this discretion in times which are to come? The Judges, as has been shown, represent a mere Corporation—the Federal Government; they are created by it; placed above the control of the will of the People. In a state of disconnection with them; inaccessible to the charities and sympathies of social life; subject, in the exercise of their powers, to the restraints, *ostensibly*, of the law and the Constitution; but, really, to those of their own will only. The Bank of the United States, the creature of the perverted corporate powers of the Federal Government, the protegee of the Judges—possessing an intrinsic power beyond even that of the Judges, and more irresponsible, if possible, than they are. What, I ask, may not be apprehended by the People of the States, from a coalescence, unconsciously if you please, of their kindred, irresponsible, and stupendous powers? *Avarice* and *ambition* are two of the strongest passions in our nature. The one aims at *wealth*, the other at *dominion*. Office is power—so is wealth; success places the votaries of each above the reach of the social sympathies of the mass of mankind, but does not extinguish the social bias of their nature. It places both above the vicissitudes and cross-purposes of common life, gives *leisure* to both, and invites them, by all the points in common between them, to a state of concert and intercommunion. The coalition between Cæsar, Pompey, and Crassus, was of this character; the blood of Pharsalia marked its progress, the prostration of Roman liberty its end. Crassus was dropped by the way—his wealth was used, and he was no longer useful; but the Bank of the United States is composed of more durable materials. It is a corporate agent, which wields and controls all the money, or nearly all, which the commerce of the United States employs. And surely, Mr. President, no arguments need be used to prove to this Senate, that the power which controls the money of a country, controls the People of that country. I wish not to be misunderstood here; I say that when the Government of any country surrenders to a Corporation the control of the money which is employed in the agencies of the People of that country, it surrenders, not only the People, but, eventually, the Government of the People, to that Corporation. This Bank, sir, was created, and has been, thus far, cherished and sustained by the General Government and its judicial organs, ostensibly as a convenient collector of the public revenue, but really, it is to be feared, as the medium through which the General Government might act, with all the force of money, upon the People of the States, alienate them from the Local Governments, and connect them with the General Government—not as the agents whose will should administer the Government, but as subjects whose will should be controlled by it.

This Bank Charter, Mr. President, I consider as a supplement to the Constitution of the United States, by which the Government of the Union is essentially and radically changed; the federative character of the Government is obliterated by it; its exterior federative complexion is as yet retained. But it is no longer a Federal Government; it is a National Government. The People of the States will be brought within the control of the Government as effectually, by this supplement to the Constitution, as they could have been by that instrument in its original formation, if such had been the avowed intent of its framers. This Bank may, and who can doubt but it will, exert its influence in the State elections, aye, and in those of the General Government too. The time may come, when the aspirants to the Chief Magistracy will look to it only for their elevation. It has, it cannot but have, all who are entitled to vote, more or less in its power; it is, mediately or immediately, the creditor of them all. The People have its money, are indebted to it for the whole amount in circulation, and we all know how to estimate the independence of debtors and tenants. Sir, we have seen the laws of a sovereign State arraigned in the Supreme Court by that Institution; we have heard the counsel, which it had employed to degrade the State, address that Court as the most august tribunal beneath the sun; as a tribunal *whose nod gave rule* to *sovereign States*. And what followed? Did that august tribunal declare the State laws, which the Bank had thus arraigned, unconstitutional? No, sir; that task is reserved, and will, no doubt, be performed hereafter. But, it authorized the Judges on their circuits to enact a *suitable* system of execution *rules*—not laws, Mr. President—*rules* of Court. The Congress

had not enacted a system of execution laws; the system of the State did not suit the taste or convenience of the Bank. It did not permit the debtor's lands to be sold for less than three-fourths of its value; it did not permit his body to be imprisoned. This did not suit the Bank, but it was suited by the Judges. Execution rules were enacted by the Judge, subjecting the lands of the debtor to sale, for whatever they might bring, without valuation, and subjecting his body to imprisoment. And so the matter *stands* at this moment.

Sir, if this Bank Charter were not considered as a supplement to the Constitution, incorporating the power which it creates, with those already possessed by the General Government, I should have no hesitation to say that it would eventually control not only the State Governments, but the General Government also. The power exercised by the Bank is the more to be dreaded, because its operation is silent and imperceptible, and because, on that account, it may the more easily operate upon, not only the People, but their functionaries. It rules by seeming to yield; it controls not only all whom it accommodates, but, through them, all whom they can control. Its power is atmospheric, and, like the atmosphere, conceals, in its apparent complacency and calmness, the desolating force of the tornado and the hurricane. But why do I dwell upon the effects of that power, which has been the Destroying Angel of Liberty, in all time past, and which, it is feared, will continue to be so, in all time to come? It is, however, the province of prudence to anticipate and provide against evil; it is in that view I have made the propositions which are now under consideration. But the evils of which I speak are not ideal and visionary; they are instant, present, and pressing. The ravages of the Bank upon the rights of the States, are a part of the history of our own times; the encroachments made by Judicial *construction*, upon the vital and sovereign powers of the States, are incorporated with, and form a part of, the wrongs inflicted by the Bank. Yes, Mr. President, the Judges have made the Charter of this Bank a supplement to the Constitution, and thereby made the Bank constitutional. For what is that construction of the Constitution, which varies its literal import, but in so far the formation of a Constitution? No body believed that the Constitution conferred on Congress the power of creating this *giant* Corporation; no one but the Judges, and other functionaries of the General Government, could read that grant of power in that instrument. If, then, the framers of the Constitution did not insert that power legibly, it was not in it; for it is, philosophically as well as legally, true, that, concerning that which does not appear, and does not exist, the reason is the same, and applies, most emphatically, to the Constitution. If I am told that a Bank of great capital exists in England, and that the evils which I have attempted to pourtray have not resulted from it there, I reply, first, that the Bank, there, was not created by the Judges; that the creation of that institution was not one among the many enormities which characterized the Judiciary of that country, in the early period of its history. It was created by the legitimate powers, and is in accordance with the nature and principle of the Government. The principle of that Government is honor; the Bank is but a part of an harmonious system, adapted to the nature and principle of the Government, and is checked and balanced by other parts of the same system.

In that Government the laws of primogeniture and entail are so many fortresses from which agriculture, and every thing essentially and intimately connected with it, are defended against Bank influence; the Bank there subjects to the control of the Government the merchants and manufacturers, while the People, including Lords and Commons, through the representative principle, which takes deep root in the soil, control, to some extent, the Monarch and his Bank. There, giant powers are opposed, and the injurious force of each neutralized by the other; and the People remain unscathed by their violence. They sit by, not only uninjured, but they educe solid good from the surrounding evils. The laws of entail and primogeniture, while they give ease and elevation to one member of a family, and place him, personally, on a height which the Bank cannot reach, enables him to protect all the other members of the family from its injurious influence, while *they* are thrown into a state of conscious dependence upon their own intellectual and physical resources; and thus they are made Republicans, and able and efficient Republicans too, in the bosom of a monarchy; and it is this sprinkle of the Republican spirit and habit, which gives to that Government all of efficient freedom and energy which it possesses.

But, with us, Mr. President, the case is happily different; our State Governments are Republican in their nature—their principle is virtue. The General Government was intended to be, and is, of the same character, with the exception of the Judiciary.

Virtue, as the principle of a Republic, means *a love* by the citizens of their *country* and of the *laws*.

With us, entails and primogeniture were abolished; the distributive principle was incorporated in our statutes of descents; and every man was placed on the basis of equality of rights; free scope was given to his faculties, intellectual and physical; competition was left free to *whet* ardor in the career of industry. The Governments, I mean the State Governments, while they furnished the highest incentives to industry, by the protection which they gave to its achievements, secured its votaries in the enjoyment of its fruits, and secured them from the bad influences of accumulated wealth, by the abolition of the laws of primogeniture and entails. But, Mr. President, to what purpose were all these regulations in favor of equal rights, and the distribution of wealth; and these precautions against the direful effects of its perpetual accumulation in the hands of a few? To what purpose was the army reduced to 6,000 men in time of peace? You tell me that all this was to render more secure the enjoyment of liberty by the citizens; but how idle this parade of caution, if, as the fact has turned out to be, it is in the power of three *unarmed* men, the Judges, a majority of a quorum of the Justices of the Supreme Court, to create and locate in each State, a corporate aristocracy of overshadowing wealth; one which, unweakened by any rival, must, from the nature of its power, and the nature of *man*, control the will of the citizens of each State in which it is placed. It is useless to tell me that Congress enacted the law establishing the Bank: for I reply, that the People of the States denied the power of Congress to do so. The Judges affirmed the power of Congress; over-ruled the voice and will of the People of the States, and gave its protection to the institution. But, sir, I am, I fear, wearying you and the Senate with this Bank. Sir, I have only to urge, as an apology, that I have been, from the establishment of that institution, deeply impressed that, in its creation, the axe was laid to the root of the tree of liberty; that the Bank, through the instrumentality of the power of construction, assumed by the Judges in its favor, must prostrate the States; and that, with the fall of the States, the liberty of the People must fall. I would willingly avert, and, if I could not avert, I would delay, as long as possible, that disastrous event. I do entertain the hope, Mr. President, that, by multiplying the Judges to the number of ten, and requiring seven of them to concur before they can vacate a State law, this fatal proneness, in the Judges, to construe the States out of their rights, may, at least, to some extent, be checked; that the Judges, by residing in their respective Circuits, will become better acquainted with the *matter of fact shape* of human life. They will perceive that it is not necessary to climb the mystic ladder of construction, to the clouds.

after law; that it is a mere matter of common sense, understood and reduced to practice in the States; that it is comprehended and regarded, by the thousands who compose the States, as the rule of their conduct, and of their property. That law is, in fact, a *rule of fitness*, resulting from the *relation* of things, recognized and consecrated by the common sense of the People, and embodied, as such, by the Legislature of their State. That law, like logic, is emphatically the science of reason; that all can reason, although but few understand logic as a science; so, as to law, all can understand it, and all are bound, at their peril, to understand and conform to it, although but few can understand it, in its scientific, or systematic shape, as jurisconsults. I flatter myself that, if we *create*, by the passage of this bill, three additional Judges, and six additional Circuit Courts, and oblige the Judges to live in their respective circuits—as this bill contemplates—and require, according to the purport of the first of my amendments, the concurrence of seven of the ten in the declaration that a State law is unconstitutional, that there will be found, not only an increased respect for the States, and for State laws, but the States will find, even in the difficulty of the requisite concurrence, some additional security against the prostration of theirs powers. And that even the Bank, that (to use the language of Lord Bacon) vile prophaner of the Sabbath; that monster that lives upon the sweat of other men's faces; will, when the ravages which it makes throughout the States shall be seen, by the Judges, in their real deformity, be received with less complacency, and treated with less indulgence, than it has, heretofore, experienced at the hand of that Department.

I have detained you, Mr. President, thus long, in attemping to point out the evils, which it is the object of the first section of the amendment in some degree to remedy; I want the Judges not to invite the money changers into the temple of liberty; but to act in relation to it, as the divine founder of our holy religion did, in relation to another temple and its money changers; to turn over their tables, and cast them out. The temple of liberty is an unfit place for the votaries of avarice and inordinate ambition. I cannot agree that they shall hold their foul *orgies*, or perform their sordid *rites*, in that temple.

Now, Mr. President, let me inquire for a moment what resonable objection can be urged against the adoption of this amendment? Are the States so prone to violate the Constitution of the United States, that the Judges should possess every possible facility to vacate their laws? Does not this argument strike at the very root of civil liberty, by proclaiming, as it virtually does, the incompetency of the people to govern themselves? You will tell me that it is not the People of the States, but their legislative agents, who so frequently violate the Constitution. I answer that the People select, and superintend those agents; that they alone are interested in the purity and inviolability of the Constitution. That it is theirs, and as they knew how to make it, they ought to be presumed *not* only to wish its preservation, but to know how to preserve it —to be at least as much concerned for its preservation, as any *four* of the seven Judges of the General Government. Besides, if a law be passed by any of the States, in violation of the Constitution, the People will feel and perceive its injurious effects, and they will repeal it. The laws are made for the People, and not for the Judges. It is, Mr. President, the great excellence of a Republican, over any other kind of Government, that when an erroneous law is enacted, its injurious effects are felt by the People, and the law is repealed. But when the Judges enact a law, an *execution law*, for instance, the People cannot repeal it, however injurious its effects may be. The Judges are placed, by their office, above the effects of their own laws. The People, upon which they operate oppressively, must bear, and be patient, *if they can*. It is so, and precisely so, when a despot gives law; the People must bear, they are in the condition of slaves—whose duty is obedience, and whose motive to obedience is fear.

But are the People of the United States so prone to violate their Constitution, as the Judges represent them to be, by their frequent vacation of State laws?

Mr. President: what motive can we suppose the People of the States to have, for the violation of the Constitution of the United States, which does not exist with the People of England to violate their Constitution, and their Magna Charta, or bill of rights? The People of England, like the People of the States, enjoy the power of enacting their own laws. Like the People of the States, they exercise the elective franchise, more limited, to be sure, *there* than *here;* but *there*, as *here*, they legislate by their Representatives. There, the Judges are obliged to carry the laws into effect according to their plain and obvious import. There, although the Legislature have a right to alter the form of government by legislative enactment, yet, no instance has occured in which they have done so; no instance in which they have passed a law which infringed upon any article in *Magna Charta*. There, their Constitution is as *obvious* in their *form* of government, as our *form* of government is *legible* in our Constitution. What saves the Legislature there from that suicidal course of legislation, which is ascribed to the States of this Union? *Here*, the legislative bodies of the States are under the obligation of an oath, not to violate the Constitution; and yet are charged with doing it, frequently. *There*, they are under no such restraint, and yet never do it: there, they are never charged with it. How, I ask again, does this thing happen? Are the People of that country more wise, or more virtuous, than the People of the States? Or are they more regardful of their happiness? To be happy, is the organic bias of man; to promote and secure this great object, was the primary and leading motive with every man, to become a member of the social compact, to enter into civil society. The People of both countries are, it is to be presumed, *alike* inclined to be happy. Strange, that two People, each possessing the power to promote its own happiness, by enacting its own laws—both enlightened—should act so differently. There is, Mr. President, in this matter, something which has hitherto escaped scrutiny; and escaped, because of the sanctity of the region in which it lies concealed. It seems never to have occured to any body, that the Judges might as readily be supposed to enlarge the Constitution of the United States by construction, as the States to violate it by legislation. There has been, and is at this moment, in this country, a judicial idolatry —a judicial superstition—which encircles the Judges with infallibility. To have them independent, public sentiment has, as I have before stated, accorded to them absolute power. That concession implies infallibility. Upon the supposition that they cannot err, their imputations upon the States have passed for oracular. The States have been disparaged; and the legislation of the States, the living fountain of the liberty of the People, has been degraded. Mr. President, if the object had been to destroy the liberty of the People of the States, and human ingenuity had been tortured to devise a plan, more effectual for that purpose, than any other, the one which is now, and for some time past has been, in operation, is the one which, in my opinion, would have been adopted as the most effectual. What is it? To disparage, by every possible means, the State powers, and especially the legislation of the States: disgust the People with the only organ by which they can express their *will*—with the legislative department of the States. And by what means? None more effectual than for the Judges of the Federal Government to vacate the State laws by solemn decisions; with apparent reluctance, but with great gravity, impute perjury by implication to the one hundred and fifty select

and selected men who enacted them—perjury, not by design, but by negligence, or ignorance; not by saying that they were either knaves or fools, but by leaving it to be inferred that they were either the one or the other. Nobody will have the hardihood to believe that the imputation of either, could attach to the *ermine*. What next? Why, impress the public mind with the belief that, however *fit* the States may be for the regulation, and decision of little matters of *meum* and *tuum* betwen their own citizens, they are utterly incompetent to decide upon any matter, in which so important a personage as the Bank of the United States is concerned; that the dignity of the origin of that institution, the weight of its character, and the extent and nature of its resources, entitle all its concerns to a place on the federal docket. Let the Judges rivet this impression upon the public mind, by a solemn decision that the Bank has the privilege to sue, and be sued, in the Federal Courts alone: In addition to this, let the presses, which are under the control of the General Government, and of its Bank, vilify the States, as petty, partial, and turbulent corporations; and pourtray, in glowing colors, the excellence and grandeur of the General Government; let them linger, at the close, with fond delight, upon the *independence* and *intellectual pre-eminence* of its judicial functionaries: Again—let the President recommend it to Congress to cut the States up into roads and canals; and let the Congress take the hint, and commence operations: Does any thing remain, Mr. President, to complete the prostration of the States, and with them the liberty of the People? Nothing, but what the Bank can very easily effect; and that is, to constrain its debtors, immediate, proximate, and remote, who form a majority of the People of the States, to give to all these operations, the unction of popularity. The Bank, it is known, has able counsel retained in each of the States. Their efforts and influence must not be wanting to propagate the sentiments which, whatever they may be, are best calculated to swell the tide of its influence; the Bank is their client; it is in the way of their vocation. Add to all these the usurers, brokers, stock-jobbers, merchants, and manufacturers, and who can doubt the result? I am one of those, Mr. President, who *do not believe* that the States are incompetent to the management of their own affairs; that they are, in their legislation, regardless of the Constitution of the United States; that they are petty, partial, turbulent corporations. On the contrary, I believe that their rights, and their constitution, and that of the United States, have been grossly and repeatedly violated by the Congress and Judiciary of the United States. I believe that the tendency of the General Government towards the absorption of the States, is visible, rapid, and, I fear, resistless. Yet, I would make the experiment to resist it. But, any experiment which purports to impose any restraint upon judicial discretion, is assailed by all our prejudices in favor of the sanctity of the ermine. The exclamation is, do what you please with the States, but do not meddle with the Judiciary; you may tax and tariff the People, to swell the influence of the Bank, by chaining to its car the manufacturers, whom you privilege by that process; you may make roads and cut canals, in any of the States, because you are thereby promoting the *general welfare;* and, because, then, you are only interfering with the constitutional rights of the States; in that, you are acting upon the People, and they, in all time, have been lawful game. But, touch not the *Judges;* they are the great umpire between contending sovereigns; between the General Government and the States. The happiness of the People is in their holy keeping. The Judges of the Supreme Court the umpire! They looked up to by the States as umpire between the General Government and the People! They the most efficient organs of that Government which wants but People to have vassals—the just and impartial umpire between *States* contending to maintain the power of the People, and the *mere Government*, contending for the power of controling the People; between the People of the States contending for the right of governing themselves, and the General Government, to govern them!

Strange infatuation! to suppose that *self-interest* is the just basis of impartial and disinterested umpirage. Let us, Mr. President, disenthral ourselves from our fatal delusions, in relation to this Judiciary. Let us invoke our reason to disenchant our feelings, and relieve us from this blind devotion to the Judges, this self-destroying idolatry. Let us not forget that they are men—and suppose it possible for them to err. I ascribe to the present incumbents nothing worse than the faculty of erring; and, if they may err—if their successors may, possibly, do worse than err—is it not wise to guard, as far as practicable, against that occurrence? Is not prevention more wise than remedy? But why speak of remedy? Their errors are irremediable; and, therefore, there is the strongest reasons for every practicable prevention.

But, Mr. President, what are the objections against requiring the concurrence of seven of these Justices to vacate a law of the State? I have attempted to show that the States do not (frequently at least) pass unconstitutional laws; that, if they should happen to do it, their own repealing power is a safe corrective. I do not, myself, believe that a single State in this Union has passed an unconstitutional law, with the knowledge of its unconstitutionality. I do believe, myself, that the Federal Judges have erred more frequently, and much more injuriously, in pronouncing State laws unconstitutional, than the States have erred in enacting laws of that character.

What objection, then, I repeat, can there be to this requisition? If the law of a State should be obviously and plainly in violation of the Constitution of the United States, it ought to be presumed that, being *obviously* and *plainly* so, all the Judges would perceive it, and readily and *unanimously* concur in pronouncing it so. If its unconstitutionality should not be obvious and plain, ought not the Judges, in *charity*, if not in *comity*, to those who enacted it, to presume that it was constitutional? Ought they to torture their wits in elaborate, learned, and *unconstruable* constructions, to arrive at its unconstitutionality, and thereby inflict the imputation of folly or wickedness upon the State which enacted it?

Where is the reason of requiring the unanimous concurrence of the twelve jurors in the guilt of a single individual, before he can be deprived of his liberty, and permitting a bare majority of a quorum of the Justices of that Court to deprive a State of its sovereign power, and the million of citizens who compose it, of their liberty? The trial by jury is the boast of the States; but they cannot be supposed to overlook, in their estimation of it, its characteristic feature—the unanimity with which alone it acts. Now, Mr. President, what reason can there be for requiring the concurrence of the *twelve* Judges of *fact*, to give validity to their verdict, which does not apply with at least the same force, in requiring *seven* of the Judges of *law*, to concur in a judgment, or decree, which condemns a State law? It cannot be that there is more difficulty in ascertaining the *law*, than the *fact* of the case. Every lawyer knows that the great difficulty of every trial consists in ascertaining the *true facts* of the case. When they are ascertained, the law is easy. Besides, in all criminal trials, the jurors are *judges* of the *law*, as well as the facts. They *must* ascertain the facts of the case, and *may* decide the law of it; and that *irreversibly* too, if their decision shall be in favor of the accused. How unreasonable, to require that twelve plain, common sense men, of the grand jury, shall agree in preferring a charge of perjury, for instance, against the humblest citizen of a State, and that twelve more, as a petit jury, must concur in pronouncing him guilty, before he can be deprived of his

privilege to be a witness; and yet refuse to require the concurrence of seven of the ten Justices, in a judgment, or decree, which shall not only vacate a State law, but inflict upon the one hundred and fifty select and responsible men, who enacted it, the imputation of perjury; of having violated their solemnn oaths to support the Constitution, either through wickedness, or ignorance. For my own part, I have no hesitation in saying, that I would place a State upon at least as good a footing as an individual. As the good sense of my country presumed every accused individual innocent, until his guilt was ascertained by the unanimous verdict of the twelve jurors, so I would, if it were left to me, when the law of a State was accused of being unconstitutional, require that the whole number of the Judges, whatever their number might be, should concur in the condemnation of it, before it should be considered as guilty of the charge, and thereby rendered inoperative. But, Mr. President, let me not be here misunderstood. In my judgment, the *sovereign power* of a *State* should not be submitted to *any judicial tribunal* whatever; but, if to any, certainly not to the Supreme Court of the United States. I can never be persuaded that the Court of the United States can be considered as an impartial tribunal in a case of that kind—certainly not more so than either House of Congress, or both—and, neither, more impartial than the Legislature of the State by which the law was enacted.

I am not prepared to say, that *sovereign power* is a fit subject for special pleading in a *court of law:* to be associated with, and share the fate of, *John Doe* and *Richard Roe.*

This, however, is only my individual opinion, and as it has nothing to do with the question involved in the amendment, it was perhaps imprudent in me to express it. I therefore pass it over, and proceed to shew, that it is not only not unreasonable to require this concurrence of the seven Judges, but entirely reasonable upon principles of reciprocal justice. Mr. President, when the Senators sit in their judicial capacity, to try a judge of that Court, the concurrence of two-thirds of that body is necessary to the conviction of a single Judge; why should it require two thirds of the Senators, in their judicial capacity, to convict *one* of those Judges of a misdemeanor, while a *minority* of the very same Judges may convict a *State* of having violated the Constitution? There are now seven Judges; four of whom constitute a quorum; *three* of the *four*, a *minority* of the whole, *may*, and in some instances *have*, pronounced State laws, of the most interesting character, *void.* Thus you see, Mr. President, three of the seven Judges can vacate the laws of the twenty-four States successively; can *disrobe* them of their sovereign legislative power; while it takes the concurrence of *sixteen States*, or *thirty-two* Senators, sitting as Judges, upon a *single one* of those Judges, to convict him of *unconstitutionality*, or in any way to affect his judicial faculty. Is this reasonable? is it prudent? is it politic? Can the States hope to retain their sovereingty; can the People of the States hope to retain their liberty, under circumstances like these? But is it not a perversion of terms, to call that liberty, which depends upon the will of another? Are the States free, when their sovereign will may be controlled, and its efficacy denied, by the minority of a Court, over which it has not any, even the slightest, control? over whose decisions all the States can, in no possible way, either through Congress, or otherwise, exert any control? But sir, not only can three Judges, as things now stand, paralyze the sovereign power of the States, but even *one* can do it. Yes, sir, a *single Judge* can deprive a State of its sovereign power. As thus: suppose there are five Judges upon the bench, the Constitutionality of a State law is drawn in question; three of the five think the law unconstitutional; the other two are of a different opinion: how stands the matter, in relation to opinion? Why, the opinion of two on the one side neutralizes the opinion of the two on the other side; and were there *but four* on the bench, the law would remain valid and effective. But the opinion of the *fifth Judge*, and his opinion *alone*, is against the law; and his opinion declares the law to be unconstitutional and void. And, Mr. President, under the bill on the table, if it shall pass into a law, without my amendment, the same thing may happen. Suppose there are seven Judges on the bench, and six of them shall be divided, *three* against *three*, the *seventh alone*, makes the decision. If there are nine on the bench, and *eight* of them are divided, *four* against *four*, the *ninth Judge alone* gives the opinion. For when the Courts are divided into two against two, three against three, or four against four, the odd Judge alone in each case pronounces the opinion; until he *speaks*, the *law* remains *valid.* The opposing opinions, possessing equal force, result in inefficacy, and when the odd Judge declares the law to be unconstitutional, the judgment of the Court, to that effect, is as exclusively his *sole opinion*, as if *he alone* constituted the Court, and as effective, as if *all the Judges* had concurred. Could a despot, Mr. President, do more than control the legislation of the States by his *fiat?* He could not do it with less than a hundred thousand bayonets. He could not do it with *even that force.* The People of the States would be prodigal of their *blood*, in vindication of their *rights.* And yet, strange to tell, these very People tamely, patiently, and even cheerfully, submit to lose those very rights, by the fiat of a judicial despot, which they would die to maintain against a despot, armed with whatever force—as if it could make any odds to them, after they had lost their liberty, whether it was taken from them by a judicial despot, *armed* with the moral force of their own fatal credulity, or by an ambitious aspirant, at the head of an *armed* force. Sir, a single Judge may, in the same way, vacate a law of Congress. The two Houses of Congress may pass a law by a majority of two-thirds of each House, against the *veto* of the President. A single Judge may, as in the instances I have mentioned, in relation to State laws, take side with the President, and overrule, by *his single opinion*, the two-thirds of both Houses of Congress. I mention this, Mr. President, to shew that even the legislative power of the General Government may be controlled by that Court—by even a single Judge of that Court. Not that I apprehend that the power of that Court will be exerted in vacating the laws of Congress; I have really no such apprehension. They are the Judges of the General Government, and will always have the wisdom to prefer foreign conquests to domestic broils. My great object is to save the States from being degraded, to save the liberty of the States from being frittered away, by the judicial oligarchy of the United States. For, I insist upon it, Mr. President, that the Supreme Court of the United States, if it shall be indulged in the exercise of the powers which it has assumed, by inference and construction, in addition to those with which it is legitimately invested by the Constitution of the United States, is the most stupendous aristocracy which was ever tolerated in any country in which the sound of liberty was uttered, and its import understood.

Sir, what would we think of the prudence of those farmers, into whose fields, (*grainfields*, Mr. President, upon the *growing crops* of which they depended, exclusively, for the *subsistence* of their families,) the breachy cattle of a neighboring Nabob had found their way, owing to the lowness of the fencing, who would neglect to secure their crops from the pillage of the cattle, by raising their fences a rail or two higher, particularly when the rails were lying by them ready made; who would, not only neglect, but refuse, to raise their fences higher? Would we not proclaim that they were improvident farmers; that they were mad men? This is, Mr. President, a homely, but, I think, illustrative case. I shall not press its similitude. But I am for saving the crops by fencing out the

cattle, and such, I hope, will be the inclination of a majority of the members of this body. I do not know that the crop, and a *precious one* it is, can be saved, by even this precaution. But its importance justifies this, and every effort, which can be legitimately made, to save it. The experiment can do no harm, it may do much good.

But I will leave this section to the reflection of the Senate; my deficient manner of discussing it, will be supplied by their good sense. I must, however, beg their indulgence for a few minutes, while I offer to them the reasons which influenced me to propose the remaining amendatory section.

The execution laws, Mr. President, of any People, who assert their right to self-government, should, in a more emphatic sense than any other of their laws, be suited to their condition. Their other laws are, comparatively, theoretic and abstract. They exist in the statute book, for contemplation, as rules of conduct and of property; while unobstructed in the acquisition of property, and uninterupted in its enjoyment, the People, unfortunately for the durability of their rights, pay but too little attention to the complexion of their *code*. Busied with the avocations of life, vexed with its cross purposes, and thwarted by its vicissitudes, they have but little leisure, and less inclination, for abstraction of any kind. But execution laws, Mr. President, address themselves to the senses of the People; an execution law, is *law*, in its practical, noun-substantive, *matter of fact* shape. The other laws constitute the rules by which each man regulates his *own conduct* and disposes of his *own property*. The execution law constitutes the *rule*, and creates the authority, by which *one man* takes and disposes of the property of *others*, by which *he* even deprives *others* of their personal liberty. I repeat, then, that the execution system of any State should be enacted with a wise regard to the condition of its People. It is a *despotic feature*, which cannot be *discussed* from the countenance of the Republic; it should, therefore, be softened as much as possible. The laws of right were enacted by the Legislator of the Universe, and written legibly and irreversibly in the volume of nature; the social compact recognizes that code, and legitimates it: its fitness and its force is, instinctively, recognized, felt, and acknowledged by the People. But, Mr. President, the laws of remedy are created by the State; they are the rules by which civil society exerts its remedial and protecting force, in favor of one or more of its citizens, against the delinquency of others. They are the avenues through which that force finds its way to the delinquent citizens, and it should find its way in the gentlest of all the conceivable efficient modes. This is required by the peace, tranquillity, and harmony, of society. When the marshal seizes, and bears away with him, the property of an individual; if you abstract the authority under which he acts, his conduct amounts to robbery. The authority, therefore, under which he acts, should not only be visible, in his acts, but it should be obtrusively so; it should be a domestic, and not an alien authority; the individual who is the subject of it should perceive its justice from his consciousness that it was according to the will of the People of which he was himself a part, and in which he had confidence, because he had consented to it. He should, in fact, recognize his own power, as the agent, in producing his own privation.

Hence I insist, Mr. President, that it is the right of every State to enact the execution laws by which the judgment and decrees of the Federal Court, in that State, shall be carried into effect.

Mr. President: we are taught that the liberty and property of the citizens are regulated, guarded, protected, and guarantied by the States. But how can they guaranty the liberty, or protect the property, of their citizens, if they permit their persons to be imprisoned, and their property to be taken from them, at the will of another Government, or at the instance of its functionaries? The citizens and their property must be regulated by the State; that is; by the People in their corporate capacity; or the State is not sovereign, and they are not free. The proprietary right of the States over the People, and their property, is, or is not, sovereign. If sovereign, it implies not only the right to regulate both according to *their will*, but competent wisdom for this purpose. If the power of the State is not sovereign, why are they mocked with it? If the General Government is the proprietor of the People, and their property; that is, if the citizens, and their property, are to be regulated by the Federal Government, why is not that power asserted by that Government? But I have, I trust, been successful in showing that the Constitution of the United States did not, and could not, confer this power; that it is inherent in the States, and that the States would be faithless to themselves, if they were to surrender it, or permit it to be usurped, or filched from them. It is not, it cannot be pretended, that the Congress could pass laws regulating conveyances, descents, and distributions, or last wills and testaments—laws regulating the purchase and transfer of property. But an execution law is, in fact, a law of this character; it involves, in its operation, the sale, purchase, and transfer, of property. And in States where land is, and shall continue to be, subject to sale under execution, that must, at no very distant day, (such is the vicissitude of human affairs,) become, in such States, the most prevailing title to lands. And, although Congress ought not, and, as I believe, cannot, legitimately, pass execution laws, except such as relate to its revenue; yet the Judges of the Supreme Court have *construed* themselves into the power of enacting laws of this character, under the denomination of *rules* of Court. And some of, even the District Judges, made haste, after this learned opinion was made out by the Supreme Court, to exert their legislative power upon the States. In the State which I have, in part, the honor to represent, the legislative faculty of the District Judge was very promptly and energetically exerted, in furnishing a system of execution laws *for the People*, or rather *against* the People: for it was, in all its outlines, and essential provisions, in *utter* contempt of their known and declared will. By the law of the State, imprisonment for debt had been abolished; by the law, alias rule, of the Court, the ca. sa. was revived, and the citizens subjected to imprisonment for debt. By the law of the State, land could not be sold under execution, for less than three-fourths of its valuation; by the rule of the Court it was enacted, that land should be sold, without valuation, for whatever it would bring, at a credit of three months; and, by several rules of the Court, it was enacted that the Marshal should convey the lands, sold by him under execution, to the purchaser. The rules, moreover, kindly prescribe the ceremonies necessary to be observed by the Marshal, in making the conveyance, in order to give it validity.

Mr. President: it is time that it should be distinctly ascertained whether execution laws should be enacted by the States, by the Congress, or by the Courts. The object of the section which I am now attempting to discuss, is to silence all doubt on that subject, by rescuing that power from judicial usurpation, and leaving it with the States—its only appropriate source. And why should it not be exercised by the States? It originated with them. They have not conceded it to the General Government; they could not, consistently with the power they retained over the persons and property of their citizens, concede it to the General Government. The concession of it would have been an implied concession, to the General Government, of the power to regulate the conduct and the property of its citizens. It would, in fact have been a virtual surrender, by the States, of all their sovereign power.

A surrender, whereby the General Government would have been at once—what it is rapidly, as I fear, hastening to become—a National, a consolidated Government.

But, Mr. President, I ask again, why should not the States possess and exercise this power? Will they exercise it foolishly, or partially, or wickedly? If so, they are not sovereign; because folly, partiality, or wickedness, cannot be supposed to be associated, in the mind of a statesman, with sovereign power. So far as concerns their own citizens exclusively, it is admitted that they may exercise this power, and that they must be supposed to exercise it wisely. Well, sir, why shall there be a special, distinct, and different execution law, for aliens, and the citizens of other States? Ought they not to be content with family fare?

If, when visited by a stranger, you extend to him the hospitality of your domicil, ought he not to be contented; could he reasonably expect you to change your whole domestic system, to suit his taste, whim, or caprice? Which is most reasonable? That he should accommodate himself to the established rules of your household, or that those rules should be changed to subserve his convenience or caprice? Now, sir, when an alien comes into the political household of a State, he should conform to the rules of the household; he will be hospitably entertained while he remains—he will be more than entertained; he will be protected by the very same laws which protect all the members of the household. To expect more, would be unreasonable; to demand more, would be arrogant.

What, Mr. President, has been the usage of other States in relation to this subject? Has England afforded to Frenchmen, or France to Englishmen, an execution law, distinct from that afforded to their respective subjects? Has either claimed the right, or even suggested the expediency, of enacting an execution law, for such of its own subjects as may happen to be drawn into the Courts of the other? Has the commerce of either of those States, or of any of the States within the knowledge of history, suffered from the want of the exercise of this power? On the contrary, has not commerce flourished, wherever it has flourished, without it? And has it not flourished most, where liberty has most prevailed? And can any State be free, that is not sovereign? And can any State be sovereign, which permits another Government to make an execution law for it?—to create the laws by which its citizens are deprived of their liberty, or their property?

But, Mr. President, I will suppose, for the purpose of the argument, that Congress possesses this power, and inquire whether she ought to exercise it; and if she should, how and what would be the result? She ought not to exercise it, because its exercise is unnecessary, and would be odious; and because she is under no compulsion to exercise it; and because its exercise would be incompatible with the sovereignty of the States. There are several powers conferred on Congress by the Constitution of the United States, which it has not yet, and it is hoped never will, exercise. But if it were to exercise this power, it must exercise it in one of two ways; namely, it must either enact one uniform execution law, for all the States, or it must enact separate and different laws for the different States.

It cannot enact one uniform execution law for all the States; for the obvious reason, that an execution law which would suit one State, would not suit another—and all laws should be suited to the condition of the People; therein lies the perfection of legislation. But the condition of the People of the different States is different, and the cause of that difference is not within the control of Legislation. The People in one State are commercial; in another manufacturing; in another they are farming. In one they plant tobacco; in another cotton; in another sugar. Their pursuits, habits, and avocations, are different. Their resources are different; their climates are different; and all these, and a thousand other local causes, combine to influence the will of man. And man, (I use the term as a noun of multitude,) is only free, when governed by his own will; he is only prosperous, only happy, when so governed. It is therefore that the liberty of the People cannot survive the sovereignty of the States. The sovereignty of the States consists in the will of the People, and accommodates itself, as it ought, in the enaction of laws, to the resistless will of the *heavens only*. In every State, that portion and species of property which is essential to the immediate subsistence of the debtor and his family, if he have one, are exempted by the laws from the effect of the execution. In England, the beasts of the plough were exempt; so were the implements of professional avocation—tools of handicraft, &c. The same exemption prevails in most of the States. Each State, however, suits this exemption to the condition of the People, in reference to their pursuits, their climate, &c.

Now, Mr. President, it is evident that an uniform execution law would, in its very uniformity, inflict great evils upon the People of the States.

If you consult commerce, you should give a very swift remedy; that remedy would ruin the agriculturist: it might not suit the manufacturers—but each, and all, can be suited by the States in which they most abound. The exemption, Mr. President, which obtains in the State of Maine in favor of poor debtors, is very different from that which would be dictated by the climate and condition of the People in the State of Louisiana. The execution law of Maine exempts one swine, *seven sheep*, and *one stove*, &c. The rigor of the climate makes the warmth of wool, and of the stove, *necessaries*, as much so—to the comfort of the bodies of the poor—as the flesh of swine to their stomachs. In Louisiana, the stove, the wool, and even the swine, have never been thought of, except as articles of discomfort. There, consulting their comfort, you would exempt musquito curtains.

But, Mr. President, whether the execution laws of the States be enacted by Congress, or by the States, it will, I presume, be acknowledged, that, to be obligatory upon the People, they must be enacted by their Representatives. What is the reason, Mr. President, that a law, to be binding upon the People, must be enacted by their Representatives? It is because they are free; and, to be free, must make the laws by which they are governed: the People enact laws by their Representatives, because they cannot, with convenience, assemble and do it themselves. If they assembled and enacted the law, in their proper persons, the law would be an expression of their will, and, therefore, binding. When it is enacted by their Representatives, it is supposed to be an expression of their will; and, unless the Representatives be faithless, it is so, and, therefore, binding.

Well, sir, when the People of a State have enacted an execution law, by their Representatives in the State Legislature, that law is an expression of their will upon that subject, and therefore binding, until they shall will to repeal or modify it. The State of Kentucky has no right to pass an execution law for the State of Tennessee; and a law of that, or any other character, enacted by Kentucky for Tennessee, would not be binding on the People of that State, because the law was not made by their Representatives; was not an expression of their will. On the same principle, the People of Tennessee have no right to enact a law for the People of Kentucky. Well, suppose Congress to enact an execution law for Kentucky, and suppose it were to enact the existing execution law of Tennessee for Kentucky, and that of Kentucky for Tennessee, would the law, in either instance, be binding upon the People of those States? Ought it to be binding? It is, in each instance, not only not according to the will

of the People of those States, but expressly contrary to their will. But the will of the People is the power of the State; and the law derives its obligatory effect only from the consideration that it is the will of the People. The People of Kentucky and Tennessee, therefore, certainly could not be bound by those laws, and remain free, *quo ad hoc*.

Then, if Congress were to enact an execution law for the States, it would enact, if it consulted the will of the People, precisely the execution law which exists in each of the States. The existence of the execution law in each State, is the highest and most solemn expression of the will of the People of each, upon the subject; and to make a law of Congress binding upon the State, in relation to matters of interior policy, it should be according to the will of the State—if, indeed, such a law can be binding.

Again—the presumption must be, upon the supposition that each State is sovereign—that its execution law is wise, and suited to its condition. Now, if Congress were to enact an execution law for each State—Congress being a sovereign, must also be supposed to act wisely, and, acting so, it would suit the law to the condition of the People; and, acting wisely, and suiting the law to the condition of the People, it would enact precisely the same law which the State had enacted: and, therefore, in enacting the law, would do an idle, a supernumerary act, and thus display its folly in the exercise of its wisdom.

But, if Congress should attempt to enact a distinct execution law for each State, then it might happen that no State in this Union would have an execution law according to its will; and that every State would have an execution law contrary to the will of its Representatives in Congress, and in violation of the representative principle. That of Kentucky might be imposed upon Tennessee, and that of the latter upon the former; and every other two States in the Union might be made, in effect, thus to reciprocate their execution laws; and all those States enslaved, *quo ad hoc*. For, as the freedom of a People consists in their government of themselves according to their own will, so, *e converso*, their slavery consists in their being governed by some other will than their own. And so it would turn out that the States, instead of being secured by the Confederacy in their right of self-government and liberty, are, by that very means, to be deprived of both.

What objection, then, Mr. President, can there be to the adoption of this section, which provides that judgments and decrees of the Federal Court should be carried into effect by the ministerial officers of that Court, according to the laws of the State within which the judgment or decree shall have been pronounced? I have shown, I trust, that it is in accordance with the nature, genius, and principle of our Government; that it is in accordance with, and even demanded by, the relation which the citizens and their property bear to the States: But, above all, Mr. President, it is in accordance with the great principle in which all right to rule originates; namely, the will of the People. In their will the States originated; by their will, the State Governments were formed; according to their will, all laws are enacted. In the formation of the States by the social compacts, the citizens surrendered themselves and their property to the regulation and control of the States; by the State Constitutions they settled the plan by which they and their property should be regulated and controlled. And they did not, by the Constitution of the United States, dissolve the relation which was created by the social compact, and surrender to the General Government the regulation and control of themselves and their property, except in specified instances, and to a limited extent, for specified purposes. And this is not one of the specified instances; nor is the subject embraced by any of the specified powers.

It has been said, that, by the adoption of this amendment, the Congress would virtually delegate the legislative power of the General Government to the States; and that the Congress cannot legislate by deputy. To this objection, Mr. President, I have two answers: First, That this power is not vested in the Congress by the Constitution; there is no express concession of it in that instrument, and you cannot, on account of the intervening State Governments, reach either the People or their property, so as to infer it from either; and, second, that, by the thirty-fourth section of the Judiciary act, which *created* the Supreme Court, it was provided, in substance, that the Judges *should be governed, in their decisions*, by the *laws of the States*, respectively, in which their Courts were holden. Now, surely it is as competent for Congress to ordain that the Marshal shall be governed by the State laws, in carrying a judgment or decree into effect by execution, as that the Judges should be governed by those laws in the formation of the judgments and decrees.

But, it is said that, although Congress might, as it has heretofore done, adopt the present existing execution laws, it could not adopt, now, the laws of that character which the States may hereafter enact. Mr. President, I do not consider it necessary that Congress should *adopt* either the present or future execution laws of the States, if *future* can be predicated of laws of that character. The proposition is, to direct the ministerial officers of the Federal Courts to be governed by the execution law of the States—not to adopt the laws. But, if it were an adoption of those laws, the difficulty suggested would not exist; for there are not different successive execution laws in any State. The whole of what is called the execution laws of a State, is but one execution law; as all the successive executions which may issue upon a judgment, however numerous and different in kind, are but one execution, in contemplation of law, and in the nature of things. So, any number of execution laws, however different in their provisions and dates, are, in contemplation of policy and reason, and in the nature of things, but one execution law; and, of course, essentially the same at all times.

Mr. President, civil society is an unit; a moral agent; a sovereign, which prescribes by its will, and enforces the observance of its prescriptions by the power of its will. An execution law is but a display of the remedial energies of this will. This will is a stream that never ceases to flow, nor intermits it current; its current is, to be sure, sometimes more rapid than at others. In times of adversity it lingers, as it flows in a circuitous direction; in times of prosperity, it rushes forward in a right line, but is always the same; always, and necessarily, from the nature of sovereign power, an unit. It is therefore, I ventured, with great deference, to differ from their honors in the construction of the process act of 1789. That act declared, in substance, that "executions should be levied and carried into effect according to the execution laws *now* in force in the several States." They interpreted the word "now" to mean the very point of time at which that act went into effect, and confined its effects to the modification of the execution law of each State, at that point of time; and made that interpretation the basis of the necessity which impelled them to enact the rules of Court which I have mentioned. The word *now*, in that act, was, in my humble opinion, susceptible of a much broader import than they gave to it; the nature of the subject required that a broader import should be given to it; and words should always be construed in reference to the subject-matter to which they relate. "*Now* is the time, *now* is the day of salvation," is a text containing a repetition of that *adverb* of time; and who would construe those words to refer to the very point of time at which they were uttered? Who could restrict their import to a shorter period than the lifetime of those to whom they are addressed? To the lifetime of this world—the subject to which they relate?

Nor could the word *now*, in the act of Congress to which I have referred, be justly, in my humble opinion, restricted in its import to the point of time at which that act passed. Whatever execution law was then in force in the States, respectively, must, *ex natura rei*, be now in force, and continue to be in force, while the States exist. While the sovereign exists the same, the execution law must continue to be the same; no matter under what or how many modifications it may be displayed.

This argument, Mr. President, goes to prove, that Congress may adopt the existing execution law of the States, respectively; and that that law, however varied or diversified in its provisions, must remain the same essentially; and answers, and, I trust, refutes, the objection made to the supposed delegation by Congress to the States, of legislative power. But the case does not need the argument; because, *direction* to the Marshal to conform to the execution law of the State, and not the *adoption* of a State law, is contemplated by this amendment. But, those who urge this argument, invert the nature of things. The suggestion that Congress invests the States with power, is beginning at the wrong end. The States invest Congress with all the power which it possesses. The latter was created by the former, and not the former by the latter. And the question must always be, as to the power which the States gave to Congress: and that question must, to be justly decided, be decided by the plain and obvious words of the parchment of the Constitution of the United States; and *implication* and *inference* must be rejected, or the States are gone, and the People enslaved.

Mr. President: By the Constitution of the United States, it is declared, that "the judicial power of the United "States shall be vested in one Supreme Court, and such "inferior Courts as the Congress may, from time to time, "ordain and establish." Pursuant to the direction of this clause, the Congress *created*, by the Judiciary act, in 1789, the Supreme Court of the United States, by the creation of Circuit Courts—with the direction, that the Judges of those Courts should constitute the Supreme Court. By the bill on the table, six additional Circuit Courts, and three additional Judges are *about to be created*. This bill should be enacted with great caution: for the bill, if it shall pass, will scarcely have gone through the forms necessary to give it the validity of an act, before it will be asserted that the very Courts and Judges which it *creates*, were *created* by the Constitution. The Constitution *now exists;* the six Courts and three Judges, intended to be *created* by that bill, do *not now exist*. They will have been created by this bill, and will exist, if it shall pass. And yet, it will no sooner have passed into a law, than it will be asserted that these six Courts and three Judges, which will have been created by the act, were created by the Constitution. The whole corps will assert it. The Bank of the United States will back the assertion with all its influence—with its convincing metallic intelligence—and it will be in vain to urge that the power of Congress to *create* and destroy this Court, was settled, by the deliberate sentiment of the People, in 1801; practically settled in the repeal of the *midnight* Judiciary, of *memorable memory*. It will still be asserted, and re-asserted, that this Court was created by the Constitution; and, therefore, the necessity of exercising caution in its creation. Power delegated is never returned; and it is extremely difficult to reclaim it.

Mr. President: I am one of those, who believe that the People do not belong to the Judges; that the office of Judge is created by the People, for their convenience, and may be vacated by the same Power that created it, when the public interest, or convenience, shall require it. The commission of the Judge is but his letter of attorney, but the evidence of his authority to act as the agent of the People; which may be revoked, like all other power, at the pleasure of the principal. When you take the Judge from the office, you must proceed by impeachment, and act by the Constitutional majority upon *him*, upon the *man*. When you wish to take the office from the Judge, you do it by the same process that you created it; you create the office, and confer the jurisdiction by law, and by law you can repeal them. This modern doctrine, that the tenure of his office by the Judge, would be too precarious, if it depended upon the will of the People, strikes at the root of free Government. You can have nothing in free Government, more *stable* than the will of the People.

It is absurd to look to the will of the Judge for stability in Government. He is a tyrant, when he substitutes his own will for that of the People. It is in their will, and not in his, that the force of his judgments and decrees is to be found.

Away then, Mr. President, with all this delusive jargon, about the stability of the Judiciary, and the tumultuary and restless impatience of the People. The People are never impatient, but under unjust privation; it has been the misfortune of the world, that the People have always been too forbearing and patient. They never act, until oppression becomes intolerable, and then it is unhappily too late. They awake only to their wrongs, when their liberty is gone, and with it, the power of redressing their wrongs. They make an unavailing effort, perhaps a succession of efforts, to vindicate their rights; and the usurpers impudently impute to the struggles made to save their liberty, a restlessness of spirit, in the People, incompatible with its enjoyment. Sir, all experience proves the truth of what I say. Sir, why should the People surrender their freedom? Why should they surrender self-government? Nature made them free, gave them an organic fitness for its enjoyment, and in the power of *will*, the means of maintaining it. Freedom is the *natural state* of man—slavery is a forced state; the activity of freedom is charged upon the People, as the spirit of restlessness, of insubordination, and disorder. Sir, this is the cant of power, the lullaby by which liberty has been charmed into repose, and shorn of her strength while she slept. Are not the air we breathe, and the ocean which we navigate, subject to agitations? and are not those agitations necessary to their purity and salubrity?

Repose may be found in a despotism, or a dungeon, but never where freedom prevails. The atmosphere of freedom is like the natural atmosphere, tempestuous—it must be so to be healthy.

Mr. President: Believing, as I do, that the liberty of the People depends, essentially, upon the maintenance of the rights of the States, I have always regretted that the wise men who framed the Constitution of the United States authorized the Congress to invest the Federal Judiciary with the jurisdiction of cases between citizens of different States; between aliens and citizens; and between citizens of the same State, claiming lands under patents derived from different States. This provision imports an imputation against the States, of either imbecility, or partiality, which cannot be made against sovereign States: for neither weakness, wickedness, nor incompetency of any kind, can be predicated of a sovereign State.

This provision, therefore, impressed the stamp of degradation upon the States, at the very origin of the General Government, which the Judges, by their repeated decisions vacating State laws, have heightened, and almost rivetted, and yet the provision does not apply its imputation to the legislative department of the State Governments; the imputation applies exclusively to the judicial department. It was not, at the time that instrument was formed, so fashionable as it has since become, to vilify and disparage the legislation of the States.

The Judiciary, and not the Legislature, of the States, was *then* distrusted; *now* it is the Legislature, and not the Judiciary—neither ought, either *then* or *now*, to be distrusted by any, but the People of the States respectively. The supplement to the Constitution, which created the

Bank of the United States, and conferred upon it the right to sue and be sued, in the Federal Courts, has (backed by the influence of that institution,) had a most disparaging effect upon the States. They must be redeemed from this bad influence, if we are destined to prosper; the States must be left to manage their own affairs; they must be believed to be competent to that task—I say believed: for *public opinion* is the *saving* or *destroying force* of every People. But I have been tedious; I plead the importance of the subject as an apology.

When we take a view of the present condition of the United States, and a retrospect of what it was twenty-five or thirty years ago, and contrast the simplicity and modest diffidence with which the Judges *then* exercised the powers, as expressly conceded in the Constitution, to their department, with the enlarged powers which they *now* assert, and exercise, we ought, I think, to feel alarmed. Then, the Judges declared from the bench, that they could not pronounce a law unconstitutional, unless its confliction with the Constitution was *extremely plain;* now, ingenuity is taxed, and the regions of conjecture are explored, by the Judges, to make out a constructive collision, and vacate thereby the laws of the States. Then, the States and State authorities were believed to be competent to the protection of the rights, and the promotion of the happiness, of the People; they were confided in, and respected; now, they are distrusted, impaired, and disparaged. *Then*, they were considered as sovereigns; *now*, they are treated as petty corporations. *Then*, they experienced the respect of all the functionaries of the General Government, including *even the Judicial*, and were regarded as the constituents, directly and indirectly, of the General Government, and their will obeyed by their representatives in Congress, and respected by the Chief Magistrate; *now*, their will has lost its *odour* with their Representatives, and they are invited by the Chief Magistrate not to permit their energies to be paralyzed by the will of their constituents. Then, protection was afforded by the *States*, respectively, to the industry of all their citizens; and competition, the great incentive to exertion in all the avocations of life, was left to its free and fair operation; the paralyzing and partial hand of the General Government was not interposed to elevate some, and depress other, pursuits, by tariff or other expedients. *Then*, the public will diffused, equably and cheeringly, its mild energies throughout the States, respectively, and all were contented, all were happy; *now*, the force of judicial encroachment upon the rights of the States is withering their prospects, and threatening desolation. But I will not fatigue you longer; I will conclude, with expressing the hope that the proposed amendments will be adopted; and, if they are, and shall have the restraining effect upon the Judges which I fondly anticipate, and if Congress shall be *able to refuse* to renew the charter of the Bank of the United States, and will herself abstain from depressing, under color of improving the States, by making roads, and cutting canals through them, I will not despair of the Republic.

Mr. HOLMES said he had been much edified by the able remarks of the gentleman from Kentucky; he agreed with him in his positions, he admitted the correctness of his conclusions, and yet he was obliged to vote against the amendment. It would be necessary in a few words to explain this seeming paradox. He should not attempt to follow the gentleman in his general remarks in regard to the origin of Government, inasmuch as he deemed them in some measure unnecessary. It was unprofitable for us to go back to inquire into the origin of our respective Governments. In tracing the pedigree of a family, Mr. H. said, it would sometimes happen that we come to some *illegitimate;* so it was in regard to Government. No Government in the world that ever has existed, or that does now exist, but had its existence by usurpation. That is, there is no Government in the world, and there never has been any, where the whole will of the People was brought to bear in the creation of that Government; and when that is the case, the rights of some are usurped. Our own Government, Mr. H. said, was emphatically a usurpation. The very Constitution under which they were now acting, was in direct violation of a pre-existing Government, or compact. The Confederacy provided there should be no alteration in that system, without the consent of every State in the Union; and the Constitution of the United States provided, that when nine States out of the thirteen should agree to it, it should be a Constitutional Government; thereby excluding four out of thirteen, taking away their confederation, and instituting a new Government, without their consent, when there was an express provision in the Confederation that these articles should not be altered, unless every State consented.

With regard to the first amendment proposed by the gentleman from Kentucky, Mr. H. thought the doctrines it embraced were generally unquestionably correct. The gentleman had made some remarks on implied power. Power, Mr. H. said, was always progressive; it never retrograded. It always had been proceeding on, and always would be so, under every attempt to restrain it. This would be the case in every Government, and in none more than ours; nor did he believe, with the gentleman from Kentucky, that the Judiciary power was the only one that was progressive. By our legislation, Mr. H. said, we threw too much into the hands of the Judiciary; and if they passed the Bankrupt Bill which had been reported to the Senate, they would give the Judiciary more additional power than any act which had passed Congress since the time of the adoption of the Constitution. Mr. H. said he would go further than the gentleman from Kentucky did. That gentleman considered the Judicial power as a monarchy; Mr. H. said, he considered it as something more: a monarchy was generally limited by the legislative power; there are few monarchies that are above it; but how is it with the Judiciary? Our Congress of the United States is one limited in their legislation by the Constitution. It is not its expounder; it is not an efficient expounder, because, though we may explain the Constitution, and pass a law on our own exposition, yet that law is to be expounded by the Judges. But they can expound our Constitution, and have efficient power to carry their decree into effect. You have none. They have done it: they issued their mandamus to Virginia, and she not obeying, they issued a decree, and executed it by the hand of their own marshal. The Constitution is above Congress, but the Judicial power is thus above the Constitution; because they having the right to expound that Constitution their own way, you have no control over them; and they make of that Constitution what their exposition shall please. I would go very far to restrain this Judicial power: I would require unanimity in the Judges in all constitutional questions; at least more than a majority; still I would not encumber this bill. The want of this bill is a subject of universal complaint in the Western country. We have been trying to get something to satisfy them for several sessions past, and we have hit on this as the least objectionable; and, sir, if we pass this bill with those amendments, which will be debated in this and the other House, it will be hanging a millstone about the neck of the bill, which will sink it. If the gentleman will bring forward a bill embracing this principle, I will go with him, and discuss it. I am inclined to believe I should vote for the principle, and even go farther. The gentleman will recollect that one of his objects is perhaps attained. Of what does he complain? Of danger to the State Governments. Why was this Senate constituted the guardian of State Governments? Was it to guard the large States against the small? No, sir, the reverse. It was to guard the small States against the large, to prevent them being swallowed up by the large ones. By in-

creasing the number of Judges, what is the result? It would be difficult to take all these Judges from the large States; if they are limited to five, or to seven, as at present, it would seem necessarily to result, that these large States having so much more to give, the Judges would be selected from them. They coming from a large State, would entertain the same feelings of the State they came from; and they would have a national in opposition to State feeling. If the number is increased to ten, a portion of them must be taken from the small States. The rights of the small States are to be guarded; and that is the reason we hear of an equal representation. Instead, therefore, of increasing the danger by increasing the number, you diminish it. This is one of the reasons why I was in favor of the amendment proposed the other day. I was in favor of throwing the district of small States together, that they might have an opportunity of having a Judge who would have some feeling in favor of the rights of the States against the national right. One part of the object wished for by the gentleman from Kentucky, is already obtained in this bill. The object is to require a greater unanimity of the Judges in deciding certain constitutional questions. There is greater unanimity required by the Judges by this bill in deciding all questions. Does the Senate understand me? At the present number, seven, one-seventh may create a majority. By the bill before you, (increasing the number to ten,) one-fifth would be necessary to create a majority. One-fifth is more than one-seventh. You require six out of ten, that is, one in five; you require now only one in seven; the majority, therefore, by this bill, will be greater.

I have only to remark, that, in regard to the second amendment, there is too much detail. It will have a bearing on every part of the United States; and such is the difference of opinion in regard to it, that it had better come in in the shape of a distinct bill. During the session before last, the predecessor of the gentleman from Kentucky (Mr. TALBOT,) made the same proposition to the Judiciary Committee. It was recommended that he should offer it as a separate bill; and last session, or the session before, a bill was referred to the Judiciary Committee, requiring more than a mere majority to determine on such questions. Yet there is very little hope that any measure of that kind ever will secure the rights of the States against the rights of the powers of the General Government. The Judges, after all, are created by you. You pay them, and they are responsible to you. I consider it no responsibility at all. The Judges of the Supreme Court are to be subject to the judicial investigation of this Senate, but it is only where they have acted corruptly. And when can you prove that the Judges of the United States have acted corruptly in giving an exposition to the Constitution of the United States? Then, sir, you must find two-thirds of the Senators who believe they have acted corruptly. I am well convinced, that that clause in the Constitution of the United States, and similar clauses in the Constitutions of the several States, that create permanent judicial tribunals, smell a little too much of the lawyer. We have adopted the British doctrine, without their reason. It was necessary that the Judges in England should be independent of the crown, and should not be subject to Executive influence. What is the independence we give our tribunals? Independence of the People. Our Government is one founded on a different principle; it is founded on the principle of dependence. Every branch of the Departments is, or ought to be, dependent on the People; and if I could alter the United States' Constitution, I would have the Judges appointed for a limited period. The only way is to make them responsible, as much as you can; to scatter them among the different States, and to make them do their duty there, in such a manner as not to lose their federative feeling. The other day I had occasion to refer to one beauty in the Mexican Constitution, in the establishment of a Federal Judiciary. They have copied our Constitution, almost word for word, with one exception: it provides that their Federal Judiciary shall be nominated by the States. I would either give the States a voice in the appointment of the Federal Judges, or they should have an appeal to this Senate, or to some other tribunal, that might revise the decision of the Judges of the Supreme Court, especially where these decisions were to declare the law of a State unconstitutional.

Mr. WHITE, of Tennessee, said he should not discuss the general principles of the bill, or the amendments of the gentleman from Kentucky. For himself, whatever opinion he entertained of the principles involved in these amendments, he should be constrained at present to vote against them. The object of the first amendment was to modify one of the sections of the original bill passed by the House of Representatives. According to that, said Mr. W. the Supreme Court is to consist of ten Judges, and six of these are to form a quorum for doing business. The first part of the amendment proposed by the gentleman from Kentucky, is to require the concurrence of the opinions of seven of these Judges, in a certain class of causes that may be brought before them. The second part of the amendment embraces a new principle; it is a new subject, not touched upon in the original bill in any of the sections. For myself, were I ever so well satisfied that both the principles embraced in the amendment offered by the gentleman from Kentucky, ought to be adopted, I should be decidedly of opinion that neither of them ought to be incorporated with the present bill. I believe it is a matter of great importance, that this bill should pass—firmly believing, as I do, that a large portion of the United States will be benefited by having, effectually, the operation of the Circuit Courts of the United States. I should not feel justified in adopting any amendment whatever, which would endanger the passage of the original bill. What will be the effect of introducing the proposed amendments? The probability is, that they will defeat all the benefits that are expected to be derived from an extension of the circuit courts to nine of the States of this Union. It will defeat all the benefits which that portion of the United States expected to derive from an improvement in the Judiciary of the United States. We are now acting on a bill which has passed all the forms of legislation in the other House: and if we adopt this amendment, what is the consequence? The bill must be returned to the other branch of the Legislature for their concurrence; and it is not probable that they will take them up to give them that deliberate examination which will be necessary, to gain them the sanction of a majority of that House. If they are introduced here or there, in the form of a distinct bill, it will have three readings, and there will be ample opportunity for the discussion of the principles on which each branch of the amendment rests; and after undergoing a fair and thorough consideration, it will be adopted or rejected. I am unwilling to jeopardize the benefits which will result from the original bill, by introducing these amendments, or any other, that embrace any principle of a general nature, that will require much consideration before a majority of that House will yield its consent. Can it be said that, if the bill passes in the present shape, that the same principles of the amendment cannot be introduced in another bill? The gentleman from Kentucky did intimate something, from which it might be inferred, that, if the first provision was not incorporated in the present bill, it could not be introduced in another one. He did not distinctly state it, therefore I must infer that I misunderstood the expression he used. I do not think he intended to advance any such principle, and I must continue to think so, unless it is distinctly avowed.

[Mr. ROWAN said such was not his meaning. The

amendment could not obtain in a bill by itself, but ought to pass in its present shape.]

Mr. WHITE resumed. Congress, after the passage of the bill, will have the same power to legislate on these two principles. That gentleman's argument is, if you do not introduce them into this bill, he has no hope he shall be able to get them passed into a law, because he cannot get the same strength for them in either House, in a separate bill, that he can in the present bill. This forms a most decided objection against putting them in this bill; it shows that all my fears would be realized. Even if I agreed with him in sentiment, as to these principles, I would not hazard the passage of the original bill, by consenting to their introduction into this. I have no hesitation to investigate these principles, and to give my vote on them. There are some features I admire very much. The details of others I might probably wish modified before I would give them my sanction.

If it can be demonstrated that this bill, as it at present stands, ought not to pass, I am willing it should not. If it is attacked, I am ready to defend it; but it has not been attacked, and it would be a waste of time, and trespassing on the patience of the Senate, to go into the discussion of it, more especially after the lucid explanation which has been given of it by the Chairman of the Committee.

Mr. VAN BUREN said he had listened with great attention and profit to the gentleman from Kentucky, on the subject of his proposed amendment; but he could not vote for it in the form in which it now stood. Not that he was opposed to the principle, but he did not think they were properly connected with the bill now under consideration. The general rule, Mr. V. B. said, which would influence his mind on this subject, had already been stated by the gentlemen from Maine and Tennessee; his object in rising was to state one or two facts. With respect to the first branch of the amendment, which required a certain number of Judges to unite in the decision in certain cases, that subject was proposed when this bill was under consideration in the other House; it was discussed at large, and was resisted there on the same ground on which it is resisted here, and was finally rejected. It was in order, and proper, Mr. V. B. said, to advert to it. They knew, in all probability, that the adoption of it here would serve no other purpose than to retard the passage of the bill, which he believed was necessary should soon be passed, that the advantages expected to be derived from it might be realized.

With respect to the second branch of the amendment, that subject also had been referred to the Judiciary Committee, and had received a good deal of their time and attention; and for himself, Mr. V. B. said, he thought the amendment proposed by the gentleman from Kentucky, with some modification, would remedy the existing evil. The proposition was in itself proper and right; and he should be willing to unite in a report of the Judiciary Committee, recommending its adoption, with some alteration of the details. There is a bill now pending in the other House, containing the same provisions, as far as the United States are concerned. When that bill came here, Mr. V. B. said, or when the Judiciary Committee were referred to on the subject, he would lend his aid to carry into effect the views of the gentleman from Kentucky on these two objects. He was certain that some modification would be necessary; it was an object that had but recently been brought before them, and, connected with this bill, he was opposed to it, for the reasons he had stated.

[Mr. MILLS, Mr. TAZEWELL, and Mr. JOHNSON, of Ky. here successively delivered their sentiments on the question. It is a subject of great regret to the Editors, that they have it not in their power to introduce these speeches in their proper places.]

Mr. VAN BUREN said he had stated he concurred generally with the gentleman from Kentucky. He concurred with him further, in his entire willingness to adopt the other remedy he proposes, to curtail the power of jurisdiction of the Supreme Court of the United States. On this principle, he would expunge from the Constitution the clause declaring no State shall pass any law impairing the obligation of contracts; and he would do so for the reasons assigned by the gentleman from Massachusetts. It was an article inserted in the Constitution at the time when State Governments did not hold that rank to which they are now entitled. But that could only be done by an amendment of the Constitution. Mr. V. B. said his principal object in rising was to weaken the force of the objection last urged by the gentleman from Virginia, and which was to this effect: The bill on the table is defective, inasmuch as, by its provisions, a decision pronounced by the Judges at one term, might be reversed by a decision of the majority of the Judges, at a subsequent meeting of the Court. True, that was the case. But, Mr. V. B. said, it had been the case for the last twenty years. It was true, as the gentleman from Virginia had stated, that, at the first organization of the Judicial System, the difficulty was guarded against. There were five Judges, four were necessary to form a Court, and three were a majority. That continued to be the case after the number was raised to six. But in 1807, an additional Judge was added to the bench of the Supreme Court, making seven, and four were necessary to form a quorum up to the present time. From that time to the present, it has been in the power of a full Bench to modify or reverse a principle previously established. But when twenty years have passed without any such occurrence having taken place, Mr. V. B. thought that legislative provisions on that subject might be deferred till it could be brought up disencumbered from the present bill.

Mr. WHITE said he had heard the gentleman from Virginia declare, he had deliberated for the last twelve months on this bill, and though not free from exceptions, it was, on the whole, better than any other proposition that had been brought forward, and feeling the full force of the difficulties of the question, states, he was willing to give it his support. Knowing that gentleman's great correctness, Mr. W. said he had listened with the greatest attention, to ascertain the ground on which he was about to support the amendment of the gentleman from Kentucky, which, Mr. W. said, he believed endangered the bill. His only reason was, that the act of 1789 had fixed the Judicial Establishment, and he did not even advert to the circumstance of the seventh circuit having been created so long ago as 1807. It was not singular it should have escaped the notice of that gentleman, for, Mr. W. said, though he, himself, lived within the seventh circuit, he had almost forgotten there were any of the benefits of a Circuit Court extended to them. The Judge was overloaded with business, and for some time before his death they had lost his services altogether.

The same result could happen, Mr. W. said, to the system they now had, that would happen if the bill on the table should pass in the shape in which it was now presented without the amendment. And what, asked Mr. W. was that? That a minority of Judges might decide a case this way, this term, and the next term, a majority of the whole number being present, those that were absent in the first instance, not concurring with the decision, may overrule the decision of the preceding Court. That which was law for A in one state of facts, should not be law for B on the same state of facts. If gentlemen were desirous of guarding against this evil, and Mr. W. admitted it was one that ought to be guarded against, where was the objection to introducing a bill embracing that object? Why incumber the present bill? Mr. W. then referred to a case in the Supreme Court: the Bank of the United States against an individual, which was very labo-

riously argued, and when the Judges came to consider it, they divided three and three, the Court being reduced to six by the death of one of the Judges. The counsel said that many other cases were depending on precisely the same principle, and the parties had agreed that the decision of one cause should operate as a decision in all the cases, and they importuned the Court not to enter any judgment whatever till the seventh Judge should be appointed. The Court considered the proposition for some time, and it seemed so reasonable, that he had expected they would not give a decision till the benefit of a full Court could be had, and it knew what decision a majority would be disposed to give; but, on the counsel agreeing to free his adversary from the engagement he had entered into, that the decision of this cause should be a decision of all the causes similarly situated, they went on and gave a judgment in conformity with the judgment of the Circuit Court. When the seventh Judge had taken his seat, it may happen, he will think the judgment of the Circuit Court should be reversed, and, if so, these people will be released from the liability to pay a considerable sum of money, in a case precisely similar to the one first decided.

The only object of this bill, Mr. W. said, was to extend to the nine Western States, *beneficially*, the same provisions of the circuit system, which the rest of the United States, at this moment, enjoy—the present bill ought not to be encumbered: for, if this principle was desirable, it could be incorporated in a separate bill, and the fair sense of Congress, after a full discussion, would be expressed on it. If this bill should not meet the approbation of the Senate, still gentlemen would feel it necessary, at all events, to bring forward a bill to remedy that evil which now exists in the Judicial System of the United States. Mr W. said he was not for going the length which the gentlemen from Kentucky and Virginia were prepared to go on this amendment, but if the matter were before him, in such a manner, that he was compelled to give his vote, it should be, to make a majority of the whole number of Judges necessary in these, if not all other, cases. Mr. W. hoped, on reflection, that the gentlemen would consent to lose sight of this amendment for the moment, and bring it forward in a separate, independent bill.

MR. DICKERSON said that he had long been of opinion that it would be found necessary to take from the United States' Courts a large portion of business with which they are now occupied; but which never should have been committed to them. He intended, at some time, to bring the subject before the Senate; and he was gratified to hear the same opinion expressed by the gentleman from Virginia, (Mr. TAZEWELL,) and, also, by the gentleman from New York, (Mr. VAN BUREN.) The gentleman from New York, however, expressed an opinion, that this cannot be done without an amendment to the Constitution. If, however, Congress is justifiable in refusing to give efficiency to that part of the Constitution which extends the Judicial power of the United States to controversies between States—no alteration of the Constitution is necessary to enable Congress to take from the United States' Courts a large portion of their business. By the Constitution, the Judicial power shall extend to controversies between two or more States. This portion of the Constitution has remained inoperative, from the commencement of the Government, to this day, because Congress have neglected, and frequently refused, to provide for the exercise of the power, by an act to regulate the proceedings in such cases. It is not believed there was any obligation on Congress to provide for the exercise of this power, unless they thought that the interest of the country required it; and, if by law they had provided for this case, they would have the right to repeal such law if they found it injurious to the country: in this, they would be precisely as justifiable, as they now are, in never having provided for the case.

Congress have never provided for extending the Judicial power of the United States to controversies between States: because they have not thought it expedient to do so—they might, therefore, have omitted to provide for extending the same power to controversies between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State and citizens thereof, and foreign States, citizens or subjects. If they would have been justifiable in omitting to provide for these cases, they would be justifiable in repealing or modifying so much of our laws establishing the Judicial Courts of the United States, as extends the power of those Courts to these subjects, which never should have been referred to these Courts.

The subjects which would then remain for these Courts would be, all cases in law and equity arising under the Constitution—the laws of the United States, and treaties made, or to be made, under their authority; to all cases affecting Ambassadors, other public Ministers and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; and to controversies between a State and citizens of another State, as regulated by the 11th amendment to the Constitution. This subject ought to be thoroughly investigated, when it can be brought properly before the Senate.

[MR. TAZEWELL here made a few observations, which it is not in the power of the Reporter to furnish.]

MR. WHITE said he was satisfied his friend from Virginia had not heard the decision which had been given in the case of the suit of the Bank of the United States. I was present, said Mr. W. and I feel satisfied if the gentleman from Virginia had been present, he would not have made the statement he has done. It was not in a matter of form, as he supposes, that the Court divided—it was on the merits of the cause itself; and it involved one of the most important questions as to the doctrine of fraud, that has ever been raised in this country: it was most ably argued; and the Court itself was, on the main question, divided, three and three.

MR. HOLMES said he was opposed to the amendment, not so much to the principle—it did not go far enough—there were many other subjects which ought to be embraced by it. Mr. H. said he would so alter the law as it now stands, as not to permit a citizen of another State to go into the Federal Court, in his State. He would put him on the same footing as a citizen of that State. If this amendment prevails, said Mr. H. I shall consider it my duty to offer an amendment to the amendment, so that a citizen of another State coming into my State, shall fare as well, and no better than a citizen of my own State. It would be wise and salutary, and would take much business from the Supreme Court of the United States.

I would offer a section to repeal the 25th section of the act of 1789, authorizing a writ of error to be brought from the Supreme Court of a State, to the Supreme Court of the United States, in certain cases where the Constitution of a State, or a law of a State, comes in conflict with the Constitution of the United States, or is supposed to do so. I would do it on this ground: if the parties see fit to take their remedy in a State Court, and pursue that remedy to final adjudication in the highest tribunal in that State, whatever that decision should be, I say the parties ought to be bound by it.

Mr. BERRIEN said that the amendment proposed by the gentleman from Kentucky, as now modified by the gentleman from Virginia, seemed to meet the general concurrence of the majority of those gentlemen who had addressed the Senate. The single objection which had been urged against it, was, that it would be an incumbrance to the bill, and might embarrass its passage. Why should it be considered an incumbrance? If the thing was right in itself, if it was right in principle, where was

the incumbrance. The other branch of the Legislature, Mr. B. said, had sent a bill to the Senate, creating an additional number of judges. The appropriate time to prescribe what number should act on a question brought before the Court, was, when they were increasing the number of Judges on the Bench. It was agreed by those who had addressed the Senate, that the proposed modification was correct in principle; the idea that it was to be considered an incumbrance could not prevail; if it was correct in principle, it was not an incumbrance, but an appropriate part of the bill. What reason was there to suppose that the other House would reject this provision? It had been recommended to abstain from pressing this measure here, and to maintain it in a distinct bill; but, said Mr. B. you give the power, why not qualify it in the grant? you create the tribunal, why not regulate the mode of proceeding in that tribunal? What evidence was there to show that such a distinct bill would pass? Why was not a distinct bill reported by the Judiciary Committee, who reported this bill in the other House? The bill for throwing back the time of meeting of the Supreme Court has accompanied this bill, and if it was intended to introduce the principle by which it was now attempted to modify the present bill, why was not such a bill originally reported and made to keep pace with this? The only security Mr. B. thought for this proper modification of the power they were about to give, was to make the qualification of the grant in the bill, by which these additional Judges were provided for.

Mr. ROWAN said he was not much concerned about the proposed amendment. He regretted the gentleman from Virginia should have thought his excellent argument of so little value. Mr. R. said he understood it to be this: to alter the Constitution, it required three-fourths of the States, and two-thirds of both Houses, and that interpretation and construction by the Judges, give a meaning different from the literal one, that power ought not to be granted without a number corresponding in some degree to the standard fixed by the Constitution. The argument Mr. R. said was invincible, and he was sorry the gentleman did not seem to feel the weight and value of it.

The question was then taken on the amendment and lost.

TUESDAY, APRIL 11, 1826.

JUDICIAL SYSTEM.

The Senate resumed the unfinished business of yesterday, on the bill further to amend the Judicial System of the United States.

Mr. WOODBURY, of New Hampshire, offered the following motion:

"That the bill to extend the Judicial system be recommitted to the Committee on the Judiciary, with instructions to report such amendments as will remove any existing grievance, without an increase of the number of Judges of the Supreme Court."

Mr. WOODBURY then addressed the Senate, as follows: The gentlemen near me, sir, ask for my views, in submitting the motion on your table. The task is one I undertake with reluctance; but, at the same time, one from which I have no right to shrink, and which shall be discharged with all practicable brevity.

The strong, the prominent feature of the bill is, in my eye, its extraordinary increase of the number of Judges of the Supreme Court. Before yielding my approbation to such an increase, I feel anxious to obtain further facts and principles in illustration of its necessity; and as the particular friends of the bill unquestionably think that abundant reasons exist for so novel a measure, this motion must afford gratification to them, and be received in the spirit of kindness, as it will afford them the opportunity, doubtless desireable, to spread those reasons before persons of less local knowledge concerning the region of country whose grievances the bill is particularly designed to remove.

I am thus exposing myself to become a convert to their opinions, rather than cherishing any vanity of my power to convert others.

It will be seen that the motion presents only a single point of specific instruction, as to the bill which may be prepared for their relief; leaving the committee to adopt, for our future consideration, any efficient scheme whatever, which shall not enlarge the Supreme Court.

If the motion should prevail, additional instructions, by other motions, can be proposed by gentlemen who are friendly to particular plans: such as the circuit plan, with the attendance of a Judge of the Supreme Court once a year; or such a plan dispensing with his attendance altogether; or any other, which the observation and reflection of those around me may have satisfied them is most eligible.

But should this motion not prevail, then the consideration of any of these plans would be useless: and hence I desire to put to the Senate the single, unembarrassed, and naked question, whether they believe any exigency now exists which demands and justifies the unprecedented increase of the Supreme Court to ten. Has any thing been exhibited to us which renders such an increase necessary, proper, or safe?

In an attempt to obtain some certainty as to the operation of this increase in the members of that Court, and as to the real reasons which exist for the increase, so that the Senate can act understandingly upon the present motion, we shall not, it is hoped, be misled by the title of the bill. The living principle of any measure lies deeper.

The title is merely "to extend the Judicial system," and not to alter or amend it: so the title to the act of February 13, 1801, was to "provide for the more *convenient* organization of the Courts." &c.

But as that, under the then condition of the country, was not long found by the people to be very "convenient," so this will not be found a mere extension of our judicial system, to places where it never before prevailed. The judicial system now in operation in all the nine States covered by this bill, has been a part of the judicial system of the Union, with the exception of about one year, ever since the first judiciary act of A. D. 1789, to the present moment. Because we all know, that, for local duties, District courts and Circuit courts have ever been this system, with the right of appeal in certain cases to the Supreme Court; and that the only difference in different regions has been simply what now exists in some of these nine States, and in parts of some Atlantic States; namely, that in new and thinly peopled sections of country, the Circuit courts have been held by a District Judge alone.

But the proposed bill not only alters this system for local purposes, by requiring the attendance of an additional Judge at the Circuit Court in regions of country not so populous as those where the Judges of the Supreme Court now attend; but it alters the system for general purposes, by enlarging the Supreme Court itself one half its whole original number, by leaving its quorum so that contradictory decisions may constantly be made without any change in the Court itself, and by increasing it to as great an extent as a majority of its present quorum, so that new results may possibly be produced in all its grand supervising powers over each State, and over the whole confederation.

It is thus that a principle lurks in the last effect of this great alteration, which, in the opinion of many, should carry anxiety and dismay into every heart; because, among other objections, hereafter to be noticed, it places at the mercy of legislative breath, in any moment of overheated excitement, all that is valuable in any constitutional judgment on its records. We have only, as in this case,

to add a number to any court sufficient to balance a majority of its quorum, and, by an union of feeling with the appointing power, secure judges of certain desirable opinions; and any political or constitutional decision can, in the next case which arises, be overturned. Every security is thus prostrated. The system is not extended; but is, in principle, destroyed. For thus does this increase open an avenue to a radical change in the highest functions of one great department of our Government; and a department, too, of all others, the most endangered by any change, because, in its very nature, designed for permanancency, independence, and firmness, amidst those tempests, which, at times, convulse most of the elements of society.

Gentlemen must perceive that I speak only of the general tendency and alarming character of such an increase, without reference to the motives which have now recommended it. They are doubtless pure. But its propriety is to be tried by the reasons for it, and not by motives. And, without stopping to trouble the House with any detail as to further inconveniences, injuries, and dangers, from this extraordinary increase in so important a department, let me ask, sir, what are its justifications? By whom is it called for? Who has stood forth and proclaimed that public sentiment throughout the Union has demanded it? Whatever may be the jealousies and apprehensions concerning the general course of decisions in that court, so eloquently sketched by the Chairman of the Judiciary Committee, who has shown the loss of public confidnce, the errors of opinion, or denial of justice by that court, which this great increase of its numbers is sought and is adapted to correct? No, sir. I undertake to aver, that, so far as this bill alters the Supreme Court itself, by that increase, and thus affects its discharge of all its general duties as the Supreme Constitutional Court for the whole Confederacy, it is a bill entirely uncalled for by the whole Confederacy, or perhaps by any part of it; and, at the same time, it is entirely unfitted to remove any actual grievance which exists in the discharge by that court of those general duties.

The fallacy of the measure consists in this: This bill is to be passed mainly for the removal of local evils, now existing in the West and Southwest. Such has been the argument. Thence come the complaints. Why not then remove those evils, as my motion proposes, without touching the Supreme Court? Why not make the remedy co-extensive only with the disease? I do not now consider the delay in the Supreme Court itself, for I shall, hereafter, show that this bill will not diminish any delay in the Supreme Court. But, as a cure for a mere local disease, why should you begin to tamper with parts of the system not disordered? You will thus jeopard, if not sacrifice, the primary and most momentous duties of that court, for the relief of some sectional inconvenience; you will make the head and heart tributary to one of the extremities; and for the gratification of two or three millions of people in the inferior duties of our judiciary, you will put in peril, not only the interest of the other seven or eight millions, but the interest of the two or three millions—of the whole Union, in all the paramount, original and appellant powers of the great Judicial Tribunal of the whole Union.

Is it possible that the local evils which exist in the valley of the Mississippi, can be such as to justify so extraordinary a measure? Where are the petitions and remonstrances on this subject from Conventions or Legislatures? Here is a bill, whose local operation reaches nine States; but not more than one of that brilliant galaxy has memorialized us for relief. The bar of a single city in Tennessee, and the bar of some part of Ohio, have petitioned us; but, however respectable these sources of complaint, is it all you would expect, if an actual necessity existed for so important a bill?

I shall not now discuss the abstract and metaphysical propriety of a call for our legislation by a sovereign State; but I appeal to our knowledge of human nature, and to human usages, if we should not, probably, see different remonstrances, if the grievances were, in fact, so widespread and acute as to require for their removal so unusual a bill. But, intelligent gentlemen, on this floor, have stated their impressions as to the character and extent of those grievances. Their statements are entitled to the utmost respect and consideration.

If I understand them, as now and heretofore disclosed, they are all resolvable into a supposed want of equality between those nine States and the rest of the Union in their judiciary.

And without tracing all the Protean shapes, which conjecture and argument have assumed, I will frankly admit, that, if such a want of equality exists there, as is so fatal to the administration of justice as to require for its removal this large increase of the Supreme Court, I earnestly pray that my motion may fail. For, without vaporing about my regard for the West, which those only can doubt to whom I am unknown, and without claiming any exclusive merit for broad statesman-like views, I would extend any proper relief as readily to Missouri, however Western or small, and whether born under a good or an evil star, as to that Pilgrim State, whose arms, literature, and arts and commerce, have crowded her history with such proud trophies since the landing at Plymouth Rock.

Proceeding then to analyze this general want of equality, it must, if true, be found to consist either in a want of an equal representation on the bench of the Supreme Court, or in the want of an equal system of inferior courts, or more comprehensively in the want of an equal attention to their unusual quantity of judicial business.

In an examination of their want of an aqual representation on the bench of the Supreme Court, I care not whether the increase be asked because it is necessary to give them equality on the ground of comparative population—on the ground of their number of States—on the ground of wealth—on the ground of probable business, as depending on any of those circumstances—or on the ground of their diversities of local law—which last the Chairman more particularly and eloquently urged as a reason for three new Judges from the valley of the Mississippi.

Some of these considerations have been suggested by some persons, and others by other persons; but they all are resolvable into some kind of representation.

For the purpose of ascertaining the relative condition of the West on this point, I cast away every shield and panoply as to the principle, and concede to the advocates of the bill, that this representation, based on any of those circumstances, is neither novel nor abominable.

A very easy and just test of their equality, so far as regards population, (and almost every thing connected with the judiciary depends on population, directly or indirectly,) is the representation in Congress. Examine this a single moment: All the States have 213 Representatives, and the present number of Judges, who compose the Supreme Court, being seven, the judicial representation is only one Judge to every thirty Representatives. The nine States included in this bill have one Judge, reckoning the recent vacancy in that quarter as filled, and only forty-seven Representatives. Hence, on this ground, they are not yet entitled to one more Judge, and much less are they entitled to three more, until they have 120 Representatives. The result is the same, if you consider separately the six new States now destitute of any Circuit or Supreme Judges; for they all have only twelve Representatives, and, of course, are not yet, on this ground, entitled to a single Judge; while the other three, having only thirty-five Representatives, are now, on the same hypothesis, fully represented. The great increase of Judges, therefore, contemplated by this bill, so far from being necessary and

equal towards the West, on this ground of judicial representation, is grossly partial, unequal, and unjust.

There is no escape from this conclusion, by saying that the new Judges may, or should, be selected from other States than those embraced in the bill. For that would be an abandonment of either the principle of representation on every ground, or of the very fact of that want of an equality, which is now under examination. Nor is there any escape by saying that these nine States have increased much in population since the last census. Because the other States have likewise increased, and though in a ratio not probably equal, yet more equal than heretofore, and sufficient to prevent my former conclusion from being shaken. It was admitted on Friday last, by the gentleman from Kentucky, (Mr. Rowan,) that two or three of the oldest of these nine States had now become emigrating States; and all of us know that the tide of emigration into them from the East, no longer dashes over the Alleghanies as it once did. The swarms from the Northern hive now alight nearer home. Even in cities like New York and Boston, and in many towns somewhat rural, like Dover and Chelmsford, manufactures, no less than an improved agriculture and commerce, always vigilant, have worked their miracles; and as rapid an increase within the last seven years can be shown as in any vale of the Land of Promise in the West.

But if the population of those nine States had, since the last census, augmented one-half, and all the other States had remained stationary, it would justify, on this hypothesis of judicial representation, an addition of only one Judge: and when these nine States are compared with those Northeast of Maryland, it would not justify the addition of even one. Those Northeastern States have now 117 Representatives, and only two Judges of the Supreme Court. Add to the nine Western States twenty-three more Representatives for an increased population, and then, with seventy Representatives and one Judge, they are not entitled to even a single Judge more till they have 117 Representatives. The present bill, then, allowing four Judges, where a right exists to only one, and leaving only two Judges in States where a right exists to four, proceeds on a new kind of equality as regards population—proceeds on a boasted species of legislation on broad national views, which it has been my misfortune not to comprehend.

But it has been suggested by another member of the Judiciary Committee, the ingenious gentleman from Maine—that this great increase of Judges in that region is to favor or represent the small States. If Judges are to be created in analogy to the representation in the Senate rather than the House of Representatives, then the bill should provide at least one Judge for each State; or, if they are to be created to represent State codes of local law, the same necessity exists for a Judge from each State. But this bill neither confers an equal favor in this respect on each State, nor on each class of States. If a class of small States are to have Judges to aid them merely as small States; if the bill is an oblation or peace-offering to them, then why does that gentleman forget the East? Forget our own hearths and altars, and the resting place of our fathers' ashes?

Are Maine, New Hampshire, Vermont, Rhode Island, Connecticut, New Jersey, and Delaware, less deserving than the younger members of the family? And if the small States are to be aided by any measure, are those at the East, who are now destitute of any Judge of the Supreme Court, to be entirely overlooked? A most striking fact on this point is, that the present Eastern Circuit, composed of small States, save Massachusetts, has only one Judge to twenty-seven Representatives—when this bill gives to the small States, in the West and South West, one Judge in one circuit to only four Representatives, and in another circuit to only five. A less number in the whole of each of those circuits, than what belongs to the little Spartan State alone—one of whose sentinels, unworthy to be sure, I am, stationed in this citadel. Again: if the judicial representation, in order to justify this increase of Judges, is to be grounded, not on States, nor on "men, high-minded men—

> "Who know their rights,
> "And, knowing, dare maintain,"

then it must be grounded on wealth or territory. But this part of the inquiry has been sufficiently extended, and if pursued further, may give rise to invidious feelings, which I, on my part, utterly disclaim. I prize no less highly than others, the services and the chivalry of the West, and can see, without envy, in the mist of coming time, their high destinies. But, if you look to the arts that sustain or embellish life, to private affluence or public institutions, to single cities, or the numbers, capital, and power, of States; the region of country embraced by this bill will, surely, at this period of their unrivalled growth, complain of no existing injustice towards them in judicial representation, as based on wealth. Yet, as respects territory, if that, independent of its population, wealth, and other circumstances, is to be the basis, I frankly concede that their present number of Judges is unequal—though, at the same time, a larger number, on this hypothesis, must not be created to represent or benefit men or wealth, the causes of contracts, torts, and courts; but, in some sections, mere earth and vegetation, without any controversy to be settled, unless that of older time between the trees and the bramble.

I know that the friends of the bill cannot desire this increase of Judges on the last ground exclusively; while I do not hesitate to confess that, in connexion with the others, it is not to be lost sight of in the frame and establishment of any judicial system. I have now done, sir, with the consideration of a supposed want of equality, or due balance of power, in the West and Southwest, on the Bench of the Supreme Court, as founded upon any principle of representation, whether called representation or by some other name, imagined to be less exceptionable in respect to a Judiciary; a principle on whose abstract correctness I say nothing, but whose operation I have examined, merely because it has been urged by others, in different shapes and under different titles, as a plausible, and, indeed, unanswerable argument in favor of the proposed increase of the Supreme Court.

Another ground for this increase, and what was styled, by the Chairman of the Judicial Committee, "a leading grievance," is a supposed want of equality between the judicial system now in operation in those nine States, and that in operation elsewhere. To understand the extent of this grievance, it will be indispensable to advert a moment to their present system. It consists of a Circuit Court in the three older and more populous States, and, in the other new and thinly settled States, a Court by a District Judge, with circuit powers, and a right in all to revise certain questions of law in the Supreme Court. What is this but the same system which has ever prevailed in similar regions of country, since the organization of our Government? Indeed, as a system, this can be complained of only in the six newest States, and in them the only inherent defect of the system is supposed to be the want of a Judge of the Supreme Court to attend the Circuit, because their District Courts are now held as others throughout the Union, and their appeals, or writs of error, to the Supreme Court, in all cases, are, or might be, made the same, in substance, as elsewhere, without any change of the system itself.

A moment's attention to our judicial history may correct some hasty impressions on this point. The very first judicial act of September, A. D. 1787, included within its established Circuits neither Maine nor Kentucky. But did

any person ever suppose, that our fathers thus intended to put their inhabitants to the ban of the empire? to exclude them from the pale of our Judiciary? or to strip them of their proportionate privileges?

So far from it, that a District Judge, with Circuit powers, was then created for them as a part of our local judicial system best adapted to tracts of country newly and thinly settled, and in similar regions this has constantly been retained as the appropriate system, and indeed as the only one that can be applied in such places, without giving to them more judges, and a greater judicial expenditure, than they are entitled to on any of those principles of equality so strongly urged by the friends of this bill as the basis of all our institutions. Let me entreat the Senate to reflect a moment longer on this consideration. Because, if we trace down our judicial history, it will be seen that this part of our system, now the cause of so severe complaint, was afterwards introduced into all other places beside Maine and Kentucky, where the population and territory were similar, and retained not only during their District and Territorial condition, but, in many of them, long after they became sovereign and independent States.

What is still more striking, three of the largest States in the Union in those portions of them in a physical condition similar to the six new States in this bill, have resorted to this very district system, and have thus, according to the views of some, subjected large portions of their population to ignominy, and placed in unequal jeopardy their property, their liberties, and their lives.

To see how far this "leading grievance," as it has been called, can justify this great increase of Judges, I do not shun a more particular scrutiny, because I am seeking truth, and not victory. If it be such a grievance, it is on the ground that the system is unlike the systems which have existed in similar regions; or unlike the systems which have existed in similar sovereign States; or unlike the systems elsewhere, in its inherent excellence.

But it is not such a grievance on the first ground; because we all know, by the highest written evidence, that the system now in force in these six States, has always prevailed in other parts of the Union similar to those six States in population and territory; that it prevailed in Maine over thirty years, in Kentucky eighteen years, in Tennessee more than twelve years, and without further detail, has, for some years past, prevailed in large sections of New York, Pennsylvania, and Virginia. Nor is it such a grievance on the second ground. For, whether that ground be assumed on the theory of the able Chairman of the Judiciary Committee, that a Circuit Court, and Judges of the Supreme Court, are due to these six States on account of State pride; or, as suggested by others, are due as a badge of State sovereignty, State uniformity, or some other indescribable State prerogative; then will our past history be found at war with this theory. Because this precise system, saying nothing of these six new States, long pervaded other entire independent States, as lofty in their political opinions as the loftiest.

It was the system of the gallant Tennessee, as a State, from A. D. 1796, to A. D. 1807; of the giant Ohio, from her State birth till the same era; and even of Kentucky, with all her chivalry, and eagle vigilance, from her admission into the Union, in A. D. 1793, till, after fourteen years, she and her immediate neighbors had attained to that population which might, on equal principles, justify their receipt of more Judges and more expenditure, and which might render the Circuit System not altogether inappropriate to their increased density of population—a density of population, however, which, though then perhaps too small for the system, and an extension of it, by altering the numbers of the Supreme Court, not the most eligible remedy; yet holding out no justification to this bill; because those three States then averaged to the square mile nearly a third more population than these six States now do.

When I speak of the present Circuit System, with its present details, as undesigned and unfitted for so sparse a population, I can furnish no stronger illustration of the correctness of my ideas, than the fact, that a Judge cannot possibly attend the Supreme Court here long enough to discharge, with promptitude and fidelity, all the business here, and then travel twice a year over a circuit embracing a proper number of people, in a country thinly populated, without becoming a mere courier or Cossack. Hence, this very bill exhibits the strange anomaly of an attempt to extend this system on what is called equal principles; and yet, giving to a population in the most Eastern circuit, large enough to have twenty-seven representatives in Congress, only one circuit and one Judge, and giving the tenth circuit and one Judge to a population only large enough to have four representatives. What is still more decisive, giving to New York, Connecticut, and Vermont, with forty-five representatives, only one circuit and one Judge; and to Indiana, Illinois and Missouri, with only five representatives, one circuit also, and one Judge. How striking the unfitness of a system which assigns to one Judge the business of a population of about two hundred thousand, and to another the business of about two million!

When admitted into the great family of the Union, it was not considered by the three oldest States in this bill, or by the other six States, that the want of a circuit and a Judge of the Supreme Court was derogatory to their independence, or humiliating to their dignity; else, then, if ever, would, and should, the tocsin of remonstrance have been blown, long and loud; because, then, if ever, on this ground of State pride, did their honor and their rights require complaint; then, if ever, on this ground, was it a grievance and an ignominy.

No, sir. The truth then lay, as it now lies, deep in their physical condition, and in the nature of the circuit system. I would be one of the last to wound their just pride, or to withhold from them, in a measure otherwise safe and judicious, any proportionate right; but it was always justly supposed that the primary duties of the Supreme Court consisted in the discharge of its great appellate jurisdiction here; and that the local duties of the Judiciary were subordinate to those, and to be performed by local Judges, aided by the Supreme Court only as much as might be practicable, without any neglect or sacrifice of their higher duties here. Hence, the Judges of the Supreme Court were not then required to go to the extremes of Maine and Kentucky to discharge local duties; hence, they have not since been sent into other territories or new States, which might call them away too distant and too long for the proper despatch of the business of paramount consequence in the Supreme Court itself. Hence, we should not now, to remove any local grievance, make a hazardous inroad on the numbers, character, and security, of that august tribunal, which is the palladium of all the States; which is consecrated by the Constitution, and all the best theories of free government, and in whose supervisory duties all now enjoy an equal share, and for the blushing honors of whose bench all now stand in equal competition.

The only remaining ground of complaint, concerning the system in these six new States, is, that it is not in itself so excellent as the system which prevails in the other States. But if it be as similar and as good as their physical condition, the proportionate rights of all, and the legitimate application of the circuit system will permit—though not perhaps, the best in the abstract, or not the best for other conditions of society; then the bill is, on this point likewise, unsupported.

That it is thus similar and good, we have already attempted to show. Without a repetition of former remarks,

may I be permitted to suggest one or two additional considerations concerning this position?

Let gentlemen advert to the judicial establishments in their respective States, and tell me, where they possess counties new and thinly settled, whether the terms and structure of their courts, are not in those counties somewhat different?—not subjecting their Supreme Courts to fluctuation and innovation, to make the system identical in every county; but adapting their local system in some degree to the physical condition of the People? I beseech the House, also, not to take for granted, that, under such a modified system, there is in the mere system itself any obstacle to as good and as equal an administration of justice as the structure of human society, and the relative rights of each portion, will permit. The questions of fact are all settled by similar juries; and the questions of law, though decided in the first instance by Judges inferior in rank or number, are, or may be carried, by appeal, or writ of error, to the same higher tribunal which acts for the whole. There is a difference, I admit; but it is only a difference between the correctness of the District Judge, who is selected on the favorite theory of gentlemen from his own district, with all the *lex loci* and *lex non scripta* of his region of country; and the correctness of the Circuit Judge; and which difference, in all cases of any magnitude, can be corrected by some additional expense and cost in appeals or writs of error.

I concede that this additional expense and cost, though in a few cases only, is still to be avoided, if it can be avoided on any equal principles, and without danger to the great and general tribunals, which dispense justice to the whole. But, surely, no person can be so unreasonable as to ask its removal in such a manner as to put those tribunals in jeopardy, and to incur disproportionate expense to the whole Union, to remedy inconveniences which all small populations on new and large territories have always been accustomed to endure.

The argument might be pushed with much greater strength to the removal of every other inconvenience arising from the physical condition of any part of our country. As the fewness of mechanics, badness of roads, small number of schools, and distance from markets. Because these would only require a disproportionate share of our joint funds, without, perhaps, putting at hazard any of our important institutions like that of the Supreme Court.

So, as a mere badge of State uniformity or State pride, it might more safely and forcibly be argued, that as many Light Houses and Custom House officers should be provided for each State, without regard to its commerce; and, as respects the wisdom of the bill on the ground of mere equality in system, what planter with two hundred acres of land, and ten workmen, would insist upon only using the spade system of husbandry, because in and of itself most excellent, and because that system had been found appropriate where a planter with two hundred acres of land had one hundred workmen?

All legislation is only an approximation to the theories of abstract right and equality. It must be modified by an infinite number of circumstances. Every wise man, in common life, acts invariably according to the diversity of means, interests, and condition of himself and those around him; and any different system of equality in legislation is only the levelling, indiscriminate equality of a churchyard.

But if such an equality is to be pushed at every sacrifice and danger in respect to a judicial system, this bill is a perfect *felo de se* on that hypothesis, because, as before shown, it violates such an equality in judicial representation, as much as it enforces such an equality in system. Nor is it any answer to this view of the subject, that the executive may select the new Judges from the North and East, when in the same breath gentlemen argue, that they are wanted on account of their knowledge of local law in the West—when by the bill they are compelled to reside in the West; when all their local duties are to be performed there, and when we witness around us such splendid specimens of Western and Southwestern talent, that must be overlooked, in order to import into the rich valley of the Mississippi, from some Eastern manufactory, a cargo of foreign judges.

Again: if this system is to be extended to the six new States, because most excellent, without regard to the effect of such an extension on the Supreme Court itself, and without regard to population or expense; then why not extend it to every part of the Union now destitute of it? When gentlemen talk of equality and broad American grounds—when they, with indignation and justice, disdain sectional views and favoritism, why create new circuits for the People in these new States, and not, at the same time, create them for more than three times as many people, now destitute of such circuits, in Western New York, Pennsylvania, and Virginia? Is not this straining at a gnat and swallowing a camel? For, if the circuit system of itself be superior, and therefore, without regard to other circumstances, is to be extended to the West and Southwest, for the safety and advantage of about half a million of People, now destitute; then, surely, a million and a half of People in the three great Atlantic States are equally entitled to its securities and blessings. Are not the lives and liberties of any of the constituents of the chairman as much endangered now, by a trial before one Judge, as he feelingly described those of the People in Illinois to be? Is not this as cogent a reason for a change, a speedy and radical change, in Pennsylvania, as in Alabama? And, though the honorable chairman might recollect, that life is constantly tried in England before one Judge, whose system has been so much eulogized, and also that it can be so tried under our present system, in any part of the Union, in the absence of the circuit Judge; and that the jury in such trials, passing on both the law and the facts, are the great safeguard of the citizen; yet admitting that a change in this respect is indispensable, it should be made in the old as well as the new States; because, reversing his own language, can it be questioned that life, liberty, and property, are as valuable in the old as in the new States? It is no answer to this reasoning, that Circuit Courts now exist in some parts of Pennsylvania or Virginia; for those Courts no more secure and benefit the lives, liberties, and property, of the other parts, than they benefit the People of Missouri. So, if other modes of relief can be suggested for all these old States, other modes can also be suggested for all the new States. So, if the old States have not petitioned for relief on this ground, neither have the new ones.

Push the argument one step further.—Why not, on this ground, extend the circuits to the Territories? Are not their inhabitants flesh of our flesh? Are they not Americans? Are not their properties, lives, and liberties, as valuable to them, to use again the words of the chairman, as ours are to us? Have they not men as competent for Judges of the Supreme Court, when one of them is now spoken of as a prominent candidate? Shall they not enjoy equal protection, and a judicial system of equal excellence? Thus, pursuing an abstract theory to all its legitimate consequences, its fallacy, when applied, without any regard to the different conditions, rights, and duties of all, becomes most manifest.

One more ground was mentioned by the chairman as a justification for this increase of the Judges of the Supreme Court, which, since the debate on Friday last, as to the union of Ohio and Kentucky in one circuit, will probably not be much relied on.

It was, that these Judges were wanted on account of the peculiar and extraordinary mass of judicial business in the West and Southwest. If this mass of business, in fact, existed, it might be answered that we have, as al-

ready shown, devoted an equal and proportionate number of Judges and judicial expenditure, to its discharge. But, as I am one of the last persons to withhold relief, where actual grievances exist, or to begrudge to any quarter of the confederacy any expense, any number of judges, or any kind of system, safe to the whole confederacy, and necessary to perform the business, properly and permanently devolving on our Courts, I will detain the House a moment, to ascertain how the truth is as to this supposed mass of business, and to ascertain how necessary and safe for its discharge may be this proposed increase of Judges on the bench of the Supreme Court. Here I confide implicitly in the local knowledge of gentlemen from those nine States, as to the character and amount of the business. I will stand on the utmost verge of courtesy, and take the highest estimate of one of the warmest friends of the bill.

That estimate gives to Louisiana and Illinois eighty actions each per year; to Alabama, sixty; to Indiana and Mississippi, forty each; and to Missouri, thirty. These are the six States without the circuit system, and will first be considered.—The largest of them, on the highest supposition, brings but eighty actions a year into our Courts, and this, at the liberal portion of one-third for trial, which is as many as the chairman himself supposed last Friday in the other States, would leave, on the most crowded dockets, nearly two weeks for each trial. If this be an extraordinary mass of business, it surely is an extraordinary *small* mass for any one Court, in any section of the Union; and so far from rendering necessary more Judges to despatch it, would hardly keep the mould and cobwebs from gathering over the present Judges. As regards, then, the whole six States, all who have not now a circuit, and the attendance of a Judge of the Supreme Court, the increase of Judges, on account of the mass of business, is entirely useless. The bill, as respects them, on this account, rests upon sand.

Mark then, sir, the conclusion as to the other three States. Though they now have a circuit, and the attendance of a Judge of the Supreme Court; yet we are to create three more circuits, and three more Judges, on account of a mass of business, which, if it exist at all, must exist in those three States alone.

Again: we are to create some of these Circuits and Judges in Alabama or Missouri, for example, when the business itself exists only in Kentucky, Ohio, and Tennessee. Or, to show distinctly the character of the bill on this hypothesis, we are, on account of a pressure of business, solely in the present seventh circuit, to create three new Judges and new circuits, and yet, by this very bill, not assign to the States within that circuit the *whole* labors of *one* additional Judge. I appeal to the bill itself on this point as conclusive. Ohio and Kentucky now form one circuit, and one additional judge is to do the business, not only of Tennessee, but Alabama. It was settled here no longer since than last Friday, and by almost an unanimous vote, and on the statements of the very friends of the bill, that no pressure of business existed there, which required any more additional labor.

The business, though nominally large, was said to be of such a character, that the decision of one cause frequently governed the disposition of fifty more. Much of the accumulation on the dockets, had, in some of the States, arisen from transient causes—such as the illness of a Judge—the sudden operation of some statute of limitation—the enactment of some relief system—the difficulties between rival Courts—the suits growing out of the United States' Bank controversy—and various other causes which need not be enumerated, and on the merits of which I offer no opinion whatever—but all of which established beyond doubt, that the accumulation of business was temporary, and that their dockets would soon diminish to one or two hundred cases each.

The Western gentlemen also admitted, with their usual frankness and manliness, that most of this business was that where our Courts have concurrent, and not exclusive jurisdiction; where suitors might enter the State Courts with it, but prefer the United States Courts.

Reasoning, a priori, every lawyer would have arrived at the same conclusion; because the business of exclusive jurisdiction, such as relates to Custom-house bonds, salvage, seizures for breaches of the Revenue laws, libels for seamen's wages, &c. must, on account of our commerce, exist in a greater proportion on the Eastern, than the Western side of the Alleganies. And yet the Courts of the former seldom exhibit a docket of more than one or two hundred actions.

The cases of concurrent jurisdiction, though less numerous in the extreme East than in the West, are still frequent on account of disputes as to land owned by non-residents, and on account of numerous debts due to the non-resident merchant-Kings of the New England metropolis. But almost every action of this kind there, enters the State Courts. It will doubtless enter the State Courts in the West more frequently as their institutions grow older; and it could not be asked, without an ill grace, that we should make great and permanent changes in our Judiciary to transact a description of business not wisely confided to it in the first instance, as most forcibly shown by the Chairman of that committee—not in analogy to the correlative powers of the other Departments of our General Government, and not connected with those maritime questions, those disputes between States, those controversies under the acts of Congress, those difficulties in respect to the agents of foreign nations, and those supervisory powers over Constitutional constructions, which would seem to form the only legitimate employment of a Federal Judiciary.

When we reflect for a moment, and find, also, that this accumulation of business is confined to only two or three States, is artificial and transient in its character, and that even now the plaintiffs, who are always shrewd enough concerning their own interests, select our Courts in preference to the State Courts, for business which they might prosecute in either—we surely cannot be justified in still greater comity, at a large increase of expense, and in a manner producing a radical and alarming change in the quorum, members, and operations of the Supreme Court itself. I forbear to dwell longer on these general grounds, which have at different times, and by different persons, been adduced for this great increase of Judges.

After a consideration of them with that care and impartiality which the importance of the subject demands, will any person avow that they exhibit a grievance which requires for its removal this extraordinary remedy? Whatever may be the disorder, is this the safest specific? A few other circumstances connected with this proposed remedy must not be overlooked. It can conduce but little to the despatch of business in the seventh Circuit. That despatch, after all which has or can be said, is probably the desideratum there now most urgent and momentous. But now, whether the business be concurrent and transient, or otherwise—be it better performed than in the State Courts or not—be the call for this bill from creditors and great land-owners, or from the debtor and hardy pioneer, who, by its operation, will be dragged into Courts more distant and expensive than their own tribunals—yet all its new Circuits and Judges are insufficient materially to promote despatch, without a division of some of the Western Districts. Another bill on your table, reported by the Judiciary Committee, to establish another District in Kentucky, is, on this point, perfect demonstration. Every lawyer knows, that the creation of twenty new Circuits can in no degree affect the District docket, and it can only indirectly affect the Circuit docket, because even now the Circuit Court at each term can continue any de-

as well as smaller body is equally subjected by law to censure or punishment; yet it is settled even to a proverb, that a large body, either from a consciousness of its increased power, or from a parasite propensity to lean on others, or from any other causes, which I cannot now stop to suggest, will at times adopt measures at which a smaller body of their own number would blush.

But the tendency of this great increase in the number of Judges of the Supreme Court ought to excite peculiar caution and alarm under our present Constitution. Because, under that, beside the smallness of number properly and customarily belonging to a judicail body, we have retained no check whaever upon judicial officers, except in impeachment: this, in our virtuous state of society, is, as the gentleman from Kentucky, (Mr. JOHNSON,) cited from Mr. Jefferson, a mere scare-crow; and in respect to judicial science, industry, and talent, never was intended to operate at all, and always must prove moonshine.

Other Governments have generally provided other stimulants and securities for these qualities. Securities against an undue devotion to the power which creates, feeds, and alone can advance higher the Judges; securities against incapacity, idleness, ignorance, and dotage, in Judges. In six of our State Constitutions, they are provided by making the Judges eligible for only a term of years; in ten of them, they are provided by making them liable to removal by address, as is done in England; and in almost all of them, are they provided, by making their salaries subject to reduction, as is also the case in England.

These remarks are not made because I admire less than others lofty sentiments of judicial independence. I do not say, with two or three other gentlemen on Friday last, that I am willing to alter the tenure of judicial office. But I do say, that, with the views of those gentlemen, it is difficult to comprehend how they can consent, by increasing the Judges. to make still weaker our present checks, and to diminish a responsibility which they now consider too small.

No, Sir; I make these remarks because, in securing judicial independence by a tenure of office virtually for life; by salaries large and undiminishable; and by exemption from removal on address; we have palpably gone beyond all ancient precedent or any modern example among transatlantic nations; and in such a new, if not hazardous experiment, I will not consent to go still farther, and transcend any precedent in any age or nation, by making a body, exclusively judicial, as large as ten, with no other checks or responsibility than are now devolved upon our Supreme Court. Gentlemen seem to forget the checks, securities, and responsibilities, of the large bodies to which they refer, and I now propose to them, frankly, that if they will cite to me a single body, solely judicial, and under no other checks and responsibilities than our Supreme Court—whether in republics, monarchies, or despotisms, that I will, at once, withdraw my motion. No, sir, we are launching our bark upon an unknown sea—we are making an experiment, and, I fear, a rash one, in our highest judicial tribunal, merely to remove a local grievance—we seem, I hope I may be pardoned the expression, almost sporting with the momentous subject of Judicial responsibility.

We knowingly and coolly proceed to lessen it, while avowing that it is already too small. I had always supposed, sir, that one essential feature in a Republic was extreme caution, lest those who receive power should forget right. That its governing principle was checks, constant checks, and eternal vigilance. And although I am ready to admit, that, with no constitutional or external restraint or stimulant whatever, some men may be so happily formed, and so singularly endowed, as to continue while in office to improve all their original excellencies; yet, in the sagacious language of a recently deceased Emperor, they can only be called "a happy accident." The argument, if pushed to its legitimate extent, would justify us in abolishing all checks, and in throwing every thing, with unlimited confidence, and in the true spirit of despotism, into the iron hands of power.

Place a Judge in such a condition, and though, in the range of possibility or chance, he may continue to exercise equal diligence and fidelity, yet all experience and reasoning render it probable that his attention will be less general, and his energies less highly excited; that in truth he will be likely to degenerate, and by being placed in a body legislative in number, but without legislative checks and excitements, he will naturally become, not, to be sure, in our state of society, so livid a curse as Jeffries, but a political partisan of the power which made and maintains him; a parasite for secretaryships and foreign embassies; or, if of a less busy temper, an idle dotard, or a servile *ipse dixit* to some ambitious associate. What is here anticipation, is now history of a similar officer of a similar temperament. "He minds his ease, and lets things go how they will; if he can have his 8,000 dollars per annum, and a game at l'ombre, he is well."

Again—such an increase will not only tend to change the character of the individuals, but of the whole body. It will become a body of a legislative rather than judicial character, like the House of Lords and New York Court of Errors, without any redeeming legislative check and security, such as exist in those tribunals.

By the increased numerical force, and more widely diffused personal influence of such a Court, their decisions will acquire weight, not so much in proportion to their interest, learning, accuracy, and strength, (and which we have shown will probably be diminished,) as in proportion to the great number, rank, and individual popularity of the members. Thus shall we impart to a Court, which some of the Committee have already pronounced too powerful, an additional, and at the same time most dangerous power, in a tribunal so little amenable to the scrutiny of public opinion, and of the co-ordinate departments of Government. Reflect a minute on the probable consequences of such a measure. It will tend to mar one of the greatest beauties in judicial decision—their reliance upon mind, and mind alone, for success. Next, it will tend to sap the very foundation of all just confidence in lofty judicial integrity, by opening a door to that lamentable state, when judgments of a grand Judiciary of the Union may be considered as mere sectional questions, settled on Eastern or Western votes, according to the majority on the Bench from either quarter—questions settled only for a season, as party victories or political expedients; and questions settled with such diminished science, research, and vigor in the judgments themselves, as in some instances to be obeyed only because their authors exercise command over the prison and the gallows.

Especially in a government of laws, is it to be discountenanced, that any municipal body should be made so large as to confer on their doings a popularity derived from numbers and personal rank, without imposing on that body rigid and efficient responsibility; and least of all should be made so large any judicial body, and particularly one like the Supreme Court, where causes so delicate and momentous yearly come to judgment—where the parties in interest, sometimes empires within themselves, cannot and should not be satisfied with any thing short of the fullest scrutiny, the widest range of study, the sternest impartiality, the most elevated talents, all converged upon the questions in controversy, and then judgments pronounced, which, by their inherent excellence alone, may be destined to live, like much of the civil and common law, long after their authors have mouldered from memory. Thus, to be sure, they may operate more slowly and with less eclat, but, in the end, if they deserve it, *triumphantly*—like the silent labors of many

master minds, in correcting the abuses of Government, and in freeing from restraints and monopolies the commerce of the world. Thus alone, too, may some of their adjudications chance to become parts of the living and speaking law of every free people, and to accord well with that still wider and higher law, of which Hooker says "all things in heaven and earth do her homage; the very least as feeling her care, and the very greatest not exempt from her power."

Another mischief in this great increase of the Judges is, that, should experience require a return to the former, or a less number, under the adoption of some different system, you never can, by mere legislation, remove Judges of the Supreme Court from office. I speak now of the most prevalent doctrine on this point. But you have no power to remove them by address; their office is not for a term of years—they are not incapacitated at any advanced age; and nothing, therefore, will be able to displace them, but the grim tyrant who dethrones all. The gentleman on the committee from Maine does, consequently, with great propriety, admit that this increase is an experiment. How long should we pause upon the danger and magnitude of a similar experiment in the Executive Department, which, in its structure and nature, is most kindred to the Judiciary? A proposition to double the number of the Executive would not only require an entire change in the constitution, but what patient reflection and long deliberation! But now, in the Judicial department, designed for the greatest stability, a similar change is to be completed in the hurry of a single session; and with no useful effect from it, even in anticipation, but the removal of a grievance in the local administration of justice in a single section of country. This removal can be effected by other remedies, which have the sanction of experience, and are entirely free from danger; and yet, can gentlemen still insist upon this experiment, so contrary to all experience, and so beset with the most imminent dangers?

The immediate consequence of adding to the Supreme Court, at once, a number equal to one half its original number, and equal to the whole now necessary to pronounce any decision, and all this addition to be made from one section of the country, it is not for me, at this time, to prophecy, but nobody can be so purblind as not to see the fatal example thus set to future Congresses, and to the different States in our Union. Do gentlemen believe, that hereafter equally plausible apologies cannot be found for a further increase? They exist even now in the East and North for a still larger increase. Because, pass this bill, and they are entitled to seven more Judges on some of the equal principles advanced in support of this. Moreover, these apologies will multiply on numberless grounds in every section, if we now pass this bill, and hereafter push into practice the boasted expansiveness of the principle it enforces. Mark the progress of it. At the end of the first eighteen years of our government, to remove a local grievance, we add a single Judge to the Bench of the Supreme Court—at the end of the next eighteen years, we are called on to add three more; and pursuing this course and ratio at the end of the next eighteen years, our Supreme Court will consist of nineteen Judges, and in only thirty-four years beyond that time, of one hundred and twenty-seven Judges.

Whether we shall then have reached a point to be stopped by the fear of patronage or expense in so splendid a system, or whether we shall then have reached a point of practical inconvenience, will depend altogether upon the fashionable opinions of the age—on new judicial theories—on plausible apologies—on analogies and exigencies. It may then be justly said, as now, that the Court is not so large as the English House of Lords. Pardon me, sir, we shall never, in such a career, reach a point of fear or practical inconvenience in the opinions of any quarter of our confederacy, which may hereafter wish to engraft some species of new fruit upon the old stock. Certainly not, with power and influence in any profligate hands, that might seek hereafter to raze to its foundation any principle consecrated by their records.

I am not to be misunderstood: I speak solely of the tendency of this principle, and of the use which may be made of it under the sanction of our precedent, when at some ill-starred crisis the *winds blow and the waves beat*; and not of the objects or motives, which now, in a political calm, may actuate any friend of the present bill.

I regret that the nature of the subject has forced me to make any sectional allusions or examinations, with a view to ascertain the extent and character of the sectional grievances the bill proposes to remedy. It has been painful. But I am not accustomed to shrink from what appears to me a duty, and feel conscious that no honorable mind, no person who knows my real feelings and opinions towards the regions to be affected by the local operation of this bill, will suspect or impute to me, towards them, any thing short of the highest respect and the kindest wishes.

If the passage of the other bill on your table, creating another district in the seventh circuit, will not remove all their local grievances, I am anxious that two new districts may be formed, with circuit powers; and then the Supreme Court would remain untouched and unendangered.

If this will not satisfy the just wishes and claims of the six new States, I am willing to go farther, and adopt any reasonable plan, placing the whole Union, in all respects as to judicial system, on the most perfect equality; taking care, however, not to include in their plan any addition to the Supreme Court.

But I have not embarrassed this motion with the details of any such system, lest the force and bearing of the general principle and operation of this projected increase of Judges of the Supreme Court might be lost sight of in details alone. Yet, that the Senate may not be in doubt as to my particular views concerning such a system, I will merely suggest, that with only our present number of Judges in the Supreme Court, and the whole Union divided into seven circuits, with new districts whenever necessary, a most perfect equality would be caused as to the system in the whole Union, in the three old Atlantic States, as well as in the six new States; and this enlargement of the circuits would be in analogy to former changes, including Vermont, Rhode Island, North Carolina, and Maine.

If to the District Judges in each district were given Circuit powers, all the business could be transacted with despatch, and with the addition of neither a host of Circuit Judges, nor Judges of the Supreme Court.

Once a year only the Judges of the Supreme Court might attend in each circuit, to sharpen their faculties and increase their knowledge of local law, by aiding the District Judge, at nisi prius, and, at the same time, if thought best, to act as an intermediate tribunal, on law questions, between the District Judge and the Supreme Court. The District Judges are now competent to these duties, or should be made so: the law even now devolving these duties on them in the absence of the Judge of the Supreme Court.

But a most important advantage in such a system would be what is suggested by the Nashville memorial, and what most imperiously demands consideration in any system, that it leaves to the Judges of the Supreme Court ample time for a grave and thorough and prompt discharge of all their cardinal duties, as the great balance wheel of the whole confederacy.

"Were the Circuit Courts held in each State or District but once a year, this would enable the Judges of the Supreme Court to hold their sessions for a much longer period of time to complete the business before them.

The inconvenience of having but one circuit a year would be much less than that arising from the great delay which now exist in the disposition of causes in the Supreme Court." —(Nashville Memorial....Congressional Register, Ap. 75.)

But this project is merely a hint, *en passant*. I am not tenacious of any detail, in any change which shall be necessary and well adapted to remove all the existing grievances, if it shall not, at the same time, make any dangerous inroad upon the Supreme Court itself, or create a host of unnecessary Judges, at a time when I sincerely believe we have ample judicial materiel, if duly distributed, for all the legitimate business of our Federal Courts, without any increase whatever of Judges, except, perhaps, one or two new district ones in the Seventh Circuit.

Under these views, I had intended to offer some further remarks against this great increase of Judges on the general ground of its useless multiplication of offices—its useless increase of Executive patronage, and its useless addition to our present vast expenditures. Not losing sight in these remarks, however, of the important consideration, that we are now ten millions of People instead of three—twenty-four States instead of thirteen, with a Territory doubled, and a revenue trebled.

But I cannot permit myself, at this time, to weary longer the patience of the Senate. I have invoked their attention to what I deem the fatal tendency of the present measure in the manner my sense of duty has enjoined; and if my warnings, like those of Cassandra, should be disregarded, I shall only add, that, for the welfare of my country, they will not, I hope, like hers, prove true.

Mr. HOLMES then rose, and said, that, having been one of the Committee on the Judiciary who had had this subject before them for several years, he must confess he was somewhat surprised at the proposition that had been made by the gentleman from New Hampshire. It was easy to point out the evils and difficulties in the best devised system under heaven, when it was not quite so easy to point out the remedy. There was no system to which an ingenious man could not object with some plausibility; and he did expect, when the gentleman from New Hampshire undertook to point out the evil, that he would likewise have indicated the remedy. What, said Mr. H. had he done? Had he proposed a resolution giving any definite instructions to the committee on the subject? Had he pointed out any system which he thought preferable to this? Had he proposed any amendment to this? Nothing. It was to be referred back to the Judiciary Committee to seek out something else, he did not know what. If that were to be the case, it would only prove one thing, that it was a very easy matter to find fault, and was the most comfortable thing in the world to be in a minority, as he hoped that gentleman would find himself in regard to his resolution.

The gentleman from New Hampshire, Mr. H said, commenced by finding fault with the title of the bill. If it were not correct, there was a period at the last stage of the bill when it could be altered: it would be better to let that point alone till they came to it, as he trusted they would

The gentleman had gone on to show that this could not be a general inconvenience, that it must be local, and proves its locality by showing that it only affects nine States of the Union—very local, indeed! It was only a local injury that affected in point of territory more than half of the United States, and in point of population, one fourth. Would it not be as well for them to say it was a benefit to have it? the rest of the United States had it, and these nine States had it not; then turn the argument on the gentleman, that the benefit was a local one, there were then fifteen States that received this local benefit, and the other nine States did not: why not, then, extend this benefit to all, if there was any benefit in having justice administered? for, Mr. H. said, the gentlemen had almost convinced him there was not, for he had proved that justice was better administered when they had fewer law suits, and fewer appeals; it would only be necessary to go farther, and it would be proved that Courts of Justice were not necessary at all.

The gentleman, Mr. H. said, had been answering arguments which he was not aware had been urged: this, he thought, looked something like creating a man of straw, for the purpose of knocking him down. Mr. H. said, he had not heard it argued on the broad ground contended for by the gentleman from New Hampshire, that there was to be a judicial representation. All he contended for was, that there should be a sufficient number of Judges to do the business required. Mr. H. said, he did not expect to hear it said, after so much complaint, that there was no evil existing in the Western country. It was not treating them kindly to say so. The gentleman had said there had been no petitions presented; there had been no meetings and remonstrances on the subject. And was it, indeed, true, Mr. H. said, there had been no complaint on this subject? The committee of which he was a member had received application after application, applications, too, from State Legislatures, by resolutions, and he should think it a circumstance entitled to some consideration that the whole representation from the nine States were unanimous, and called loudly for a change. What more was necessary to convince them of the existence of a grievance? yet, at this period of the bill, they were told that no grievance existed, and that justice was as well administered under the present judicial system as it could be under the one proposed, or any other.

The gentleman from New Hampshire had farther told them that an equality of system was insisted on. Mr. H. said he had heard no such argument. He did not believe it would be possible in the United States, or even in an individual State, perfectly to equalize the administration of justice so that every individual, in whatever part of the State he might be located, would have the same advantages from the administration of justice as the rest. It was impossible in the nature of the thing. All that could be done was to get as near to it as possible. Mr. H. said, if they were to pursue the argument a little farther, he did not know why they might not go home to the gentleman's own State. If it were true that but little business was done in the small or new States, and, therefore, there was no necessity for Circuit Courts there, he would ask the honorable gentleman how many causes were tried in the Circuit Court in New Hampshire. For the last ten years, Mr. H. said, he believed it would not average ten. As regarded the State of Maine, there was a time when they could not expect that a perfect administration of justice should be extended to them for a few actions, but as the population and business increased it was extended to them. If the gentleman was to be met on his ground, the New England States might be cited, and three out of the six would be found where less business was done than in these Western States, where they had only a District Judge; and, Mr. H. said, if it was not necessary to make any additions to the Supreme Court, remove these Judges from New England, and let the Circuit Judge be placed where it was agreed on all sides he was wanted.

The gentleman from New Hampshire had suggested that in those States where there were two districts, or a district where the Circuit Judge did not meet the District Judge, there was an inconvenience similar to that which was complained of in the West. Mr. H. said, he did not understand it so; he understood there was an appeal from the one district where the Circuit Judge did not sit, to the one where he did sit.

Mr. H. said, he had never heard it said that they ought to have Circuit Courts on the score of State pride. Did that portion of the country require an addition to its judicial system? This was the question, and of this fact that it was required they had the concurrent testimony of the

West. That was enough for him. The question then recurred what should that judicial system be. They had presented one; the gentleman from New Hampshire had not presented a counter one, nor did he propose to do so.

Mr. H. protested against the objection to asking for any equality, where there could not be a perfect equality. He wished justice to be administered equally to all portions in the Union, as nearly as could be. Some States suffered much, whilst others suffered little or none—those must be relieved first if possible. It was proper to provide for the administration of justice in the Territories, but it was not proper that the judicial system of the United States should now be extended there; but Mr. H. said, he was far from believing that the Territories were in a worse condition, in that respect, or even half so bad, as the Western country. We had the right to delegate to the Territories legislation, to prescribe the jurisdiction of their Courts, and appoint their Judges; and Courts had been constituted, that did the business in a manner so satisfactory to the People, that very few appeals came from that quarter. And in the Territories of Florida and Michigan, Mr. H. said, he believed that justice was, at this time, more promptly and satisfactorily administered, than it had been for years past in the nine Western States.

So far from the arguments that had been used having been answered, Mr. H. said it appeared to him that the arguments the gentleman had answered, had never been used. The position the committee had taken, was this: there was an existing grievance, not so very local, seeing that it extended over nine States of the twenty four. It was proper to extend the judicial system to all parts of the United States, where it could be done with propriety, making a difference according to the differences in location and circumstances. If they could not arrive at perfection, they should endeavor to get as near to it as they could, to carry justice near the man's door, if they could not carry it quite there. Either this, or something else, must be done; and if the gentleman from New Hampshire would give them that something else, they would be enabled to compare the two systems and see which was best. It was not difficult to find fault, but a remedy could not be produced, in which all would agree; and if every scheme were presented by the gentleman who disliked the present one, it would be found there would be almost as many schemes as there were objections to this.

The gentleman from New Hampshire had reference to the amount of business, and he seemed to think, that though a District Judge could not do the duty at present, yet, if a Circuit Judge was appointed, business would be so much diminished, he would hardly have any thing to do. According to the gentleman's own calculation, according to the amount of actions he considered necessary to be decided there, there would be three times as many as would be found in some of the circuits to the East; and here the argument recurred, if there was more business in the West than in the East, and it was not thought advisable to increase the number of Judges, why not transfer one from the East to the West? If these additional Judges were established, greater facilities would be afforded for trial of causes, and the presumption would be, that they would be more correctly decided. Men are not disposed to bring their suits, by appeal, into the Supreme Court of the United States, when they were correctly decided in the Circuit Courts. A District Judge, Mr. H. said, was a Judge of an inferior Court, his compensation was small, and it was not expected he should be a man of first rate talent—but if a Supreme Court Judge should go into the Circuit, very few causes would come up to the Supreme Court.

The gentleman from New Hampshire had said that much of this business might be taken from the Supreme Court by the will of the parties; they would prefer going into the Courts of the United States; and that a remedy might be prescribed. Mr. H. said, he thought so too; but the remedy was not prescribed. If cases between citizens of different States, and some other descriptions of cases, should be transferred from the Federal to the State Courts, business would be diminished in your District and Circuit Courts; but till they repealed the law which authorized the citizen of another State to bring his suit in the Federal Court, so long would this business be accumulating. In the Western country, there were controversies between citizens of the same State, arising under grants of lands of several States; the parties had a right to go into the Courts of the United States. Mr. H. said there had no remedy been yet provided for this accumulation of business; and till the plaintiff was compelled to go into the State Court, he would prefer going into the Courts of the United States.

Mr. H. said he did not know whether he could answer the objections urged by the gentleman from New Hampshire, as to whether the bill reported by the committee would remove the evils which were complained of. While they were passing a law to remedy the evil, no mortal could tell whether it would remove it or not. He was sure it would go far to remove it, and he thought himself it would be an effectual cure.

As to what the gentleman had said in reference to local laws, the gentleman seemed to think that to make the Judges perfect in that local law, they must make a Circuit Judge in every State in the Union. Mr. H. said he did not think it followed at all from the gentleman's premises. The New England States have pretty nearly the same system of laws throughout. The Circuits could be so formed, where the Judges being acquainted with the laws of one State, might readily become acquainted with the laws of the other States within his Circuit; and there would be no difficulty in finding a lawyer who had practised in all the Courts in the Circuit. There was one subject, Mr. H. said, which had had much weight with him, and that was the only objection to increasing the number of Judges—their responsibility would be diminished. There was, he thought, much weight in this remark; but what number of men could be taken in order to create a tribunal which should be most intelligent, and, at the same time, most responsible, is a question that has never yet been settled. The gentleman had said, in reference to all large bodies, in proportion as their number was increased, so was their responsibility diminished. The Senate, Mr. H. said, was once composed of twenty-six members; its number now was forty-eight. Comparisons were odious—but he did not know there was any member of it who thought his responsibility had been diminished, by the increase of its numbers. If responsibility was to be increased by diminishing the numbers, then it would be proper to descend to the lowest number possible—to one. That was the other extreme. All the responsibility was concentrated in the smallest number; but then the other benefit would be lost—intelligence. No man would be found to be so intelligent alone, as when associated with others. If a body of men did not feel their responsibility lessened as legislators, by being increased from twenty-six to forty-eight, he should suppose that a judicial body of seven, would not feel theirs diminished very materially, by an increase of three.

Whether this Court could be diminished, or whether the system could be changed hereafter, Mr. H. said, was a point in which he had not made up his mind, and into the discussion of which he should not now attempt to enter. That question had once been discussed, in regard to the repeal of the Judiciary bill, passed in 1800. Then it was determined that the power that created the Court could abolish it. That was not exactly similar to the present case. This is a Supreme Court of the United States, created by the Constitution; but the numbers of that Court had not been indicated by the Constitution. They

might be increased; he was not by any means sure, they had the right to diminish them. There would, however, never be any occasion to diminish the ten Judges of the Supreme Court, because the country is so extensive, and the population has so vastly increased, that, even if they should be made into a permanent tribunal, and remained fixed at Washington, it would be necessary to increase the number to ten, inasmuch as the moment their Circuit powers are taken from them, it would be necessary to select them from various parts of the United States, to bring with them some knowledge of the local laws.

It was now proposed to re-commit this bill, and for what? The gentleman from New Hampshire had not told them. He had alluded to one system, to one alteration, which he thought would suit his purpose; but whether he had made up his mind on that, Mr. H. said he was not sure. The gentleman from New Hampshire had proposed no instructions to examine even that proposition; his plan was to throw the United States into seven circuits, and to require a Judge of the Supreme Court to go once a year into each of those circuit: then there were to be District Courts having Circuit Court powers, held by a District Judge once, twice, or three times a year. In that case, Mr. H. said, one-fourth of the evil would, perhaps, be removed. There was, however, one material inconvenience attending the proposed system. In some of the States, such were the duties of the District Judge, it would be impossible for him to be associated with the Circuit Judge in that way; but the principal objection is this: in almost all the States, the suitors would prefer to have their causes carried to the Courts where the Circuit Judge should attend: by agreement of the parties, therefore, all cases might be carried up to the Circuit Court; very few would want their causes tried by the District Judge, and come, for instance, from Louisiana to Washington to the Supreme Court, when there would be a Judge of the Supreme Court in their own Circuit, who would try their cause, and save them the trouble of an appeal. This, Mr. H. said, was his chief objection to the system of the gentleman from N. Hampshire. Many other systems had been proposed: one was proposed last year in the Senate, and was decidedly negatived. A proposition was made by a gentleman from Virginia, to refer this bill to the Committee on the Judiciary, with instructions to devise means to take from the Judges of the Supreme Court all their Circuit Court powers. Another proposition, which also failed, was, that three new Circuit Judges should be appointed, who should not be Judges of the Supreme Court. Another proposition, which was seriously investigated in the committee, was this: to divide the United States into eight Circuits. The Judges of the District Courts associated together, should constitute a Circuit Court; there should be an appeal from the District to the Circuit Court, each Judge in his own District deciding as a District Judge, and then these Judges deciding collectively as a Circuit Court. This plan was at the first view most plausible, but there seemed to be some existing objections, which it would be invidious to mention. These it was presumed would be done away with in course of time; but the business in some of the District Courts was found to be so great, that it would be impossible for them to attend to their Circuit duties also; hence, this plan was abandoned.

Another proposition was to restore the old system of 1801. To that there were many objections which it is not necessary to mention; the Senate would not now be disposed to restore that system. The Judiciary Committee had maturely investigated the subject for several years, and they had come to this conclusion: that the call on them from the Western States was imperative and must be obeyed; it was their duty to extend to them, as far as possible, the same judicial system which was enjoyed by the other States: it would be very unkind and invidious to give them a different one; and if they could not give them in perfection, it was their duty to make it as perfect as they could. Mr. H. concluded his remarks by expressing his conviction that this system was the best that could be devised to remedy the existing evil.

Mr. VAN BUREN said it was due to the gentleman from New Hampshire, to state that the remark he had alluded to, was made by Mr. V. B. In stating the various plans which had been proposed to relieve the Western States, he had mentioned that one had been a bill reported some years ago in the House of Representatives, and which had also been offered by way of amendment to the bill proposed last year in the Senate, which went to provide for such of the Western States to whom the circuit court system had not been extended, Circuit Judges who should not be Judges of the Supreme Court, and thus to place them on an inferior footing to the other States. When that amendment was acted on in the Senate, the Western members said that the system which existed in the old States, had not been extended to them; from the time they had been admitted into the Union, they had experienced an inferior system; but if the interest of the other parts of the Union would not admit a full extension of the system to them they would wait; but when Congress proposed to legislate on the subject, and to place them on a footing inferior to the other States, they would object on the ground of wounded pride, and as well as on the ground of injury to the States. This Mr. V. B. said he had stated when up, and he thought it a legitimate ground of objection on the part of the Western members.

Mr. WOODBURY said, when he spoke of the comparative extent of territory, population, or wealth, nothing was farther from his intention, than to make these reflections with any invidious view. They were forced from him by the assumed sectional character of the bill. When he spoke of expense, he meant *useless* expense. He did not object to an expensive judiciary if it was necessary. Dividing Kentucky, or Tennessee, or Ohio, into two districts, would probably remove all the real difficulties; and, therefore, it was that he spoke of unnecessary expense. All the objections he had made, grew out of the due examination of the grounds of the bill, without saying any thing derogatory to the West. He had always entertained the highest feelings of respect for that portion of the Union, and he certainly had not had reason to lower them since he had been a member of this body. The gentleman from Maine had observed that there was an appeal from the Western District of Virginia or Pennsylvania to the Circuit Court of the State. Such, Mr. W. said, he believed was not proved to be the fact, on an examination of the statute Book.

Mr. HOLMES explained and said, it was perhaps wrong as it regarded the division of a State into two Judicial Districts, it being a general principle that there was an appeal from the District Court in Maine to the Circuit Court of Massachusetts: and in another case it was so; and, if it was not so, it might be made so by law.

Mr. EATON said it had been well remarked by a gentleman who preceded him in the debate, that from the West there had been nothing of clamorous demand made for relief. The State from which he came most certainly had not complained, nor would she; patient under long suffering, she had waited, in the hope that Congress would presently perceive the necessity of some change, and would, so soon as it was discovered, place her citizens on a footing, in all respects, correspondent with the original States of this Union. In addressing you, my purpose is, to assume no higher ground than she has done; not to complain, but in respectful remonstrance to urge, that her interests and her rights may be placed upon an equal footing with the original States. This, it is conceived, we possess an unquestioned right to do. The Senate will, however, bear in mind that, if the People of the West have

not complained, it is because of liberal feelings entertained, and not for the reason that ample cause to do so has not been afforded.

The question submitted to the Senate, was not one, which now for the first time was brought before them for consideration. The discussion of its general merits he should leave for others; his object was principally to notice certain remarks and arguments which had just fallen from the Senator from New Hampsire, (Mr. WOODBURY.) Since I have had a seat in this body, not a Congress has passed by, that some alteration in our Judicial system has not been attempted, that other sections of the country, as well as this, might be placed in a situation to derive benefits and advantages equal with the original States. Often as an application has been made, so often has failure been the consequence, until an increased stock of patience seems to be required. Wait yet a little longer, has been the answer urged from time to time to our petitions for redress: just now the time of Congress is too limited, or the session too near a close; delay yet another year, and then we will take up this matter, and see, if in some way or other, a remedy cannot be applied; something be done to meliorate the hardships and inconveniences which are alleged to exist. Still, however, nothing is done, or is likely to be done; and again, I presume, we shall be told, wait yet a little longer, lest perhaps by acting hastily the best possible system may not be devised and agreed upon.

It was a little curious, he said, to mark the course and history of this business, and to trace out the contrarient opinions that had at different times been entertained, and practised upon. At one period we have been urged to the belief that it was better to confide the business of the Circuit Courts to the District Judges alone, with the right of appeal directly to the Supreme Court. This, though, failed of success, for the reason, that many considered it essential that the Supreme Justices ought to be, not merely Judges in the last resort, but should likewise be present in the Nisi Prius Courts, with a view to a knowledge of local law; and therefore did that fail. Other opinions were urged, which went to the conclusion, that Circuit Courts, separate and apart from the Supreme Court, would be the better plan; yet, for reasons similar to that before presented, a desire to maintain a knowledge of local law, that, too, was objected to. Now, by the bill before us, it is proposed to retain the system as it is, and as it has been practised upon from the foundation of the Government, and so to enlarge it, as that every portion of our country may equally and alike participate in its benefits; but again we are met with the objection, that some other plan may be preferable, and therefore we should delay yet a little longer; and thus is it, that between a desire on the one hand, to preserve to the Judges a knowledge of the local laws of the respective States, and on the other, a wish that the Supreme Court should be relieved from its present excessive fatigues, the prospect of failure is again presented: for failure must, and will result, if the motion now submitted, the recommitment of this bill, shall prevail. It will then go to rest, and, for the residue of the session, we may calculate on hearing of it no more. I well remember, it was but at the last session of Congress, that a Senator from Virginia, not the gentleman now present, (Mr. TAZEWELL,) but he who has become a Minister in one of the Executive departments, urged the propriety of confiding to the District Judges Circuit Court powers. The friends to the bill, though, were at war with the suggestion, and the plan failed. It was then, too, that a promise by that same gentleman was given that, the matter being deferred, he would, if present this year, aid and assist in the scheme of reformation and change. He did not live to keep his word, at least politically, for he has gone and left us. Yes, time after time have our efforts failed, not from a suggestion any where made, that some change, some melioration, was not required and needed, but for the reason, that gentlemen then, as now, could not determine what plan was the best, and which most securely to be confided in.

Now, after such protracted and tedious delay, when the bill has passed the House, and the Senate are on the eve of acting upon, and deciding it, an application by the Senator from New Hampshire, (Mr. WOODBURY,) is made to refer it back to the identical committee before whom it has already been, with nothing new or material presented, without any thing of particular instruction, but merely a general reference, that they, if possible, may ascertain if some better plan may not, and cannot, be devised than that which is now before us for consideration. I regret that this should have been thought a necessary course; and yet I will neither find fault, nor think hardly of the gentleman for doing it; for truly, if he is sincere in the declarations he has made, that the end and object of the measure proposed, is to overturn the Constitutional laws and decisions of the Courts, unquestionably he is right in the course he is pursuing, and could I entertain fears of a similar kind, most unquestionably should I go with him. He has asserted, with a manner quite earnest, that the object of this bill is to attain such results—that its design is to put down, or rather, in his own emphatic language, to overturn the Constitutional decisions of the Courts. The expressions employed were certainly a little too strong, nor could they have been designed to convey that meaning, of which, evidently, they are susceptible. They are susceptible of a meaning much stronger, I am sure, than was intended to be conveyed. It was designed, I apprehend, merely to suggest—and nothing more than such possibly might be the effect—the tendency of the measure; not, certainly, that it was the object to be attained.

But no matter; be it one or the other, the conclusion is the same: for if such shall be even the effect of the proposed enlargement, whether resulting by design, or as a consequence, it will be the same thing; and he who thus can anticipate, most certainly should stand in opposition to the bill. For one, I entertain an altogether different opinion, and therefore shall pursue a different course, and vote against the recommitment. It is not in my power to agree with the gentleman; his foreboding is mere illusion; if I could think so, most cheerfully should I unite, and hand in hand go with him. Will the gentleman be a little more explicit, and explain to us how such results can come? They cannot; and even if they could, and should, legislation affords a remedy. The amendment yesterday offered by the Senator from Kentucky, but which was rejected, will prove an ample safeguard. That I am willing to adopt, not in this bill, lest it might endanger; but in some other place my assent shall be yielded to it. Let that amendment, which requires the concurrence of seven of the ten Judges, upon any Constitutional or State right question, be adopted, and thenceforward will be dissipated the fears and apprehensions that are entertained. It is true I voted against that amendment, not because opposed, but from a desire that the bill before us might not be embarrassed. I should have preferred it to have come to us in a shape requiring no amendment, that nothing of danger might be thrown around it; still I could not refuse the alteration that was proposed in the Circuits, the attaching Ohio and Kentucky, which were contiguous and adjoining States, rather than Missouri and Kentucky, which are so remote to each other. A further inducement was, that seven out of ten of the Senators from those five States, wished the alteration to be made. Nor was it possible to refuse the second and more important amendment—that which required the Judges to reside within their respective Circuits; with these, I could not omit to concur, however great my desire that no alteration had been necessary in the bill. I would not agree to sanction any thing, which, having a tendency to induce protracted debate, may thereby involve defeat.

Be it then distinctly understood, that, at any moment, freely will I join in the support of any measure, which, on Constitutional questions, may require a concurrence of seven, or any other number of the Judges deemed advisable, and thereby to present a rampart of defence to those forebodings or fears which seem to be entertained by the Senator from New Hampshire.

Stripping this question of all the refined and technical objections that have been urged, it resolves itself into this: that nine States of the Union are deprived of the advantages of your Judiciary system: they possess it, nominally, though not in fact. It has, to be sure, been conceded to three of the Western States; but it is only in name. The ill health of the Judge assigned there, multiplicity of business, and the extensive Circuit he had to attend, prevented his bestowing that attention which the interest of the citizens demanded of him. Of this, however, the People of Tennessee, who were the essential sufferers, never complained, knowing, as they did, that it was impossible for him to act differently. Living at Frankfort, and having to make a visit to Nashville once a year, two hundred miles, and back again—to Knoxville, about the same distance, and to the capital of Ohio, imposed upon him the necessity of travelling, in the course of a year, at least twelve hundred miles. Nor was this all: the bodily fatigue to which he was subjected, enough to wear down a reasonable constitution, was yet, at the points at which his Courts were to be holden, met by the more fatiguing labors which the exercise of the mind produced. The labor of the body over, the exertion of the mind commenced; his was not the mere examination of a record, and trial of some light question for a day or two, as might have been the case, and indeed is the case in New Hampshire, but a constant, unremitting engagement, and arduous attention to business for four and six weeks; wading through an immense docket, through difficult and complicated suits, and in hearing the labored arguments of counsel: such, indeed, was the fatigue and trouble to which the seventh Judicial Judge was subjected. A reference to the condition of the docket of those States which compose the Circuit, will prove all, and more than I assert. It will be found that, in Tennessee, there are not less than two hundred suits, complicated and difficult, and which require a session of at least six or eight weeks. Not a less number in Ohio; while, as the Senators from Kentucky state, there are not less than eight or nine hundred pending there. These, to be sure, may be presently reduced in number, but what of that? Citizens of the Union, and entitled to equal privileges, they may well claim redress for the present; and without arguing as to what may, or may not, be the case in future, ask of this Government to have their litigation and law suits determined, under circumstances of the same advantage and liberality, as are conceded to other States of the Union.

Mr. E. requested that gentlemen would advert a little to the state and condition of the country when the plan now in operation was first enacted; and which, he said, had continued to be regarded and persevered in for more than thirty years. At the first Congress which met, after the adoption of the Constitution, the necessity of having a proper Judiciary occurred, and they set themselves to make one, and to adapt it to the then situation of the country; and what was it? Such, sir, as you find it yet remaining on your Statute Book, appointing, for the object, one Chief Justice and five associates, in all, six Judges, who were charged with the performance of *nisi prius* duties, and with the appellate and higher duties of a Court in the last resort. One of the earliest acts of legislation, was to arrange a Judiciary, not in reference to the population of the several States, as is now suggested, but such an one as was supposed might be adequate to the preserving of peace and good order in society—the determining of all existing litigation, and such as might arise. At that time, the entire population of the country was not essentially greater than that which the Western States are at present possessed of. But be this as it may, it was not materially different, in the opinion, at least, of the actors of that period, as reference to the only data of these times, of which we are possessed, will clearly prove.

In the first page of the Constitution, we have the opinion of the framers of that instrument, as to what they conceived to be the relative strength and population of the States which then composed the Union. Until a census should be taken, they declare what shall be the ratio of Representation in the several States; and the entire aggregate of the assignment makes sixty-five members for the first Congress; declaring, at the same time, that the ratio of representation should not exceed, when the census should be taken, less than one Representative for every thirty thousand: unquestionably this goes pretty satisfactorily to prove, what then was conceived to be the population of the country, and hence, what kind of a judicial system was suited to the then state of affairs, and to the probable differences that might arise in society. Let this state of things be contrasted with that which the Western States at this moment present. Then sixty-five members composed your Congress; now the States beyond the mountains give you forty-seven, which is more than two-thirds of the first representation, and which, consequently, by that parity, would entitle the West to the number of Judges asked for in this bill, with a considerable numerical fraction left But this it seems should not now be the governing rule: the present relative state of population is required as a test, and hence is it maintained, that, constituting less than a fourth of the population, the allowance of four out of ten Judges is an undue proportion for the Western States. I maintain that is not the rule of right, nor is it the rule by which such a subject should be tested. No more than is the case on this floor, should representation in the judiciary be regarded. The court represents no one, acts for no one; their purpose is to prescribe rules of action and conduct, and for the government of property, which will equally affect every one, through every State; and this apart, too, from any influence, except what a proper discretion and judgment may suggest; and if in any portion of your country there be a single individual who has a suit, (no, sir, two individuals I mean, for two is necessary to make a suit,) it is our business to take care that an opportunity be afforded the parties to obtain a decision. It is the business to be done, not the number of inhabitants, that should constitute the rule of our government and action.

By the rule of calculation, however, which is maintained by the Senator from New Hampshire, in relation to this bill, the original States were mistaken in what was done at the first Congress, and they should, in reference to their population, have rested content with a less number of Judges, than by the act of 1789 was given; but they did not then so consider; they looked to the state of the country, its extension, and the probable business that might arise; and assuming that as their surest guide, determined upon having six Judges; and yet, under this aspect of the case, and with a knowledge of all circumstances, the extent of our limits, and quantity of business, it is gravely now insinuated that one Judge is amply sufficient for the Western States: for such is the conclusion arrived at, if this bill shall be recommitted, inasmuch, as after that, we shall, during the present session, hear of it no more. Return it back to the committee and there will be an end of it: I am confident if this be done during the present session, we shall not hear of it again; it will thenceforth sleep, as time after time, under like circumstances, has been the case. Be it so; I still beg the Senate to believe that we shall bear the failure with patience; we will not complain, but wait and try it again at some future time in the hope of better success.

Permit me again to say, that I commend the opposition of the gentleman from New Hampshire, if indeed his forebodings, properly and well considered, carry him to the conclusion that, in the proposed enlargement of the system, there is any thing of real, or even fancied danger to the constitutional sanctions and decisions of the country; but to such a conclusion my mind cannot and does not come. Can he in such an apprehension be sincere? There is no question with me but that he thinks so. My inquiry is merely as to the accuracy of that opinion. I cannot bring myself to the belief that ten Judges are at all more hazardous than seven, which is the present number; or that thereby will be produced any such division of responsibility as to beget either carelessness or indifference to that high reputation which at present the Supreme Court so justly merits, and so generally has accorded to it. Gentlemen must be aware that, in legal adjudication, the rule of decision is not the motive, or feeling, or bias, which the Judge may carry in his bosom. Conscience is not the standard to which a wise Judge resorts as his rule of decision: no more does he thus determine on matters submitted for his consideration, than does a carpenter by his eye, and not by his rule, arrive at the conclusion that there are a certain number of feet contained in the timber that he works. No, sir, there are approved principles, recognized and established; there are the actings and doings of learned men, who have lived and gone in advance of the present generation; and it is by those land marks, laid down and long concurred in, by which legal men arrive at safe conclusions, and not in virtue of their own individual opinions, apart from the experience and sayings of the wise men of former days. It would indeed be a miserable system of judicial hazard, if the random notions of individuals, selected to the bench, apart from what is termed previous decision and authority, were to be made the test, the standard of adjudication: a different and more correct rule prevails: certain principles have been laid down; questions in reference to those principles have been argued and adjudged; and he is the efficient and able judge, whose discriminating mind enables him to arrive at an accurate conclusion by tracing analogies, and determining the likeness or unlikeness of cases submitted, with those which have previously been decided. This, combined with integrity and firmness, constitutes the excellence of judicial character.

But while it has been said in compliment, that we have not complained, it has likewise been urged that we had not a right to do so: I accept the first, but deny the accuracy of the latter suggestion. There was indeed a time when we did complain, nor was it without a cause.

I have said that repeated applications have been made to have the judiciary enlarged, and so extended as that the Western States might participate in its benefits; for heretofore, in reference to them, they have been nominal, not actual. But often as the application has been made, so often has refusal from some cause or other, some perceived danger, either real or fancied, arisen to arrest our progress. In kindness to us, a short time since, it was modestly proposed to create another Circuit South of Kentucky, to assign there a Judge, a non-descript kind of character, who, being something between a District and an Associate Justice, was to hear and determine causes within his Circuit, but was not to be permitted to appear on the Bench of the Supreme Court; a single Judge, unlike to every other, and unknown to any law, but that which created him, was to be assigned for the trial of causes in Tennessee and Alabama, at a salary of 2,500 dollars; and more than this he was not to be permitted to do: to this, sir, we objected, and of this we complained! Our language then, as, under the same circumstances, it would now be, was this: place us where we claim to stand, and where we are entitled to stand, on a footing and by the side of the original States; we are asking after rights, not favors: yield to our request on the first principle, for by the last we shall not receive it. To this extent and no farther was any thing of complaint made or heard on the occasion alluded to; we objected to the relief proposed to be extended—we objected on account of its mode, and we will always object for the same reason whenever it shall be proffered. It will not be received.

In legislation, uniformity is ever an essential feature, and one that should, under no circumstances, be disregarded. In virtue of practical results, to be sure almost every general law must vary somewhat; yet, may it be taken as an axiom, that, circumstances in a country being equal, acts of legislation to be proper, must have a general, not a special reference. Let me illustrate this, if not by a familiar, at least by a rule which my friends from the North will at once understand. Congress passed a Revolutionary Pension act: we did not know whereabouts they resided, nor was it necessary to be known; the only thing was to arrange it on those principles by which the war-worn soldiers of the country might derive its benefits. The effect of that law, as proven by the documents communicated to us, is, that out of one million three hundred thousand dollars which are annually applicable to that purpose, one million of it is paid North of the point where I now stand. About three-fourths of the pensioners are thus situated, while to the South and West are paid about three hundred thousand dollars, not more. Now, had the law upon this subject in its provisions declared that the pension appropriation should have assigned to it this amount of one million three hundred thousand dollars, and that three-fourths of it should be paid to the States North of us, and to those of the South and West only one-fourth, the law being rendered thus partial in its character, wanting in uniformity, would manifestly have been exceptionable; yet that objection ceases, from the circumstance that this difference arises from the operation of the law, and not from any design in its enactment. Equally so does the principle operate in reference to the judiciary of the country. Make your system general, give it the appearance of uniformity, and then we shall be without the complaint, that one portion of the country has burthens and duties more onerous, or advantages greater than another. If it shall be the case, that material inconveniences shall arise, a new arrangement of the Circuits become necessary hereafter, the difficulty may be relieved; but talk not to us about arrangements and of the best practicable plans, by which to improve the present system, until, by some act done, we shall be placed upon a footing with the other States, and participate in those benefits which, at present, we enjoy but in name, not in reality. At present we are not on equal footing, and therefore cannot negotiate. I call upon the Senate, then, to make their legislation to carry with it uniformity—to extend the judiciary actually and in fact to the Western States, who so repeatedly have requested it to be done; we ask it as matter of right and justice, being integral parts of this Union, and not as matter of courtesy and favor. Yield it to us on such principles, or else keep it yet a little longer to yourselves, for on no other terms are our claims presented before you, or we disposed to have them granted.

But the Senator form New Hampshire ventures another very curious and strange objection. He says we should wait, nor attempt a change, until it be ascertained that the people desire the alteration that is proposed; wait, says he, until the twenty-four sovereignties, the States, manifest their desires by petitions to be submitted to us here. I would entreat the gentleman to reflect for a moment, and see if he is not placing his assent upon an issue that never can happen. Petitions from the West, and respectful ones too, are already before you; this, being the only portion of your country aggrieved, is alone likely to petition to you for redress. It is the hungry, not the sated appetite, which seeks after its dinner. There is indeed no princi-

ple more highly respected by me, than that which is called instruction. It is the very essence of our government; the basis on which it rests. It is the most essential Republican feature which is contained in our form of Government, and one which ought sacredly to be maintained, or else every thing of Representative responsibility is at an end. As one, I beg leave to assure the gentleman, that I fully recognize, and will always practise it. He merits not public confidence who denies its force. But yet there is a difference between a disregard of instructions given, and an omission to act until it shall arrive. On the plan avowed by the gentleman, that we should delay for the coming in of applications from the States, I say we may wait always; they never will, they never can come, and of consequence therefore can we never act. When, and at what time, are we to look for petitions from any State in this Union, to redress grievances which it does not feel, and of which it does not complain. Will New Hampshire ask for any thing, on this subject? Already we are informed that she has little business to be attended to, and that that little is well and efficiently superintended by a highly eminent and qualified Judge. Will Massachusetts send us petitions? No, sir, she is provided at her very door with all she can want upon this subject. Virginia will not, because already she has two Judges. The same is applicable to New York, and Maryland, and to South Carolina; while the States contiguous to them, having all and every benefit from the services of those Judges, are without any cause for complaint, and consequently will not complain. To what period then, I pray you, is it, that we must be deferred, if, taking this as the rule, we are to wait until the twenty-four States of this confederacy shall petition for some change in the Judiciary? By such a rule we may wait forever! No, sir, my answer to the gentleman who urges the argument is, your citizens have no cause for complaint, and hence will make none. All our Atlantic border friends have come in at the first table; they have dined and are fully sated; expect not then, that any other than those who have not thus been dealt by, will ask for relief. The figure, though homely, is still applicable; it shows, what all experience sanctions, that he who wants, more readily applies, than he who, standing on more advantageous ground, happens not to be in want. Sir, the extent of our Territory makes to you one appeal; and the quantum of business in our courts makes another and stronger one: as regards the latter, I hazard little in saying, that it exceeds ten-fold that which is to be found in the New England States. To be sure, we have been furnished with one Judge, but the immense duties which were imposed, the labor both of body and mind, which necessarily devolved, tended greatly to wear down his constitution, formerly strong, and to bring him to the grave. It is the necessity which may exist for doing that which is proposed to be done, that should influence us to act, and not the want of petitions. If this be the principle for acting, then, in the memorial alone presented by the bar of Nashville, will abundant reasons be found to prove the proposed measure necessary and proper to be performed. It will be perceived that there exists at that place, not merely much business, but that the suits, besides being numerous, are for the most part complicated and difficult, and involve important interests. Not as in New Hampshire where the Judge merely travels to his courts to come back again, finding on his arrival scarcely half a dozen suits, and those of minor importance.

But, again, we are met with another objection: fear that the Supreme Court may be rendered too numerous, and that situations will be claimed there by the States on the principle of Judicial Representation, and thereby undue influences and improper feelings be made to mingle in its decisions. Again, I say, if such apprehensions be well founded, let the bill be rejected: for great as our interest is, and much as we may desire its success, we will not seek it, if it threaten danger to long established principles. But proof of this has not, nor can it be furnished; we are yet without information from any one, that ten is a hazardous number, and that seven is not. As for what the States may claim, that is one thing; what may be conceeded by Congress is another. Whenever any application shall be made here, resting merely on demand, I have no fears as to what will be its result; if, on the other hand, it shall be sustained by proper reasons, I am persuaded an appeal to the discretion of the Legislature will never be without its proper effect.

Again it is alleged that the bill proposes giving to the Western States four of the ten Judges, very nearly one half, whilst their relative population but slightly exceeds a fourth of what the Union contains. Be it so, and what does it prove? Nothing. It proves what no sensible community should ever act by; that the means of redressing differences in society are to be made not in reference to the differences themselves, but to the quantum of population. Courts are a necessary evil, intended to give quiet and peace to society, and to preserve its harmony. Hence, then, wherever the Government shall find them necessary, there should they be extended. It was but the other day that the Judiciary Committee laid upon your table for consideration, a bill to establish a Court for admiralty purposes at Key West, a small Island on the coast of Florida, the population of which does not exceed three hundred persons. Had they been influenced by such reasons as have been presented to us by the gentleman from New Hampshire, they would have pursued a different course, and bid those people wait until their population should be greatly increased. But they did not thus act! They found that if nothing else demanded its establishment, the wrecks along that coast, and the regulation of salvage, presented such business as to render the creation of a Court, and the appointment of a Judge, right and proper: it was the business to be done, and not the population of the Island, that made it necessary, and which influenced your Committee no doubt in their decision; and so far as my thoughts have dwelt upon the matter, they decided correctly: in the way they should.

But, let this question, if you please, be tested by the principle of Judicial Representation. Let population be admitted as the governing criterion, which I maintain ought not to be the case, and in what situation, presently, will some of the States be placed. The tide of emigration, it is well known, has been setting for a considerable time to the West, and is yet moving in that direction. In 1801, Tennessee had but a single member on the floor of Congress; a State which, with a greatly increased ratio, of representation for what then was the case, has at this moment nine Representatives. Ohio, too, with unparalleled increase, has now fourteen members on the floor of Congress; while, on the other hand, some of the old States have remained stationary, and some have been reduced in their numbers. At no very distant period, the Western, most probably, will exceed the Eastern States in population. Should this be so, then, agreeably to the argument of the gentleman, we might, with great unkindness, enlarge our judicial rights, not for the reason that business made it necessary, but merely because of the quantum of our population. Again, acting upon this rule, we should be under the necessity of altering our Judiciary periodically, as numbers might fluctuate and change between the different States of the Union; and thus, every tenth year, when the relative strength of the country is ascertained, a new order of things on the Bench would of course succeed. Surely the gentleman from New Hampshire; without any further exemplification from me, will be at once able to perceive, that such a rule and principle of action is not only contrary to right, but is such as cannot, and ought not to be maintained, and such, too, as he would most unwillingly find practised towards his section of

country, should it in some after time become weak and feeble in population, compared with others. We are members of the same great family, and, as regards our interest and happiness, should always act in reference to that belief, and keep it steadily in view. If the foreboding of the Senator from New Hampshire shall be ill founded, the illusion will presently pass away, and no inconvenience be felt; but, on the other hand, should any practical result of the proposed measure evince the accuracy of his prophecy, I shall, with great pleasure, if here, a result far from being certain, most cheerfully aid him in bringing matters back to a healthy state. If the increased number on the Supreme Court Bench shall lead to the consequences which are anticipated; shall tend to unhinge all previous constitutional decisions, why then, soon as this shall be thus ascertained, let the number of Judges be reduced; for, notwithstanding the Constitution declares, that the Judicial Department shall consist of *a Supreme Court*, there is still nothing imperative in the instrument as to the number that shall constitute that Court; and if, in virtue of the change proposed, any dangerous consequences shall arise, my scruples of conscience, as at present advised, will not restrain me from uniting in any effort that may be made to reduce the Court again to whatever number may be thought to present the greatest security and safety. It is the Court itself, as is directed, not its Judges, which bears the constitutional sanction: and while I concede that the power to put it altogether aside, or to displace the Judges, is not within the scope of Legislative authority, I will not admit but that an authority may be well maintained either to enlarge or to diminish the Judges that compose it, as Congress, from time to time, may deem expedient. If in this I be correct, the gentleman from New Hampshire will, I trust, forego his fears, nor carry with him the belief that the act we are engaged in, if sanctioned, is irrevocable; but that it is one, which, if mischievous, may be hereafter altered or improved; at any rate, let the friends of the bill bear in mind that to commit, is to destroy it.

Mr. ROBBINS, of Rhode Island, addressed the Senate, as follows:

The only effect of the proposed amendment, is to apply the present system to parts of the country to which it is not now applicable; so far it is a remedy, such as it is; so far it supplies an existing defect; but the evil of the system itself, the intrinsic evil, and that is great, and one that calls loudly for redress, is left without any remedy at all; indeed the proposed amendment tends rather to aggravate that evil. And what makes the proposed amendment the more aggravating, is, that a remedy for this intrinsic evil would supply the defect to be supplied by the amendment, and supply it in a much better manner than will be done by the amendment: And further, that, by adopting the proposed amendment we put the remedy of the intrinsic evil out of our power, now and hereafter, but with very great inconvenience and difficulty: indeed if this amendment is adopted, for one, I shall despair of ever living to see that remedy applied.

The defect now proposed to be supplied, is a growing defect; the time is coming when this growing defect will call for another supply of Judges; having begun with this plan, we must go on with it; and the Supreme Court will become so numerous that the sense of individual responsibility will be lost by being divided with the numbers that will compose it.

Numerus defendit: this ought never to be applicable to a judiciary body. It will in this way become applicable to the Supreme Court of the nation, and numbers will defend it; will shelter the individual from individual responsibility to public opinion; that best of all possible securities against his inattention, against his negligence. It is no answer to say you will have this security as to the Judge on his circuit—that signifies nothing, if you are to lose it again on the Supreme bench.

It does tend to this—it will come to this in time: that this multitudinous Supreme Court will be little better than a mere registering Court of the judgments and of the decrees of the inferior Courts. This is the natural, the necessary tendency of the principle on which you are making this amendment; I see it plainly; it is too obvious not to be seen, I should think, by every one—it must, it will come to this result. For, when our present Territories shall be States; when some of our present States shall become divided into other States, as they probably will be; when the whole valley of the Mississippi from the Alleghanies to the Rocky Mountains, from the Lakes to the Gulf of Mexico, shall be full of people, full of business, full of wealth; (and time is rapidly rolling on this state of things,) will your four itinerant Judges of the Supreme Court suffice for the courts of these boundless regions of country? for these countless multitudes of men, compared with which, any one kingdom of Europe would dwindle into insignificance? No, sir, not four, nor ten times four, would suffice. Yet this is the very state of things into which you are precipitating the country, by adopting this amendment; by rivetting upon the country the necessity of going on with this miserable system of adding and adding and adding Judges upon Judges, and Judges upon Judges, to constitute your Supreme Court. Sir, it will not do—it is infatuation to think it will do. It is worse than tampering with a malady; it is applying a remedy that is in itself a disease, or the cause of disease, and much worse than the malady itself; a remedy as much worse as bad medicine, as poison even is worse than no remedy at all.

No man has said, no man will say, that this plan of a Judiciary will do for any length of time. All agree that it will not do; that sooner or later it must be abandoned, and a different plan adopted: one better adapted to the circumstances, and to the future progressive growth of the country. But the advocates of the plan content themselves with saying that it will do for the present, and for a while; perhaps for twenty years to come; and add, not very commendably, let those that come after us provide themselves a better. Is this the language proper for a grave and provident legislature, upon so grave a concern as a Judiciary for the country? Of all things, ought a reform of a Judiciary to be a temporary expedient?—knowing that it must be temporary, knowing that it must give place to a better, and knowing that it must operate as an impediment to a better. And will it be no impediment to those that come after us to have a host of supernumerary Judges on hand, which your proposed plan will have entailed upon them? Will not that be an argument with them to go on as you will have begun? But you admit that they cannot go on; that they must, this difficulty notwithstanding, abandon your plan and adopt another. And why will they adopt another? Because, and only because, the reasons recommending it will make it a preferable plan: and pray are not the same reasons as good for us as they will be for them? Surely they are: for the reasons must arise from the nature of the thing itself, which must be the same now as then; must arise from the superior intrinsic excellence of the system to be adopted, compared with the system in practice. We go on, then, if we proceed with the plan proposed, upon the presumption that those to come after us will be wiser men than we are; so much wiser, as to undo what we shall have done, and do for themselves what we ought to have done for ourselves and for them too. Why do we do any thing now? Because something must be done to appease the complaints of those parts of the country to which the present system does not extend itself—we extend the system to them to appease those complaints; and why do

we not go further, and make the system what it ought to be, and what we admit it finally must be? Why, I ask again? Is it because some difficulties are to be overcome? Some divided opinions to be reconciled? Some prejudices of different kinds to be encountered? Is it then the part of statesmen, not to wrestle with difficulties, and overcome them, but to evade them by shifts and temporary expedients? It is the most short-sighted of all policy in all pursuits, whether by individuals or by the public. Difficulties evaded, but not overcome, are sure to return upon us again and again, till they either master us, or we master them. Surely then it is better for us to meet, and to overcome them, if possible, in the first encounter. I said that the intrinsic evil of the present system was great, and one that called loudly for redress. Now what is that intrinsic evil? It is this: that the final justice of the country is so obstructed by delay, and encumbered with expense, that it is in effect denied to the great body of the citizens; an evil that is necessary and inherent in the system itself as at present organized; and is a growing evil.

As to the fact of delay, it is too notorious to require formal proof; if doubted by any one, that doubt will be removed by inspecting the docket of that Court; the delay of trial by the course of the docket, and in that course is about three years. The delay is gaining ground from year to year, and it must keep gaining. At the late term only thirty-six causes were disposed of in the regular course of the docket, and sixty-three new cases were entered; and of the entries in the vacation, we do not know how many there will be, but probably a considerable number. The docket now stands at about two hundred. And it is nothing but this very great delay, and the serious evils attending it, that prevents the entries from being much more numerous, even more than double what they now are. Nothing, in a word, prevents the delay from being at this moment altogether intolerable, but the difficulties interposed between the citizen and the final justice of the country.

It is proverbial that the delay of justice is injustice: it is true as most proverbial sayings are. It often happens that there is no difference between the denial of justice and its long delay; it comes too late when the unhappy suitor has become the victim of its delay; a too frequent result.

But the enormous expense and consequential losses caused by the delay, is a still greater evil; many a citizen is thereby shut out, and cut off from all access to the final justice of his country. Men of moderate circumstances, and this is the condition of the great body of the citizens, cannot encounter these expenses and the other evils of this delay; they must compromise in preference, in the best manner they can; if they do not, they incur certain injury, they risk their probable ruin. And what a Judiciary is that, where only the rich can command its final justice, and where the middling classes must take of the rich only such justice as they may voluntarily accord them? I say, the wealthy litigant is enabled by this system to dictate his own terms of compromise to his antagonist who is not wealthy. He has done it, and may always do it.

Now, what is proposed as the remedy of this evil? proposed by this bill, I mean. It is the addition of about twenty days to the annual term of the Supreme Court. Can any one suppose that this will remove the evil? So far as it goes, it palliates the evil; but as a remedy it does not deserve the name. I do not think it will reduce the present delay at all; it may keep down the evil to what it now is, for a time; it may balance the gradual increase of the business of the Court from the gradual increase of the business of the country; but more than this it cannot be expected to do; nor this for any great length of time; then it leaves it to become a growing evil, as it has been. It may enable the Court to dispose of ten or fifteen cases more than they now can at the term. This will not exceed, probably will not equal, the annual increase of the annual docket.

Now, what is the remedy for this intrinsic evil of the system itself? It is this—to confine the Supreme Court to the duties of the Supreme Court. Then the business of every term will be done at every term; then the Court might hold different terms, annually, at different places, and accommodate, thereby, every part of the Union. This would remove the evil of delay entirely—would reduce the costs of litigation within reasonable limits—would put the final justice of the country within the reach of the country—would remove complaint—would give satisfaction. No one can say that this plan is not for the interest of the private suitors; and why should not that interest be consulted, even especially consulted? The great mass of litigation is an individual concern. Why, then, the interest of the private suitors should not be consulted, and especially consulted, I cannot understand; but, for some reason, I do not know what, that interest is not regarded. If the Legislature, or any of its members, are jealous of the judiciary—(I see no reason for any jealousy)—but, if they are jealous, is that a reason why the interest of the private suitors should not be consulted? The power of the judiciary is what the Constitution makes it, and must be, till the Constitution is altered; and a modification of the system that would confine the Supreme Court to the duties of the Supreme Court, will not enlarge or diminish that power; but would leave it just what it now is. If the States, or any of them, have their griefs, or their fears, occasioned or alarmed by this Department, with or without reason, why should that be permitted to affect the interests of the private suitors? If the prostration of State rights, or if the consolidation of the Union be the danger felt or affected, this danger is independent of this modification of the system—it is unaffected by this modification—it is neither more nor less on account of this modification.

Again: this separation—(but if what I am now going to say should excite some surprise, let be me heard out without prepossession; let it be considered before it be rejected; let me say, with Themistocles, "strike, but hear me")—I say, then, that this separation of the duties of the two jurisdictions, the original and the appellate, was intended and expected by the Constitution. The Constitution does not make a Judge of the Supreme Court, ex officio, a Judge of the inferior Courts. He may be made so by special appointment and commission; but he is not so ex officio. The contrary construction and practice under it, is one that, one day, may give rise to questions that may involve consequences it were much better to avoid. It may do well enough as long as individuals alone are concerned. But a time may come, (God forbid that it should come,) when combinations of men, under the connivance or countenance of a State or States, shall resist the execution of the laws; and shall defend themselves, or be defended, on the ground, that the inferior Courts have no constitutional power to enforce them. It is easy to conceive how this might involve the Government in difficulties of the most embarrassing nature; it is not necessary to point them out; they will suggest themselves to every reflecting mind. Is it advisable to leave the country exposed to this possible danger? It may be said that this danger may be prevented by special appointment and commission of the Judges of the Supreme Court as Judges of the inferior Courts.

But would this be advisable now? Is it not too late? would it not tend to throw a doubt over questions that are now considered as at rest, and which ought to be so considered; over the whole train of decision heretofore made by the inferior Courts? Will it be said that this danger is built upon an imaginary foundation? I put it to every lawyer in the Senate, to say if the Constitution makes a Judge of the Supreme Court, ex officio, a Judge

of the inferior Courts. The Constitution vests the judiciary power in one Supreme Court, and in such inferior Courts as Congress shall establish; it gives to these inferior Courts the original jurisdiction, and the appellate jurisdiction to the Supreme Court; but it does not say that the Judges of the Supreme Court shall be Judges of the inferior Courts, as it would have said, had this been intended; but it does say what amounts to saying the contrary; it says "that *the Judges*, both of the Supreme and inferior Courts, shall hold their offices," &c.; clearly implying that the Judges are to be different persons. I ask the learned lawyers of this Senate whether the Judges of the Supreme Court are, ex officio, Judges of the District Courts? Why not, if they are, ex officio, Judges of the inferior Courts, of which the District is one? But will any one pretend this? I presume no one. If, then, the Constitution intends a separation of the two jurisdictions, and to have them exercised by different persons, why should we hesitate to make the separation, when it is required by the Constitution, and recommended by the special interest of every suitor to those jurisdictions.

It appears to me, also, to be wrong in principle, that the two jurisdictions should be blended together, and exercised by the same person. To give an appeal from a Judge to the same Judge, would be a mockery of the suitor; the pride of opinion, the pride of consistency, the pride of reputation, incident to human nature, and inseparable from it, and to be found in the Judge as well as in every other man, would make such an appeal a mere mockery to him. Who, in his senses, would expect a Judge to convict himself of error of opinion? If there are some instances on record, they are few, precious few, indeed, of such magnanimity; the very admiration which they excite, is a proof how very little they are to be expected. The appeal here, it is true, is to the same Judge, conjointly with the other Judges; but he himself sits, or declines sitting, according to his own sense of propriety. I believe, in practice, he declines sitting; but all the Judges stand in the same relation to him that he stands to them; their judgments, in turn, are to be reviewed by him. This situation creates a bias, necessarily, unavoidably; no doubt unconsciously to the Judge himself; but it does create this bias. I do not say that it has any decisive influence; far from it; but it has an influence; the mind does not remain indifferent; it ought to remain indifferent; that influence ought to be prevented. All human institutions must be predicated upon a reasonable confidence in human virtue; it is equally an error to suppose an entire want of virtue, or to suppose that virtue perfect; this plan of blending the original and appellate jurisdictions together, to be exercised by the same person, supposes a degree of virtue in human nature that is not to be found in it; at least, that will not ordinarily be found in it. If the suitor is to have the full benefit of an appeal, these jurisdictions ought not to be blended; he has not that benefit if they are not separated; he is denied the privilege intended him by the Constitution.

But, be this as it will, the time must come when these two jurisdictions must be separated; this will become a matter of physical necessity.

Some of your children—perhaps some of you, will live to see the day when the people of this country will be some thirty millions and upwards; when the business and wealth of this people will be in proportion to their numbers; it may be far beyond that proportion. Can any one imagine that one court can do all the duties of both jurisdictions, the original and the appellate, for such an immense nation as this will then be; for such immense concerns as these jurisdictions will then embrace?—embracing, as they do, every species of jurisprudence, the criminal and the civil, the Chancery and the Admiralty; embracing, as they do, the whole range of jurisprudence that occupies all the different courts of Westminster Hall, the King's Bench, the Common Pleas, the Chancery, with her two courts, the Admiralty, both the vice and the appellate, the Exchequer and Doctor's Commons; and you may add to these the House of Lords, when sitting as a Court of Errors in the last resort. It will be an impossibility, physical as well as moral, that one court should do all these duties. The separation, then, must take place—why then hesitate or delay to make a change, that, whenever made, will be for the better, and which must be made, sooner or later? Why, when you are compelled to make a change, and are about to make it—why not make it such as it must be made hereafter, if not now? Why not provide for the future as well as the present, when, in providing for the future, you will provide for the present in the best possible manner? Why prefer a temporary amendment to a permanent one, when the temporary must give way to the permanent; and when, in the mean time, it is much worse than the permanent? I cannot conceive of greater want of providence, greater want of wisdom.

Now, what are the objections to this plan of the separation of the two jurisdictions, the original and the appellate, to be exercised by different persons? The honorable gentleman from New York has exhausted all his ingenuity in multiplying these upon us; and all his eloquence to enforce them. With all my unfeigned respect for that gentleman, and for his distinguished talents, I cannot profess, as I do not feel, the same respect for his objections. He must permit me, then, to canvass them freely; to present them in the same lights in which they present themselves to me; but I beg him to believe, that, however I may treat his objections, I am incapable of treating him with any personal disrespect.

He began with saying, that it is dangerous to change the principle of a judiciary system established by law. I would ask that gentleman, when it was that it became dangerous to alter that law? Was it the day after the law was passed? if not, and if it is dangerous now, at what intermediate time did it become dangerous? Up to what time was it safe to repeal that law, or to amend it; and from what moment did it become unsafe? Did one day make the important change, from safety in the repeal, to danger in the repeal? If so, what day was it? If the gentleman would pardon me, I would say it was even ridiculous, to suppose there was more danger in the repeal or amendment, at one time than at another; or that there was any danger at any time. For danger of what, pray? danger to whom, pray? Is there danger in giving to the suitor a more speedy trial? in lessening to him the expense of trial? danger in making the final justice of the country more accessible to him? It would seem, by the gentleman's objection, that the People are so enamored of the law's delay; so enamored of being ruined by it, that, unless they could be indulged in this humor, we should have them rising in rebellion, here, and there, and all over the country; at least, we should have them petitioning for the happinsss of being ruined by the law's delay, and the law's expense. It would be a curious petition; and I should like to see the gentleman rise in his place to present it; and hear him say: "Mr. President, I hold in my hand a petition of sundry citizens of New York, who state that they, in common with their fellow-citizens of the United States, are laboring under the grievance of a judicial system, by which justice is administered too promptly, and with too little expense; they pray to have the system repealed, and the old system restored, by which justice was delayed for the comfortable term of three years; by which there was a reasonable prospect of its being delayed a much longer term, and by which a suitor might be almost certain of being ruined by the expense. I move, sir, that the petition be received; that the reading be dispensed with, and that it be referred to the Committee on *Grievances*." By that time, I presume, we shall have such a committee.

So much for the danger of amending a law; a thing we are in the daily habit of doing; and which amend-

ment would relieve every one concerned, or to be concerned under it, from a great burthen; and the danger, too, to arise from those very persons. When such a mind as that gentleman's is obliged to rely upon such an objection, who can doubt the soundness of the principle which he is thereby attempting to overthrow?

The gentleman tells us it will be dangerous to have the Supreme Court stationed and stationary at the seat of Government; that the Court will become dangerous to the Government, and the Government dangerous to the Court; but that this danger will not exist at all, if the Court go the round of the Circuits, in the recess of Congress; and are here only about two months during the session of Congress, if they are here only as boarders, and are not domiciliated here.

How these important results would be produced by these means, the gentleman left us to find out by our wits. I really wish he had favored us with a short lecture upon this point, and told us the *hows*, the *whys*, and the *wherefores* of all this danger, and of its prevention, the *modus operandi*. For one, I profess myself in want of instruction; I am in the dark; I am ready to cry out, as some of us did on the Panama question, for light; light, pray give me light; it is all enigma to me; I wish the gentleman had, and still would unriddle it: say how it is, that this Judge is this harmless being, if he is kept rambling about the country a part of his time; but if he is kept all the time at Washington, he will set himself to work at undermining the Constitution, or at some mischief or other to the Government; for the gentleman has not told us precisely what the mischief is to be, and how it is, that the Government, if he is at Washington all the time, will confederate with him in this mischief; but if he is here only a part of the time, will not have a thought of the kind; and also, how the "*esprit du corps*," of which he spoke—how that is to depend upon the locality of the corps—how upon its being stationary; and how that is prevented by its being partly itinerary, and partly stationary. All these *hows* I hope the gentleman will explain to us, if it will not give him too much trouble. And another thing I wish the gentleman would tell us, when and where he made the discovery, that if we found it so dangerous to have the Supreme Court stationed at Washington, we could not station it some where else. I find nothing in the Constitution to prevent it; and the law for this purpose will be just what we please to make it. Let the gentleman, then, give us the distance at which the Supreme Court may be stationed, and be safe to the Government, and from the Government, and there it shall be stationed; that is, when he has proved the fact of danger. Then, so far as concerns myself, he shall have a *carte blanche* for fixing the place. He may fix it at Baltimore if he pleases; if that is not far enough, he may fix it at Philadelphia; and if that is not far enough, he may fix it at New York. I am apt to think the gentleman would think that a safe distance, and the proper place. But, as the gentleman has such faith in itinerary Judges as an antidote to this danger, let the Supreme Court be itinerant, and hold their sessions at different places, but within practicable distances. This, I think, ought to be, not on account of the gentleman's danger, whatever that may be, but because it would be an immense accommodation to the country.

As to the very great powers of the Supreme Court, taking the gentleman's statement in this respect for fact, as I do, I would ask him whether these powers would be any greater by the Supreme Court being made stationary at Washington? or any less by its Judges being made to itinerate the country? If not, what signifies it what their powers are as to this question? If their powers are too great, so great as to be dangerous, that is the fault of the Constitution, and the remedy is an amendment of the Constitution; the danger is independent of the judicial system, and of every modification thereof; for, in every form thereof, the powers will be the same. The gentleman complains that these powers ride over the laws of the several States, in certain cases. They do so; such is the Constitution. There is no help for it so long as the Constitution remains as it is. But these powers have been exercised in derogation of these laws, and the rights acquired under them; and in every instance the Court have decided against the State in favor of the individual. Be it so: it is singular that this should be complained of as a grievance, and yet made an argument for continuing the very system under which it has been suffered.

There might be some plausibility in it if the Supreme Court had been stationary, and all this had happened, then to apply it as an argument in favor of a change to the itinerant system. It might be speciously said, that the grievance was owing to the Court being stationary, and to the influence created by that circumstance; and that to make the Court itinerant would be to destroy this influence. But when the grievance has happened under the itinerant system, to make the grievance an argument for continuing that system, appears to me (begging the gentleman's pardon) not a little preposterous.

The gentleman says further, that these Judges, by the Constitution, and the laws under it, have to pass upon rights growing out of the local law, and depending upon it, and, therefore, that they should be well acquainted with that law; that this law is more or less peculiar to each State, forming a system by itself; that some of the States have passed from foreign jurisdictions to our own, and brought with them their foreign jurisprudence, and, therefore, the Judges will find it difficult to become acquainted with that law. It is singular that this should be employed as an argument in favor of the itinerant system, when it is, in fact, the great, the strong, and the unanswerable argument against it, as will be attempted to be shown in another place, when we come to see what the system ought to be, to secure the reign and the triumph of the local law. But, to examine for a moment, and to look at the absurdities involved in this idea: it supposes this local law to be learnt by riding post haste through a country. It supposes that the Judge who goes to decide, goes to learn it at the same time, and to learn and decide in the same breath. And it supposes that his learning, by some mysterious process, is imparted to his nine associates, and becomes their learning also. Otherwise, I would be glad to know of what use his learning will be to his nine associates. If they have learnt it, or have it to learn, *aliunde*, I would be glad to know what good his post ridings will do them? If they have to decide independently of his decision, and if not, an appeal is nugatory, they have to decide unaided by this itinerant education. If nine-tenths of the Court have to decide without it, I think the other tenth might as well decide without it. All this itinerant labor thrown upon the Judges, is then thrown away; it answers no purpose.

The gentleman says further, that incompetent Judges may shelter their incompetency from exposure in the Supreme Court; that such a Judge will need only to say yes or no; he may avoid giving any reasons, and so pass in the crowd without exposing himself, and which he could not do alone on the Circuit. But suppose he has to pass the ordeal of delivering the opinion of the Supreme Court in his turn, as is the practice. Why, then, the gentleman admits that he must expose his incapacity, at least to his brethren—must confess to them his incapacity, and get one of them to draw up the opinion which he is to read; but this the public are to know nothing of. They are to suppose, that as he reads so he has drawn up the opinion, and not to have the least suspicion to the contrary; because, if the secret leaks out, his shelter is gone, his incompetency is exposed.

But I would ask that honorable gentleman if he really

thinks we ought to legislate upon the presumption, that we ought to predicate a judicial system upon the presumption that the Executive will nominate, and that the Senate will ratify, the appointment of incompetent Judges—so incompetent that they cannot hold a Court without exposing their incompentency to the public—so incompetent, and so conscious of their incompetency, that they will decline if they are to sit alone, or only with the District Judge, but will accept if to sit with the other Judges? If we are to act upon this distrust of the Executive, and of this body too, to suppose, because the functionaries of the Government have the power to do wrong, that they will do wrong; to presume, not the proper use of power, but the abuse of power, we ought first to consider whether it would not be as well to distrust our distrust a little, when its effect is to forego the probability, the moral certainty, of the proper use of power, and sacrifice that to the possibility of its abuse. I ask the gentleman whether he would advise to the appointment of an incompetent Judge, incompetent to the degree that has been mentioned—notoriously so incompetent? He would not. Why then presume there will be such appointments? But if there are, what then? Can you remove him from office, or do you suppose that you can make him remove himself by making him an itinerant Judge, instead of a stationary one? Do you ever expect to find a Judge that will think himself incompetent, and act upon that opinion, avow his incompetency, and degrade himself from office, or decline office? I believe it would be a new case under the sun. All our Supreme Judges have been itinerant; I do not say that all have not been competent; but this I say, that not one of them ever doubted his own competency, so far as to decline the office on that ground. No, not in the extremities of old age; not all its imbecilities, all its infirmities; not the loss of hearing, not the loss of memory, has induced him to decline; though time had impaired every sense, and every faculty, it did not impair his confidence in his competency; he still would itinerate and hold his Court; and however the bar might perceive the incompetency, the public did not. A man must be very low indeed in his profession, not to be able to go through the forms of a presiding Judge, so as not to expose his incompetency to public ridicule. A man that makes no distinguished figure at the bar, will make you a tolerable Judge, to appearance, in the public eye. There is a disposition in the public, as the gentleman himself remarked, to overrate the importance of every thing said by a Judge; to submit to it as an oracle of legal wisdom; to revere it as authority. "A Judge is just;" this is a common impression, a common prejudice. No, you never will prevent an incompetent appointment, nor get rid of an incompetent Judge, if you have one, by means of your itinerant system—that you may depend on.

But, to return to my object—how would the intrinsic evil of the system supply the defect to be supplied by the proposed amendment? In this way. This separation of these jurisdictions would induce the necessity of establishing separate Courts, for the exercise of the original jurisdiction. A system that is much preferable to the present, for very many reasons; but I shall mention only two, as these appear to me decisive, and to settle the question of preference. These original Courts, as they might be constituted, and probably would be constituted, would supply at once all parts of the Union with a competent Judiciary, and the system will adapt itself to the future wants of the Union, as they may arise from time to time. There will be future calls for additional Courts; but never any call for any amendment of the system. It is a system that looks to the future as well as to the present, and to all future times; and will be equally suitable to all; it will expand itself as the country expands, accommodating equally all parts at all times. Then these Circuits, besides being equally competent with the present in all respects, in one particular, and that one of the greatest importance, would be pre-eminently superior. The local law is the law most dear of any to the People of the several States; and justly so; it is made to them as they are made to it; their affections are wedded to it; it has become, as it were, "bone of their bone, and flesh of their flesh." Now these local Judges will be much more competent judges of this law, as well as much more tenacious of it, than the itinerant Judge of the Supreme Court. These local Judges will have been bred to this law, and bred in it; they will be its able expounders and zealous defenders; and their decisions will be the best of all instructers to the Supreme Court itself upon questions of this law. Their decisions will, in a manner, become authorities upon that law with that Court. It is true, that the itinerant Judge has the District Judge to sit with him, and to give him information; but, the objection to this is, that it is given transiently, and acted upon suddenly. How infinitely preferable must be the judgment of coequal Judges deciding from antecedent knowledge, from familiar experience, from mature consideration? Who would not trust to such Judges all questions of local law, in preference, not only to a single itinerant Judge, but to the whole bench of the Supreme Judges? Not one, I venture to say. It is strange to me, that my friends, the Western gentlemen, the pride of the Western country, and of whom the Western country has reason to be proud, should hesitate one moment to prefer this system to the poor diseased system that is offered by the proposed amendment; that must be temporary, and while it lasts will be a miserable one, and not to be compared in use and usefulness to the one they may have.

But, the honorable gentleman from New York tells us that the system of local Courts, for the exercise of the original jurisdiction, will be unpopular. He says this on conjecture merely, and against all the probabilities of the thing; it is to be judged of by comparison with the present system: does he mean to say that the present system is so very popular, that any change of it would be unpopular? One would think, from his own account, it was not very popular with him at least—that at best it was but a necessary evil. I hope it is; I think it is more popular with others, but I do not think it so very popular but that a change for the better would be borne with, and without producing any popular commotion.

It will, as I said, be judged of altogether by comparison; and that must be in favor of separate Courts for the exercise of the original jurisdiction. That plan is better in itself; it is better for the present; it is all better for the future; so obviously so, that it speaks its own preference, and speaks it to every mind. I venture to conjecture, (and I have as good a right to conjecture as the gentleman, and better grounds, I think,) that these Courts would become the most popular Courts in this country—the most popular with the suitors, the most popular with the bar, the most popular with the People. These Courts would be the means of making the national Judiciary the national favorite, as well as the national pride. The gentleman has alluded to a similar system, that was once adopted, and soon after laid aside; and hence infers, that the system itself is unpopular. The inference is incorrect; the men who made that system, made it unpopular, and nothing else. It was not the thing itself, as being bad in itself, that caused it to be laid aside—it was the supposed calculation of the thing; it was the political effect of the thing that was the cause.

It was made by a party going out of power, in the last moments of power, and to secure in their hands (as was believed by the party coming into power) the whole Judiciary power of the country, to be wielded for their own political purposes; and the system was broken down to frustrate this calculation, and to wrest this power out of their hands. The ostensible objection, it is true, was to

the thing itself, but as it could not be shown to be bad, the thing was stigmatized; it was called by many bad names; among others, by the name of the midnight Judiciary; and the bad name raised a hue and cry against it, and not the demerits of the system itself. It was deemed reason enough by the triumphant party, that it was presented to them by the defeated party, retiring from power. I remember it was said on the occasion, "Timeo Danaos et dona ferentes," the designs, the wiles of the Greeks were feared, and the present was rejected.

But, I speak from knowledge, in a large district of country—from information, as to a much larger, and from belief, as to the whole country, when I say, that these Courts, as Courts, by all the suitors to them, by all the bar connected with them, were esteemed by far the most popular Federal Courts which we have ever had in this country. There is not the least reason to believe that such Courts would now be unpopular.

The gentleman supposes the District Judges would be in the way of this arrangement. It is true, they might be dispensed with; but no one would think of displacing one of them; nor is it necessary. Their jurisdictions might be transferred to the Circuit Courts, to take effect when their offices became vacant, and as they become vacant, and, in the mean time, to be exercised as they now are.

The gentleman very properly admitted, that the expense ought to be no objection, but seemed to apprehend that the People would think it one. There again, I think he is mistaken. The worst of all economy is that which is practised at the expense, and to the prejudice of Judicial establishments; the People so view it. There is no institution which they regard with so much partiality; and the expense of which they so little regret, provided the institution is made as perfect as it may be.

I hope I need make no apology for the time I have taken up on a subject so important as that of improving the National Judiciary. No function of the Government is so interesting to the nation as the administration of the national justice. It touches directly upon every individual; it is felt by him as his own immediate personal concern; it is looked to by him as his shield and his sword, to protect his rights and to redress his wrongs. Other functions of the Government are interesting too; but not so immediately interesting; their effect upon the individual is indirect; they act upon circumstances which, in their turn, act upon him; thus and thereby affecting his condition in life, more or less favorably. But, it is distributive justice, and the hand that makes the distribution, that is watched and regarded by every one; for it is that hand which is to lift this shield for his protection, to wield this sword for his redress.

Let me add, too, that on no function of the Government does the moral estimation of the nation, in the minds of other nations, so much depend. Indeed, it is the great standard of this moral estimation; in truth there can be no other; the moral fame of a country must depend upon the character of its justice. And that character is, of all things, the most important to a nation. National justice, and its well founded reputation, is credit, is wealth, is power. It so appeared to the great men who devised and recommended the Constitution for adoption; they deemed the character of the national justice a national concern, as it truly was, and is; and hence they gave to the national Judiciary the jurisdiction of causes in which the individuals of other nations should be concerned as parties.

When, then, so much depends upon the Judiciary for giving satisfaction to our own People, and so much for drawing to us, and securing to us, the confidence and esteem of all other People; ought we not, each of us, to endeavor to make the Judiciary as perfect as possible? At least, will not the merit of an endeavor at this, on my part, be an excuse for the trouble which I have given you in making it?

WEDNESDAY, APRIL 12, 1826.

JUDICIAL SYSTEM.

The Senate resumed the consideration of the bill further to amend the Judicial System of the United States—the motion of Mr. WOODBURY, to re-commit, pending.

Mr. WOODBURY again rose and apologized for further troubling the Senate. It had been stated that this bill was an experiment—the gentleman from Maine admitted that; the admission was most alarmingly true. The bill was not, he said, sanctioned by any precedent. All the changes that had been made in the Judicial system up to the present time, had been of a character entirely different. The change in 1793, was to relieve the Judges from circuit duties; that in 1801, was to the same effect; that in 1802, did not add to the number on the bench of the Supreme Court: there never had been any addition up to that time. The gentleman from New York had stated the Supreme Court had once consisted of five, instead of six. In the act of 1801, there was a provision to reduce them to five, in case of death or resignation, but the Court was never in fact changed in number till 1807. It would be obvious, Mr. W. said, to every gentleman that the adddition of that one Judge, in A. D. 1807, did not change the quorum, much less put it in the power of the Judges on the Bench, as this bill did, to raze to the foundation every constitutional decision of that Court, if they should choose. Mr. W. said he had stated, in the first instance, that this was doubtless not intended by the friends of the bill. Their object was to remove a local grievance; he had not imputed any motives to any gentleman which were not legitimate. But see, for a moment, what will be the tendency of this change as a precedent in another view. They had gone on eighteen years without one additional Judge; in the next eighteen years they were to add three more. Whither was the system to go? In eighteen years more from this time, it would require nineteen Judges; and in thirty-four years more, one hundred and twenty-seven Judges.

He had no faith in such a principle of legislation. The true course in any Judicial change, Mr. W. said, was to adapt the system to the condition of the whole country, retaining the system at the centre—at the heart, in its original purity and strength. No particular section was to be relieved in a manner which endangered the whole system: and that, Mr. W. said, was his main objection to the present measure. He had uttered nothing against any expense in any local remedy that was necessary; he had only protested against what was unnecessary and injurious.

The gentleman from Tennessee would, Mr. W. said, find he had committed an error in point of the number of Representatives, and not that Mr. W. had made a mistake. If he would turn to his list, he would find that to make the number forty-nine, he must add the Delegates from the Territories who were the scape goats under this supposed equal system, and were not at all included in the bill.

The gentleman from Maine had admitted the truth of the proposition, that, as a body increased in numbers, its responsibility diminished, and had expressed his uncertainty as to the number at which it would be proper to stop, without diminishing responsibility. Mr. W. said he could tell him, it would not be possible to go beyond four, in any common law principle, without endangering the decisions of the tribunal as a common law tribunal; and as a Judicial tribunal, acting only on Judicial principles. Beyond that, it was necessary to provide special quorums by special acts—and that was one of the strongest arguments against increasing the number of the Supreme Court; for it could not be done without providing special regulations as to quorums, as was shown by the gentleman from Kentucky yesterday.

The gentleman, Mr. W. said, had also abandoned the ground of this increase in Judicial representation—the ground of State pride, and the ground of the permanent increase of the business in the West—Judicial representation was not his ground—it was not his argument—he should never have alluded to this argument if it had not been pressed on him from different quarters, and in different shapes, that there must be three more Judges from the West on the ground of some kind of representation. He had told gentlemen he would meet them on this ground—would place his objections on their own hypothesis: and it had turned out on examination upon this ground, that the Northern States had not so many Judges on the Bench as they ought to have, and the Western States had more than they are entitled to. They had no Judge from New Hampshire or Rhode Island, Maine or Vermont. They had a circuit; it was convenient for them under the present system: but it could not be extended to the West over large Territories with thin population, under the provisions of this bill, without changing the Supreme Court radically; and thus putting in jeopardy the administration of federal justice for the whole Union. Mr. W. said he had stated before, and he now repeated it, that the remarks he had offered, had been urged out of kindness to the Western gentlemen, rather than from any other motive. He could not suppose they would wish to have a bill pass through this body, without having its principles canvassed; and he had made the proposition to re-commit, that he might suggest his objections to the leading principle of the bill, and hear it vindicated against them, if unsound. He was perfectly willing that the West should be relieved, and he would spare no expense that should be proper, for that purpose; but let not that relief be afforded in such manner, as tends to the injury and peril of the whole Union.

Mr. WHITE, of Tennessee, then rose and said, if it could be shewn that the remedy proposed to obviate the inconveniences complained of in those sections of country, would be injurious to the whole Union, he ought not to expect, or to wish, that their special inconveniences should be removed to the injury of the whole community. The subject on which we are about to legislate, said Mr. W. is, in my mind, one of infinite importance. We are about to pass an act in relation to a department of the Government which every man feels and ought to understand. It is in vain we enact good laws unless they are well administered—it is that department of Government which operates directly on the persons and property of individuals who happen to be citizens of the United States, so far as the jurisdiction is local, or so far as it relates to the internal concerns of the citizens of the respective States. So far as it may operate on general principles it is still more important—therefore have I heard with great attention every thing that has been urged by gentlemen who are opposed to it, and I shall still be glad to hear all further objections that can be urged.

We cannot judge whether the alteration will be beneficial or injurious, without first making ourselves acquainted with the inconveniences which are supposed to exist. Till we are acquainted with the disease, we cannot tell what will be a suitable remedy. I think I can, if favored with the attention of the Senate, if not already satisfied on that point, satisfy them that the disease lies much deeper than the gentleman from Rhode Island seems to suppose. I paid great attention to the argument, and he seems to think, so far as I can understand it, that the main grievance which we are called on to remedy, is the *delay* which takes place in the Supreme Court of the United States. He has not even, in his excellent argument, given the most distant glance at the situation of that section of the country which is on the other side of the mountains, to see what the local inconveniences are, and whether the remedy he proposes would be a suitable one or not. The grievances which do exist in the country, are, as I think, of two kinds; one, in the manner in which the business is conducted in the respective States; the other, that which exists in the Supreme Court itself: and this latter does not consist so much in the delay, as in the incorrectness of the decisions where the questions depend upon the municipal laws of the respective States.

These are the grievances which exist, and which it is the object of this bill to remedy: First, by extending to nine States the circuit system, which is applicable to, and practised in, *beneficially*, the other fifteen States: and, secondly, to increase on the bench of the Supreme Court a knowledge of the local laws. Those are its leading objects. These nine States, when we look to them, we find thus circumstanced: six of them have never had, either nominally, or in fact, the benefit of a circuit Judge: three of these States have had nominally, and to a very limited extent, the benefit of the attendance of a Judge of the Supreme Court from the year 1807 up to this time. I say they have had it nominally, but not so, in point of fact. When the Judge of the seventh circuit was in the vigor of life, and in the enjoyment of perfect health, it was his duty to attend and hold Circuit Courts in the Districts of East and of West Tennessee, of Kentucky and Ohio, and from the necessity he was under of leaving one Court in time to arrive at the next, in his circuit, an opportunity was not afforded him of disposing of the causes on either docket. For example, he would have suits enough in West Tennessee to require a session of two months, but at the end of three or four weeks he was compelled to be at Kentucky, distant two hundred miles, and so on; and thus it happened, either that the District Judges must continue the Courts after his departure, or the causes must remain undecided. In important suits, parties would not be willing to trust the opinion of the District Judge alone, and he would willingly yield to applications for delay, until he could have the assistance of the Judge of the Supreme Court, and thus the business must be either long delayed, or, in most instances, decided in the Circuit Courts of those three States, by the District Judge alone. For several of the last years of Judge Todd's life, his want of health put it out of his power to attend his Circuit Courts, and thus it has happened that the business in Tennessee, Kentucky, and Ohio, has accumulated to an unreasonable extent, and those States have, in truth, been no better provided with an opportunity of obtaining a due administration of justice in their Federal Courts, than the other six Western States; and how is it with regard to them? They have never had the benefit of the circuit system, even nominally? They have each a District Judge, who does all the duties which other District Judges perform, and vested with the jurisdiction which other Circuit Courts possess in the other States. So far as relates to the grievances which exist in the country we are safe in considering the whole nine States to be practically in the same situation. When we come to look at the laws which vest the courts with jurisdiction, we find that a large portion of the jurisdiction which is to be exercised in those nine States, is of that description which falls within the jurisdiction of a Circuit Court, and not within the jurisdiction of a District Court. A District Court, as such, can have no jurisdiction of suits between A and B, whether citizens of the United States, or of different States. Some attempts have been made to get them to entertain jurisdiction of suits between citizens of different States, when the matter in dispute is of more value than twenty, and of less than five hundred dollars, but, so far as I know, they have been unsuccessful.

As it relates to a great portion of the jurisdiction which is to be exercised in those nine States, the Senate must see at once, it is of that class of cases which belongs to the circuit courts in the other States. What is the situation of these other States? They have, in point of fact,

as well as in point of law, a Circuit Court, composed of one Judge of the Supreme Court, and the District Judge. When a suit is brought, and the matter in dispute exceeds the sum of two thousand dollars, upon the trial the parties have the benefit of the opinions of two men, which will in most instances be satisfactory: but if not, the unsuccessful party can remove it to the Supreme Court, and there have the judgment revised, and if wrong reversed. If the matter in dispute is less than two thousand dollars, and the Judges disagree in opinion upon any point, either party can have that point certified to the Supreme Court, there revised, and the judgment of the Circuit Court rendered in conformity with the opinion of the Supreme Court. In all criminal cases the defendant has the like advantage. How is it in those nine States? In no case, either civil, or criminal, can the parties, in the Circuit Court, have any opinion, but that of the District Judge, which, in every criminal case, and in every civil one, where the matter in dispute is of less value than two thousand dollars, is final and conclusive whether, right or wrong; and in all other civil causes, although an erroneous judgment may be revised in the Supreme Court, it is at an expense and trouble which would often be avoided if two Judges sat in the Circuit Court.

The gentleman from New Hampshire said yesterday we of the West would not compare wealth with those in the East; all true enough: and therefore there are many causes where the matter in dispute does not amount to two thousand dollars, and still it is very material to the parties that they should be correctly decided. It is certainly not just that a man should be punished as a criminal under an erroneous judgment, or that he should lose his all by the like means, while those living under the same Government are protected in their persons and property because more wealthy. We are one people living under a Government common to us all, and each State has a right to expect from the Federal Government, that a like provision will be made for her citizens, with that made for the citizens of the other States. This has not been done, and as we are to be one people, we have a right to expect it will not be longer delayed.

Fifteen of the States of this Union have more than double the chance for a correct exposition of your laws that the other nine have; these nine complain of this inequality, and the only wonder is, that their complaints have not been more loud and frequent against this crying injustice.

Tennessee was admitted into this Union, upon an *equal footing with the original States*, and so have the other Western States been. These States feel that this promised equality has not been extended to them; as sovereign States, they insist that their citizens must be placed in a situation that their persons and property shall be equally as safe in the Federal Courts, as the citizens of any other State, are in their persons or property. With nothing less than this, will they be contented. But, it is said, the proper time is not come; we are used as well as others have been used. I should be glad to know when the time will arrive? Tennessee is thirty years old, Kentucky is older. Ohio came into the Union in 1803, Louisiana in 1812, Indiana in 1816, Illinois in 1816, Missouri in 1821, Mississippi in 1817, Alabama several years ago. Will the gentleman tell us when it is, we shall have arrived at such mature age, as to entitle us to the same benefits of the Federal Judiciary that are enjoyed by the other States? Sometimes they are willing to recognize us as at years of discretion, to put their dearest interests in our keeping. Personal services, money, any thing we have, we are disposed to render freely our full share of, according to our abilities. We are willing to do our duty; and I call upon the Senate to say whether they do their duty to us, if they do not put the administration of justice on the same footing in the Western States, as it is in the others. Is not the life of a man in any one of these nine States, worth as much to society as it would be, if he were a constituent of the gentleman from New Hampshire, or Rhode Island? Is it not reasonable to afford the same man as good a chance for justice in the States where he now lives, as he would have if he lived in any other? Is that opportunity furnished? No sir, it is not.

It was intimated we had not applied in time. Why did we not apply at the time we were admitted into the Union? We did apply, and you promised us, and we now respectfully ask a compliance with that promise. Had we been of the original States, would we not have had the benefit we now ask you to extend to us? Surely we would; therefore do not put us off with less now.

It may be said there is not much in all this; the wrong is on a limited scale, because the State Courts do the mass of the business. When the people are called to account for crimes, they are called before State Courts, to answer for offences against the State, and not for those against the United States. If gentlemen will think a little, they will see the case is not so. We have heard a good deal respecting Indians latterly: there is a portion of the territory within the limits of the Western States, where the Indian title is not extinguished, and where that is the case, every offence committed by a white citizen against an Indian on the Indian side of the line, is a subject for Federal and not of State jurisdiction, according to our laws; so likewise of crimes committed by Indians on *citizens*. Trials for crimes under this branch of your laws are not unfrequent, and no matter whether the accused is a white, or a red man, a fair opportunity for a correct exposition and application of the laws ought to be furnished. Against the Indians prejudices invariably exist; they are ignorant, not only of our laws and forms of proceeding, but of our language also; and common humanity requires that at least the same measure of justice should be meted to them, as to a white citizen. I have witnessed several of those trials, and have no doubt they were conducted with perfect integrity; yet the legal correctness of some might well be doubted. The criminal cases then which have existed and may exist in the courts in some of these States, is not so limited as those at a distance might be inclined to believe.

But, sir, we are told that the accumulation of business in some of these courts, in the three States, is produced by temporary causes that are passing away, and that there is no necessity for any alteration in the system on that account; that one circuit Judge can do all the business in those three States. It is not to pass away so rapidly as the gentlemen supposes. I do not doubt the correctness of the statement of any gentleman living in any one of those; he knows what the business is; therefore I do not choose to doubt the correctness of what was advanced by the gentleman from Kentucky. I have before me a certificate from the Clerk of the District and Circuit Court of Kentucky, and at the session of November last, the number of causes on the two dockets combined was 950. As very little business is to be done in the District Court, much the greater portion must be on the Circuit Court docket of that State. How is it in Tennessee? You have the statement of the gentlemen who belong to the Western part, and altogether it may be estimated at 200. But it is not the number of causes which prove the necessity of a Circuit Judge, and an extension of the system: this necessity is produced, more by the kind of causes that are to be decided, than by their number. These causes are, in their own nature, especially those brought into the Federal Court of Tennessee, of the most litigated description generally. Many of them relate to lands; foreigners claim titles to them, and assert them in the Federal Courts. It is necessary to go back and examine what was the situation of the country forty years ago, and you get into a set of difficulties, from which nothing can extricate

you, but a patient, laborious, and protracted investigation. They necessarily consume a great deal of time, first in ascertaining the facts, before a jury who are to decide the cause, and next in investigating the legal principles which are to govern that decision. To investigate and decide one of those causes, has sometimes taken two weeks; suppose only one hundred causes on the docket, I ask if it would not be more necessary to extend the judicial system through a country like that, than to a place where there were 500 on the docket, of which 30 or 40 might be disposed of in a day. If we were to be governed by the mere number of causes we would make a most important mistake as relates to this matter. Many disputes in Tennessee relate to land, the titles to which are founded on the act of 1777 in North Carolina, or the act of 1783, or those acts which these two have given birth to, and in investigating matters of fact it is necessary to go back and ascertain what were the names of different places, at different times, from those periods up to this time; the whole country was a wilderness, and every man who had a claim under these laws had a right to select a piece of land within a certain boundary, of from four to five hundred miles one way, and one hundred miles the other. We had not only to investigate our titles derived from the State of North Carolina, but in some instances those issued by Virginia, perhaps Kentucky likewise, as disputes respecting boundary with those States once existed, upon adjusting which provision is made to secure individual rights.

We have amongst our own citizens those who claim under Virginia grants, under Kentucky grants, under North Carolina grants, and under those issued by the State of Tennessee. Whenever there is a dispute respecting any of these conflicting titles, they may go into the Federal Court, although the parties may be citizens of the same State. You are extinguishing the Indian title as fast as those People are willing to sell; and, wherever you do, the settlements will keep pace with the extinguishment of title. In Tennessee there is a very large district of country, granted to individuals under the law of North Carolina, in 1783, which, until a very short time ago, the United States had secured to the Indians by treaty: that country is now settling, and every man has to look for the land for which he obtained his patent. Many of these conflict, and whenever they do, and a foreigner happens to be the owner of one of these titles, the consequence is, that the cause goes into the Federal Court. So long as this process of extinguishing the Indian title, and settling the country, is going on, it is in vain for gentlemen to say that those disputes are produced by temporary causes, or that they are passing away: they cannot pass away until your settlements are completed.

Do we not all know that, in 1794, and onward for several years, a great rage for speculation existed in Philadelphia, New York, and the Eastern States; that immense quantities of Western lands were bought up by foreigners, or citizens of other States? considerable quantities were purchased in Tennessee. These companies have found it convenient to part with their titles to various individuals; and those claimants who have got titles in this manner, living in other States, when they come forward to assert these titles, now that the Indian title is extinguished, assert them in the Federal Courts.

But, the gentleman says, you have Federal Courts, and the People must have confidence in them, because, if they had not, they would sue in the State Courts. Will the Senate reflect, for a moment, on the idea here suggested, and they will easily see some of the difficulties under which we labor. The titles to land must be settled by the laws of the State in which the land lies. A citizen of another State, or a foreigner, claims title to a tract in Tennessee; he finds a man in possession under a conflicting title. This foreigner can sue either in the Federal or State Court, at his election. He submits his title to counsel, who advises him that, according to the decisions of the State Courts, the man in possession has the better title. The foreigner orders suit in the Federal Court—there is but one Judge, and he, living in the State, will likely follow the State decisions, and give judgment in favor of the defendant. The plaintiff takes a writ of error, and carries the cause to the Supreme Court, before a set of Judges, who neither know, nor have they the means of knowing, the local laws, or the true reasons of the decision; and, for want of this information, judgment is reversed, and thus the plaintiff becomes the owner of a piece of property, which he otherwise would not have acquired. Plaintiffs often commence suits in the Federal Courts expressly for the sake of gaining an advantage over their adversaries, which they could not get in any other tribunal whatever. And yet, this is the argument relied on to shew that Federal justice is well administered to us.

What, sir, is the situation of the other States, Louisiana for example? There are British, Spanish, and French grants: so, also, in Mississippi and Missouri. All these may go, and mostly do go, into the Federal Courts, principally for the sake of having these cases removed into the Supreme Court of the United States, if such a decision is not given as is satisfactory to the plaintiff. So far as Tennessee is concerned, those who act under the belief that our business has accumulated from temporary causes, are, in the main, mistaken: to a limited extent, no doubt, they are correct. I believe, if our Circuit had been one of reasonable extent, and we had had the benefit of our Circuit Judge, the number of suits on our docket would have been much less. Where a man has a cause which he thinks he ought to gain, if the law is well understood, he will not agree to have that cause tried before any one man, when there is another of a higher legal character. It is a very unpleasant thing to have to settle disputes between man and man; and when it comes to the last stage, there are few men who would not like to be eased of a portion of the responsibility of the decision. If a reasonable excuse can be made to defer it to another term, the District Judge will fall in with it, because his associate will then be with him, and he will have the benefit of his opinion, and be better satisfied, if they agree, that he is right than if there was none with him; and, if he should disagree in opinion with him, by certifying that there was a difference of opinion, it could be carried into the Supreme Court, and no mischief would arise. It is to their credit that they have this disposition. I do not make unnecessary complaints against the District Judge of the State in which I live. He is entitled to as much character as any other judicial officer on the score of integrity; and, if he ever does make mistakes, which, I think, is but seldom, it is in endeavoring to attain that which he thinks the justice of particular cases. The People of Tennessee have as much right as the People of any other State in the Union, to have the opinions of two men, who will concur, as to which is right in their disputes. It is vain to tell me we are placed on an equal footing with the other States, while they have one measure of justice meted to their citizens, and the citizens of Tennessee have a different measure meted to them. I would rather you should lop off one of our Senators, or three of our Representatives—reduce us as to the power we have in the Executive and Legislative business of this Government, but let us have, when you come to the practical operations of this Government, that are to take away a man's life, liberty, or property, let our citizens have an equal opportunity, for the administration of justice, with any portion of the good People of the United States.

During the last session this subject was before you, and was put off by saying, we have not had time to examine it, and, at the next session, we will all lay our shoulders to the wheel and accomplish this particular task. And,

sir, where are we now? About the 12th of April they took up this subject in the other House—the committee made a report; the subject was examined and amply discussed, and they passed a bill, in substance, similar to the one on your table. The same subject was referred to the Judiciary Committee of this body, who concurred in a similar report: and, after the bill from the other House was brought here, it was referred to them, and they reported it, with an amendment, which is not calculated to change very materially the principles of the bill. Every gentleman has matured his judgment on this subject, and, if he does not like the present proposition, let him give us his system in its stead. But now the worthy gentleman from New Hampshire comes forward with a general proposition to refer the bill to the Judiciary Committee, to see whether they cannot contrive, in *some* way or other, to relieve our local distress and inconvenience, without adding any member to the Supreme Court. I put it to the gentleman himself, and to every member of the Senate, whether, if they have solid objections to this bill; if they are able to digest a system which they think better suited to put us on an equality with the rest of the Union; whether they do not owe it to their own justice, to their own character, to their own high standing, to have brought forward a distinct proposition, containing another system that would have placed us in a similar condition with the other States of the Union? It is very easy to raise objections; but you can never test the merits of this bill, compared with any other plan, until you have the other in detail likewise. Suppose, sir, that a majority of this Senate should believe that the number of Judges ought to be seven, and they send it back to the committee to find out how the United States are to be divided into seven circuits; they try it every way; they cannot fix on any plan that is not liable to stronger objections than the present bill—what then? are we to have no relief? If the gentleman who made this proposition had given us something like a detailed plan for his seven Judges, and compared that plan with this, then there would have been something to test the principle he has so ably advocated on this occasion. It is a principle which seems plausible in itself; but when you come to detail it, to reduce it to practical operation, it is found to be one, which, when compared with the situation of the United States, cannot be used. I think we have cause to complain when we find that, after this matter has been postponed for eight or ten years, and the lapse of time which has taken place during the present session, those who are opposed to it say they are disposed to do what is just towards us, but find fault without submitting any plan which might keep up hopes that we are not to be always in the situation in which we are now placed.

The gentleman from Rhode Island I can understand exactly. He wishes to get back to the good old system of 1801, because he thinks it is better than any other which can be devised. I do not intend for him any thing which I say upon the subject of unkindness; they are all intended for the gentleman from New Hampshire, who sends us so many kind wishes, of which I wish to see the fruits.

As to the Circuit Court part of the system, every one must be satisfied that we are not on an equal footing with the other States. Increase, then, the number of Judges to such an extent as to enable us, with reasonable circuits, to have the services of some one or other of the Judges of the Supreme Court. This is the remedy, and then shall we be on an equal footing with the others. Let no gentleman object to this system because we cannot furnish good materials for Judges; if they cannot be found in that part of the country, we will receive, thankfully, the addition of talent from any quarter of the Union. That luminary which gives us light rises in the East and passes to the West. I suppose it is the same with genius and talent: let us then go to the morning, and draw from the fountain-head of talent as much as will answer the wants of the West, and give us the benefit of it. I wish justice administered. I indulge in no prejudices. From the East they have sent us out those who have made us valuable officers, whom I should be sorry to part with. I wish them to remain with us as citizens of our State, and if the present system should be adopted, and the President should see fit to find the materials to fill the offices in the East, let him make the experiment, and if it turns out that they are qualified, I shall never be disposed to be very clamorous on that subject.

The gentlemen from Rhode Island and New Hampshire seem to think, that on this system, if it should pass, no benefit to us can result as to an increase of knowledge of local laws on the bench of the Supreme Court. In this I disagree with the gentlemen. Take a man from Rhode Island, and I think it likely he is as ignorant of the laws of Tennessee as I am of those of Rhode Island; place him on the Supreme Court bench, and let him be compelled to hold our Circuit Courts, and reside among us, and I think that in the course of one year he will be better qualified to decide our causes than any Judge in the Supreme Court, in the present organization, will be in forty years. He sets out ignorant of our local laws—but he is acquainted with his own profession; he is associated at once with the District Judge, who is intimately acquainted with the local laws; he meets with that which he never met with in the Supreme Court; he meets with the most intelligent of the profession in that country where he goes to do business. They have their own materials, their own books; they have had leisure to make preparations for every cause; they have looked into every act of Assembly which relates to the subject, into every record, into every case found which bears any relation to the subject; and this Judge, so called on to dispense justice, after he has heard the arguments on both sides, and has conferred with the District Judge, will be very likely to decide correctly even in the first instance—for six weeks or two months his Court may continue—daily, causes depending on the local laws are under discussion; his leisure moments are spent in conversation relative to those local laws; at the end of his first term will he not have acquired more knowledge of the local laws than on the bench of the Supreme Court during his life? In the Supreme Court one cause, depending on those local laws, may be argued during a term, without the necessary books, without much preparation, by those illy informed of those laws; it is decided: and perhaps for twelve months no other cause, depending on those same laws, come before the Court. The subject is then taken up as a new one; and thus he may go on from year to year, without any improvement in a knowledge of local law. Take a man of good natural capacity—a scientific, well-read lawyer, compel him to reside in the circuit; he immediately acquires a knowledge of the local laws of the States in his circuit: because he must continue his mind upon a succession of similar causes, until he has disposed of perhaps fifty or one hundred without having it distracted by an attention to any other. He soon acquires a knowledge of the laws as a system, which is not to be forgotten. But upon the bench of the Supreme Court, he has no such advantage; and it would be strange if he did not go off almost as ignorant of local law as he came on it.

Now, whether it be seven or ten, or of whatever number it may be, I insist that it is a valuable feature in our system, and one that I would not part with any more than I would with that most valuable political privilege, of trial by jury; that the man who is ultimately to decide the cause, must be in a situation to have a reasonable opportunity of becoming acquainted with the laws that are to form the ground of that decision. Says the gentleman, by what mystery is it that you are going to communicate

the information which that one Judge has obtained, to the other nine? The moment a cause is brought into the Supreme Court, instead of their having to grope about without knowing how, or where to find the necessary statutes and authorities, they make common stock of all the knowledge they have acquired, and the judge who has made himself acquainted with the local laws, applicable to the case in question, brings to their view at once, not only the statutes, but all the authorities he has had access to, in relation to the same question, and when these materials are spread before them, then, sir, they are prepared to come to a correct determination. There is no mystery in this. Each is not to lock up within his own breast all the information he has acquired upon legal subjects, and let his brethren be groping about in darkness. They talk freely on legal subjects amongst themselves, they make joint stock of their knowledge, they apply their natural talents, and then, sir, they bring out such a result as they think will be according to the justice and law of the case. The moment you give me one Judge on the bench of the Supreme Court that has a knowledge of the laws of the country in which I live, the Supreme Court is placed in a situation that it can dispense justice between man and man in Tennessee; but till that is done, it is as much a matter of accident, as any thing else, that justice should be done. I have no complaint to make against the Judges of the Supreme Court, nor have I any eulogies to pronounce on them. In some causes that have come from Tennessee to the Supreme Court, I think their decisions erroneous; I have the same opinion as it relates to some other States. But, in the situation in which they have been placed, I am surprised they have not been oftener wrong. It is the lot of human beings to err when they have the best means of information, and it would be strange if they did not err, when you compel them to act without the necessary means of information. There was one case in which their decision was in opposition to all the decisions of the State Courts, in which they applied old principles that were inapplicable to our local laws, and thereby reversed the decision of the District Judge doing duty as a Circuit Judge, and sent the cause back to be retried; upon the second trial, a more enlarged view of the case was given in a Bill of Exceptions, and the cause again brought to the Supreme Court, and they a second time reversed the judgment of the Circuit Court, but took great pains to explain away what seemed to be the ground of the first decision, thereby using their endeavors to ward off the mischief likely to flow from the first opinion. I mention these things, not as a ground on which to censure any man who is on that bench; I have as much confidence in them as any man who has no more acquaintance with them, and who is as little capable of forming opinions relative to their decisions. Still, I am constrained to believe, that not only in the case alluded to, but in some others, they have not correctly expounded our municipal laws, and that mischiefs have been produced, and that more must inevitably be produced, if that Court is not placed on a different footing from that on which it now stands. Had we not better pass the bill on the table, than throw every thing into a state of confusion by the reference? Had we not better refuse the gentleman's proposition? If you agree to it, where is there to be an end? The gentleman from New York stated that there were grievances under which we labored, but that he did not deem them to be so great as to justify all the clamor that had been raised in that part of the country. I think he has not yet got to the bottom of our grievances, unless—

[Mr. VAN BUREN rose to explain, he had stated, on the part of Tennessee, that there had been no complaint—their memorials were such as they ought to have been—they stated their grievances fairly and fully, and left it to the wisdom of Congress to apply the remedy. But he had stated that complaints had been made elsewhere.

Mr. WHITE resumed. I am very glad to receive the explanation. It gave me pain to think our complaints should be censured from so respectable a quarter, and am relieved to find I misunderstood the gentleman. By the bill upon your table, we can be relieved—without some change, the causes of complaints must continue. The gentleman from New Hampshire finds fault with the bill, and chalks out no plan. The gentleman from Rhode Island excepts to the bill, and refers to a substitute. What is his remedy? He wishes the Judges of the Supreme Court to form an Appellate Court, and to be relieved from all circuit duties, and to have a separate set of Judges, called Circuit Judges, to try all causes in the respective circuits. Indeed, sir, I should think (to use his own language,) he would give us a remedy worse than the disease; and I believe that no man who has reflected well on this subject, and is a friend to the Supreme Court of the United States, will ever put its high character in jeopardy by any such system. As an American, I am proud of the character it now sustains. It is not only a blessing upon the whole to the nation, but some of its members are a credit to the age in which we live. And how did they become so? Not by being shut up in Washington, in New York, or in Rhode Island, but by letting them have a fair opportunity to become acquainted, not only with those things which are to be got out of books, but with those things which are going on in that society of which they are members. Let me not be told that I wish to send the Judges out popularity hunting—to drink a dram with this ignorant man, or to take his breakfast with another; but, I say, send the Judges of the Supreme Court to administer and dispense justice in the respective States, in the presence of the citizens of those States, of the Counsel that attend the Bar, and of the Jury, let them hear the witnesses that depose as to the facts of the case.

While the Judge in his circuit dispenses justice, he watches, with all possible care, the conduct of the Counsel, the course of the testimony, and sees its practical application to the particular transactions of men; at the same time that he is dispensing justice, he is keeping up an essential part of his education; he is keeping up his personal knowledge of human nature; he sees its workings as it is;—and of all the places on earth that a man can be placed to acquire a knowledge of human nature, the best is a Court of Justice, where the Jury is to decide a matter of fact, and *viva voce* testimony is given, to inform them on it. Put the question down in the most careful state you can, in a bill of exceptions, and an Appellate Court never can have the same impression made upon their minds, that they would have had, if they had seen and heard the same testimony delivered to a Jury. Do you believe there would have been the improvement there has been in the doctrine of evidence during the last hundred years, if those who established these rules had possessed no practical knowledge acquired at *nisi prius*, or elsewhere? How long is it since the distinction has been drawn between a competent and a credible witness? But lock these Judges up in Westminster Hall, or in Rhode Island, or New York, or Washington, and you take them from the source of information, and what becomes of them? If I wished to lessen their standing in society; and to destroy public confidence in them; to put them in such a situation that, instead of doing justice between man and man, they should become a curse to the country, I would adopt the system recommended by the gentleman from Rhode Island.

Again, sir. It is a great object in the administration of justice to keep mankind satisfied. If I could spare the property, I would almost as soon lose a portion of mine, by the decision of a man in whom I had entire confi-

dence, as to gain by the judgment of one that I believed decided in my favor, he thinking that his own decision was wrong: because, in such case, I would feel that neither my person nor property was safe. Take the Judges of the Supreme Court from all circuit duties, and you make them strangers to society; they will have no acquaintance with any portion of the profession, except the very few who may practice at their bar; let them then decide some favorite statute of some of your large sovereign States to be unconstitutional, and it will be found that they have not enough of character to sustain them. But keep each of them in the discharge of circuit duties, and they are all forced into society; in their respective circuits, they become personally and intimately known to most of the respectable men in those circuits; to clerks, marshals, jurors, witnesses, lawyers, bystanders; and, if they have integrity and talents to fit them for their high station, it becomes known, and felt, by the mass of society who are witnesses of their usefulness: then let them decide such a statute to be unconstitutional, (and so they ought to do, if such be the fact,) and then see how well public opinion will sustain them. The moment the decision is complained of, the inquiry by every man will be, did the Judge with whom I am acquainted, concur in that decision? And, if answered in the affirmative, he will immediately say, the decision must be right, he is honest and enlightened, and would not have concurred unless the judgment were correct.

Again. You put a man at middle life upon the Bench well qualified for his station; make the Court stationary; take from the Judges all circuit duties; and, if he live to reasonable age, he will most probably die unqualified for his office. How will the Judges fill up the intervals of time between the sessions of the Supreme Court? It is answered by reading—I put it to every practical, well-informed lawyer to say, whether it would not be more profitably employed in holding Circuit Courts. Take any one legal subject, and let the Judge be in search of information upon it, and, I say, he will, in my opinion, acquire more by hearing arguments upon it, for *one* day in the week, than he will by reading the *whole* week; and that which he has thus acquired, will remain with him for life.

Again. Take from them circuit duties, and a main stimulus to exertion is destroyed; the mind is, for a considerable portion of life, improved by use; one exertion prepares it for another; and by repeated efforts, it acquires a vigor and force not to be otherwise acquired. Make the Judges stationary, and they will soon content themselves with moderate labors; their reading will be alone; none to help them compare and examine ideas collected from books; they will have no precise object in view: but keep them to the circuits, and there they will have every inducement to exertion; their conduct will be in the view of the world; the causes openly argued; the opinions of the Judge are formed for present use, must be accompanied by his reasons to support them, delivered in presence of Jury, witnesses, parties, counsel, and bystanders: If wrong, he will be called upon to re-examine them on a motion for a new trial, when their errors will be openly exposed, and they refuted. He will, therefore, have every inducement to continued and unremitted exertion: and this very exertion will daily increase his capacity for usefulness.

On the plan proposed by this bill, you make the Judges men of vigorous minds, well stored with useful knowledge, capable of forming, and continually, not only forming, but actually expressing opinions for themselves.

On that proposed by the gentleman from Rhode Island, you will soon have your Judges book worms, if you choose, without any practical knowledge; their minds enervated for want of use, neither habituated to form, nor to express opinions for themselves; acting seldom or never on *individual* responsibility; and always in presence only of the comparatively few, who may be attendant on the Supreme Court. By his plan, they will soon lose that manly independence so beneficial to society, and become mere drivellers, drones, ready to lean upon any associate, ambitious of distinction, and admirably fitted for any unworthy purposes to which a designing Executive may wish to apply them.

It is said that another misfortune from the proposed plan will be, that it will add to the existing grievance in the Supreme Court—delay. At the first view, there certainly appeared something very plausible in this objection; but, upon mature consideration, I think the business will rather be expedited by this additional number of justices, than otherwise.

How is the delay to be increased? Because, say gentlemen, each Judge must make himself acquainted with the contents of the record, and will take ten men longer to do so than seven.

This difficulty is in a good degree removed, if we suppose the Judges will make such arrangement, as that one shall read the record, and the other nine listen to him while reading it; upon this plan ten will become acquainted with its contents in as short a time as seven. But suppose some delay to be occasioned from this cause, it is more than counterbalanced by positive advantages by an increase of the number of Judges.

Have ten Judges of the Supreme Court performing the duties of Circuit Judges, and you bring to the Bench of the Supreme Court, in a short time, an intimate knowledge of the municipal laws of the respective States: when one of those causes depending for its decision upon any of those local laws shall be brought into the Supreme Court, the Court will at once be able to refer to all the statutes and decisions which ought to govern their judgment; whereas now they are frequently at a loss to procure either the one or the other; and it consumes much time and requires great labor to procure those materials, from which, alone, a correct opinion can be performed; and often it must happen, that decisions are given without the benefit of all the information from these sources which they ought to have.

Suppose a case to be decided upon the local laws of a State, and the State decisions to have fixed the construction of a doubtful statute: but no book of reports containing those decisions to exist—How can the Supreme Court acquire the necessary information? Only through the industry and research of the counsel employed. They may and often will report them differently, and leave the Court in great doubt. But pass this bill, and one at least of the members of the Supreme Court will, on his circuit, have acquired a knowledge of those decisions, and can give correct information to his brethren.

But, sir, it has been urged that, by increasing the number of Judges, you increase the number of causes in the Supreme Court, and of course must delay the decisions there. To this argument I answer, first, it is not likely the fact will turn out to be as supposed: in all suits exceeding the value of two thousand dollars writs of error can now be brought; if a Judge of the Supreme Court is associated with the District Judge on the trial below, and they concur in opinion, most frequently both parties will be satisfied, and no writ of error will be brought; whereas now, when the causes are decided below, by one man, and he a District Judge, writs of error will be almost invariably brought if there is the least room for a doubt. It is therefore most probable the number of writs of error will be diminished in all those cases to which I have alluded.

But it is said now, no criminal case can be brought to the Supreme Court, nor can any civil one, when the matter in dispute is of less value than two thousand dollars; because, as the decisions will be by the District Judge alone, there can be no certificate of a division in opinion.

by which means only such cases can be brought to the Supreme Court.

I must regret that such an argument should be used to defeat this bill. It conforms to the rules by which tyrants govern. The substance of it is, that it is better that a man in one of those nine Western States, should be hanged or lose his property by the erroneous decision of the single Judge, than that a suitor from any other of the *fifteen* States should have his suit delayed in the Supreme Court, by increasing the number of causes upon its docket.

This argument cannot be tolerated; all are to be equally obedient to the same laws; all must be equally protected by them. The main object of government, and one of its first duties, is, to protect the innocent at the same time that it punish the guilty. The citizens of one State are not to be unjustly punished, that those of another may have a speedy revision of their causes in the Supreme Court. The citizens of each are entitled to the same measure of justice, and an equal chance for a correct administration of it must be furnished to all. Will it be allowed that a citizen of Tennessee must submit to injustice, for no better reason than to enable a citizen of New York, or Rhode Island, to have his cause speedily decided in the Supreme Court? It is hoped not.

Something was said about the weight of population, and that the proposed bill would give to the West more Judges than their relative numbers entitle them to.

Mr. President, I have not felt the force of any argument used upon this point. Before the judicial system of the United States is extended, there must be States; those States must have citizens living in them; and those citizens must have suits, or a reasonable prospect for suits of Federal jurisdiction to be decided, and whenever these things concur, your system, applicable to the other States, ought to be extended to embrace them.

Take a State composed of a number of counties, some of them thickly populated, others with a population more sparse: what would be thought of a legislature which, in devising a judicial system, would make one system for those counties of dense, another for those of thin population? Would they act wisely or justly when they directed the courts in counties thinly settled, to be holden by a single Justice of the Peace, whose decision should be *final;* and the courts in the counties thickly settled, to be holden by a Justice of the Peace and a Judge of a Supreme Court; and that in all cases where they disagreed, no judgment should be entered until a Supreme Court, composed of seven men, should be consulted? All would concur in pronouncing such a course unwise and unjust; yet the very argument now used goes to justify such a system.

Upon this branch of the subject I hope it will be seen that, if this bill passes, the confidence reposed in the decisions in the Circuit Courts will tend to diminish rather than increase appeals; that the increased knowledge of local laws on the Supreme Bench will facilitate the decisions there, in place of delaying them; but that, if some delay should be produced, it is far better that should be submitted to, than that nine States should be compelled to live under a judicial system less favorable to the administration of justice than that which is afforded to the other fifteen.

There is another point of view in which this matter ought to be considered, when we are considering and comparing the utility of the bill upon your table, with the system of 1801, which the gentleman from Rhode Island desires to re-establish as a substitute for it.

That which this bill proposes is a mere extension of the judicial system, as it now exists, and has existed, in fifteen of the States, for many years. Its utility has been tested by experience, and its provisions have been generally approved. If the bill passes, no change, even in the nine States, will be effected by which society can be disturbed; the Courts will sit at the same time in the respective circuits; the business will be conducted upon the same plan heretofore adopted; the only sensible alteration will be that, instead of *one* man upon the bench when the Courts sit, there will be two. We are creatures of habit, and any radical change in a judicial system, by which the settled habits of the People are disturbed, or changed, is not likely to succeed, even if the new would, in the end, be better than the old; it is not likely that the new will be tolerated long enough to give it a fair experiment, unless the old has been found glaringly defective. In this instance this is not the case—the old has been tested and approved, and, if now changed, as the gentleman wishes, the People will compel us to change *back* to that which this bill proposes.

It has been said that the system of 1801 did not go into operation; it was unpopular on account of those who proposed and adopted it, and, therefore, put down without a fair experiment. Be it so, and it is a proof of the correctness of my argument. The old system, that which we wish now to extend, had been adopted in 1789; its utility had been proved; without necessity a new experiment was made by the act of 1801, not called for by any existing grievance; the People would not submit to it; they put it down, and, with it, or rather before it, those who had brought it into existence. You now wish to reinstate that system to relieve the West. From that very quarter came the attack upon it. It was commenced by Breckenridge, of Kentucky, and it was repealed. It is a mistake to suppose it never went into operation—it did go into operation; we had the circuit system in operation, for a short time, both in Kentucky and Tennessee, the only two Western States then in existence. No time was lost in putting it in operation any where, and but little lost in commencing the struggle by which it was put down, and that of 1789 reinstated. Let us not repeat the experiment. We need not flatter ourselves it will be better received now than it was then. The system then approved, is that which is still approved; pass this bill, and thereby extend its benefits to the nine Western States. By this means you will keep the People happy and contented: but, disturb their settled habits, uselessly make the radical change which gentlemen desire, and a struggle is again commenced, which will produce great discontent, and end in the overthrow of the new system and the re-establishment of that which is now known and approved.

The alteration effected by this bill will be, that the Supreme Court will be composed of ten in place of seven. Gentlemen say they would rather reduce, than increase, the number of Judges—six, say they; and then, as circumstances will permit, until the number, which composes it, shall be only four. Seven is the favorite number in religious matters, and four in legal matters, according to the opinion of gentlemen on the other side.

And why fix upon the number four? Because, in Great Britain, four is the number which composes their highest courts.

Mr. President, we have borrowed many of our most valuable ideas upon legal subjects from Great Britain; but care must be taken not to copy too far. That country is of small extent, an Island; a Judge in any one part of it has it perfectly in his power to acquire a knowledge of the general laws applicable to the whole, and, also, of the particular customs applicable to any particular part. That is not our situation in the United States—our country is of immense extent; your Judges of the Supreme Court ought to be well acquainted with the general laws of nations; with your conventional laws; with the Constitution and laws of the United States, and with the Constitutions and laws of twenty-four distinct and independent States, varying from each other in many important particulars. The same system which has been found well adapted to the one country, may be entirely unsuited to the other. Four Judges would be more likely to bring

all necessary legal knowledge into the Court of King's Bench, in England, than ten will be to bring all the legal knowledge necessary to the bench of the Supreme Court. The situation and circumstances of our own country must be carefully attended to, otherwise we shall do great mischief by borrowing from others, and adopting systems not suited to the extent of our territory, to the circumstances, and situation, and habits, of our citizens, nor to the various and mutified peculiarities in our Federal and State laws. From no country upon earth can we expect a model which will suit us for a judiciary. Our country, and every thing in it, is upon a more extended scale; and our judiciary must be adapted to our own situation and circumstances. The politician, who will be useful in the United States, must permit his mind to comprehend the various interests of the different sections of country; the habits, customs, and pursuits of the People in different quarters—even their prejudices, if you choose—and, from all these considerations, enact his laws upon such principles as will secure the interests of the whole. He who will not permit his mind so far to expand as to embrace the whole extent of his own country, will always be in danger of inflicting injury, while he intends to afford protection. Let us then pass this bill; make our system co-extensive with the country; adapt it to the wishes and expectations of society; place every State on an equal footing, in fact, with every other: we will then have made an effort upon this subject from which we have reason to anticipate much good. Should it, contrary to our expectations and wishes, be productive of mischief, the fifteen States which now have an efficient system, can have no just cause of complaint—the situation of all will be equal—the inconvenience will be common to all. We have a right to expect, and therefore do expect, this risk will be encountered in an attempt to do justice to all. Fifteen of the States now have a system with which they are satisfied: nine others ask to have the same system extended to them, that they may enjoy the common benefit. No, say they: by doing so you compel us to run the risk of a worse system than we now have; say the nine, we think it will be an improvement, and it is much better you should hazard the change, than that we should have the certainty always of a bad and unequal system. I put it to the candor of gentlemen, to their sense of justice, to say whether they think it reasonable that these nine States should always remain in their present condition, solely from a fear that an extension of the system will deprive them of some benefits which they now experience? That is the true question now to be decided. Considerate men, willing to make the advantages and disadvantages of a common government common to all, can answer but one way.

But, sir, take the plan proposed by the gentleman from New Hampshire, recommit this bill to the Judiciary Committee, without any instruction what to do, and they must return it in the shape it now is, as containing the system least exceptionable which they can devise. This will produce delay, and, in the end, defeat the passage of the bill, in any shape, and thus the matter is to rest for another year.

Gentlemen say they do not wish, indirectly, to defeat this measure; that they are very willing that any grievances which exist may be redressed; but, they think, may be redressed in some better mode. I am neither willing nor inclined to doubt the sincerity of gentlemen who use this language, but words cost so much less than acts, that I wish to see some manifestation of a regard for our interest in acts done. When I think the course recommended must end in a sacrifice of our interest, or at least, a procrastination of the redress to which we are entitled, I cannot do less than resist it. When gentlemen wish, seriously, to protect our interests, to redress our grievances, I should be gratified to find, from their arguments, that they had used their common industry in making themselves acquainted with our actual condition. Had this been done upon the present occasion, I cannot but flatter myself that several of the difficulties, which seem to have occurred to the minds of some gentlemen, would easily have been removed by their own sound judgment.

But it is said by gentlemen opposed to this bill, if it should pass, and you increase the number of Judges, and then it should be found that the usefulness of the Supreme Court is destroyed, the mischief is past remedy, because Congress, cannot, consistently with the Constitution, reduce the number.

This objection I think is more specious than solid. Suppose the increase to have taken place and to be found inconvenient, the grievance to be redressed will be common to the People of all the States, and if we are to live under a common Government, this will be perfectly fair; all will then have a common interest in redressing this, and how long do you think it would take to reduce the number as low as gentlemen would wish, say to their favorite number four?

Would it not be very easy to provide that as time removed the incumbents their places should not be filled? and, in a few short years, gentlemen can atttain their object in a way entirely free from objection. Look to the ages of the men upon the Bench; of those that would probably be qualified to go there, and all fears of this permanent mischief will vanish. My acquaintance with the members of that Court is of very modern date, and even now, of the seven which I once found upon the Bench, two are removed; and it is rather a melancholy reflection that in the course of nature others must soon follow them.

Should a reduction in number be found indispensable, my plan would be, to wait the silent but sure operations of nature to make that reduction, and, in the course of a short period, gentlemen can have the number just that which may suit their views.

I am anxious for the passage of this bill; yet, to get it along, I am not prepared to profess any principle upon which I would not act, and therefore I will not say that if the increased number should be found to be an evil, that I would remedy that evil by changing the system and turning out a part of the Judges, and thus reduce the number. There is no necessity to resort to any such remedy, and I will never act upon a doubtful power, affecting so important a department, when, by a short delay, a remedy is sure to be within our reach which none can doubt our right to apply.

Some gentlemen seem really to doubt whether we have any great cause of complaint, as we have a system under which we have lived, and which is as much as our population entitles us to, if not more.

I assure the worthy gentleman who has had the trouble of all these calculations, that he and I, on this question, act on different principles, and therefore I have not, nor shall I weary either the Senate or myself to review and test the correctness of his tables. I would not even upon this question look over it, if he were so kind as to loan it me.

I know we have nine States called Western; that these States are settled by citizens of the United States; that these States have been admitted into the Union upon an equal footing with the original States in all respects whatever; that those citizens have important interests to be decided in the Federal Courts, both in the Circuits at home and in the Supreme Court at Washington; that, according to the present organization of the Courts in those Circuits, there is not a reasonable opportunity afforded for a due administration of the laws; and that in the Supreme Court, so far as their most important interests are concerned, from its present organization, the chance for a due administration of the law is still less. Upon these principles it is, that I contend the same system which is found

by experience to be beneficial in the other fifteen States, shall be extended to, and include these nine likewise.

This I think we are entitled to demand: but I will not say we do so. There would neither be a propriety, nor a necessity for the use of such language in this body. It will always be sufficient here, to show, that a respectable portion of the Union labors under some inconvenience, which ought to be redressed and which can be redressed without endangering the whole, and that remedy will certainly be applied.

These things, it is hoped, have been shown, and I flatter myself our grievances will be now redressed by the passage of the bill upon your table.

Upon this subject, Mr. President, I am conscious I have consumed more of your time than I ought to have done. It is a subject upon which it is natural to expect that those representing States which feel that their interests have been too long overlooked or postponed, should manifest some solicitude. I have manifested none which I do not really feel, and as, in speaking, I have no object in view, but to express the opinions I entertain, in terms that cannot be misunderstood, I may sometimes use expressions not acceptable to the feelings of others; whenever this does happen I can only regret it, because nothing is farther from my wish than uselessly to wound the sensibility of any man living.

So far as I am concerned, in future, I shall endeavor to economize our time by remaining silent, when consistent with my duty I can do so; this is amongst the many evidences I furnish myself, that, as men advance in life, if they retain the faculty of knowing when they ought to commence speaking, they seldom do that of knowing when they ought to desist.

The bill was then laid over until the next day.

RESCINDING RULES.

Mr. RANDOLPH rose, and said: Sometime ago, I gave notice to the Senate I would, unless the subject should be taken up by some other member of this body more able, but not more willing, to vindicate its privileges than myself, move for the recision of so much of the new rules of this House, which give to the presiding officer of this body the appointment of its committees, and the control over the Journal of its proceedings. I did give notice on both points, although, the debate being broken off abruptly, for reasons beyond my ken or control, notice appeared in the public papers on the first of these points only—the appointment of committees. I now rise to give notice that I shall, to-morrow, unless the subject be taken out of my hands by some one more capable of doing justice to it, move, and support with reasons for that measure, the restoration to this body of its ancient and accustomed privileges. This body exhibits a memorable, I will not say a lamentable, instance of the tendency of human affairs towards servitude and abuse. To get rid of the trouble of ballotting for committees, the subject was placed in the hands of your most lamented and venerable predecessor, who was a member of this House, who was responsible to us for his situation, and who exercised that trust under that responsibility; but who, by my vote, never should have been invested with it, or any other human being, unless, as Jefferson said, we could find angels in the shape of men. In consequence of a fact, as notorious as it was disgusting, the Journal was put under the control of the same presiding officer—a fact to which I allude no further than by the words which I uttered, because it was notorious and disgusting: that fact, with which other facts led to a state of things in this country unexampled, but not unexampled elsewhere; one set of officers to do the duty, and another set to receive the salary. There was a time when these two expressions had their meaning: "sober as a judge," "as good as the bank;" but they have both lost their meaning. If our officers cannot do their duty, let us put persons in their places that can do it. I rose to give notice only. I shall go back and say, that the Secretary of this House being a sworn officer—being supposed to be competent—being supposed to be faithful—being supposed to be willing to do his duty—to him, and to him only, under the supervision of ourselves, can be safely trusted the control over the Journal, for reasons which I shall humbly submit, to this House to-morrow.

THURSDAY, APRIL 13, 1826.

Agreeably to notice given yesterday, Mr. RANDOLPH then rose, and moved to rescind the two rules of the Senate, which place the power of appointing the Committees of the Senate, and the supervision of the Journal, with the presiding officer of the Senate, and supported the motion in a speech of an hour and a half duration.

The motion lies on the table one day.

JUDICIAL SYSTEM.

The Senate resumed the unfinished business of yesterday, and again took up the bill to extend the Judicial System of the United States—Mr. WOODBURY'S motion to recommit the bill being still under consideration.

Mr. BERRIEN rose, and said he entertained certain opinions on the subject now under consideration, which, as a member of the Judiciary Committee, he felt himself called upon to state to the Senate. I do not deceive myself, said Mr. B. by the expectation, that I can arrest the progress of a measure, which is obviously hastening to its consummation, under the influence of motives, as various and contradictory to each other, as the bill itself is inconsistent with the system which it professes to sustain. If the objections which I have to it, had been met by its advocates, I should have been relieved from the necessity of trespassing on the patience of the Senate. But neither here, nor in the discussions before the committee, has this bill been sustained on its own intrinsic merits. No one has attempted to prove the efficacy of the system itself, and still less to demonstrate its superiority to others, which will readily suggest themselves to the mind. The unanswerable argument of its advocates is, that it is the best which can be done. Though the bill under consideration is defective in principle; though it affords no remedy for the evils to which the existing system is liable; though its provisions may tend to consequences highly injurious to that valuable department of the Government, which it proposes to regulate, still its adoption is recommended as a concession to the wishes of our brethren of the West, as the only one in which a majority of the Legislature of the Union can concur. From this doctrine I must dissent. The principles of this bill are at war with all the convictions of my judgment, and are equally condemned by the results of my experience. The existing Judicial System is radically defective, and requires a remedy which we have it in our power to afford. I am not absolved from the obligation to urge the adoption of that remedy, by the suggestion that others will not do their duty.

Before entering into this discussion, I ask the permission of the Senate to relieve it from the objection that the motion for re-commitment by the Senator from New Hampshire, is unaccompanied by specific instructions for the guidance of the committee. Against the insinuation that this form has been given to the motion, with a view to defeat the bill, by indirect means, it is not necessary that I should vindicate him: his course, in this House, has been too plain, straight forward, and direct, to subject him to such an imputation. But the motion itself, in the precise form in which it is submitted, is consistent with parliamentary usage, and is obviously adapted to the investigation of the objection which we desire to present to the consideration of the Senate. The bill contains a provision for the increase of the number of Judges of the

Supreme Court, against which the Senator from New Hampshire protests, as destructive of the efficiency of that high tribunal. His motion is directed against that provision. He proposes to re-commit the bill, with instructions to report one, which, without increasing the number of Judges of the Supreme Court, shall afford a remedy for the evils complained of. Here is a specific instruction, which is calculated to carry into effect the views of the mover, to avert the evils which he believes this bill has a tendency to produce. The committee are not to be confined to this system or to that, for the obvious reason, that every specification would have weakened the force of the motion, in its principal object: that of avoiding an increase of the number of Judges of the Supreme Court. The course is then a fair, proper, and efficient one, and not liable to any objection of the want of parliamentary form, or technical precision.

I must relieve myself, also, from an imputation, which it is unpleasant to hear, and which it would be still more unpleasant to deserve—that of entertaining any unfriendly feeling towards those States who are more immediately interested in this bill. In regard to those local grievances, which induced them to seek this extension of the Judicial System, I enter into no controversy. The fact of their existence is admitted on the simple statement of the Representatives of those States on this floor, who are entitled to receive, and do receive from me, the most unlimited credit. The very able and elaborate argument which we heard yesterday from the Senator from Tennessee, was not necessary, so far as I am concerned, to prove that evils exist in the Western States, to which it is the duty of Congress to apply a remedy. Gentlemen have intimated a distrust of the sincerity of similar declarations, which they say are mere words, not followed by corresponding acts. We are called upon to redeem ourselves from this imputation, that of keeping the word of promise to the ear, and breaking it to the hope, by specifying the relief which we are willing to afford—by suggesting a system, which, while it shall be free from the objections urged against this bill, shall be adequate, at the same time, to the wants of the West. Before I sit down, I will endeavor to meet this requisition; but I desire first, that the question between these new States and ourselves should be truly stated, and clearly understood.

The Senators from the Western States deceive themselves, when they assert that we "are well off, that we are content with our actual situation under the present Judicial System." Sir, the fact is not so. I speak after an experience of twenty years of constant practice in the Judicial tribunals of the Union. There are radical defects in the system. In the Courts of original jurisdiction, those defects are severely felt in the States where this system has been in operation for the greatest length of time. Now it is the effect of this bill, without applying any remedy to these defects, to extend its operation throughout the Union, to rivet it on the original States, and to render comparatively inefficient the Court of appellate jurisdiction. Whether this bill be permanent or temporary, it affords no remedy for the evils of the existing system; and unquestionably increases the difficulty of removing them at any future period. The People of the new States have their peculiar grievances, which we are willing to remove. We have ours, in the removal of which we call upon them to aid us. We ask them to accept a common remedy, alike applicable to their condition and to ours; to correct the errors of the Judicial System before they extend it, and thus fix it indefinitely on us and themselves. If, then, in reference to this measure, aught of complaint can be indulged, in relation to the conduct pursued by gentlemen on this floor, the right to complain is with us; certainly sir, not against us.

There is yet another preliminary remark, in which I desire to be indulged: From the views which I entertain in relation to the Judicial department, from my early, constant, and confirmed conviction of its importance to the preservation of this Union, I have not heard, without alarm, some of the doctrines that have been advanced on this occasion. In the progress of this discussion, (and if with any object connected with it, certainly with a view to induce the Senate to adopt the bill under consideration,) gentlemen have inveighed against the Supreme Court, because of the tenure by which the Judges hold their offices; because of its excessive jurisdiction, principally with reference to its power to decide on the constitutionality of State laws; and because of its decisions, the uniform tendency of which, it is said, has been to strengthen the arm of the Federal Government.

Why are these suggestions presented to us now? It is not the object of this bill. It is not within the scope of the legislative power to change the condition of the Judicial department, in the particulars complained of. Ought it to be changed? Is it believed that such a change can be effected? What number of persons will concur in the opinion that the tenure of the Judicial office should be any other than during good behavior? It is fixed by the Constitution. Why then is it drawn into the discussion of this bill?

We are presented with an alarming picture of the excessive jurisdiction of this Court—for what purpose? It is not the object of this bill to reduce it. It is said, too, that the uniform tendency of the decisions of this tribunal, from the very origin of the Government, has been to strengthen the Federal arm—and what then? Will the march of that Government be arrested by the bill under consideration? Gentlemen do not impute incorrectness of motive—they do not even assert that the Judges have decided incorrectly. They limit themselves to a statement of the consequences which they suppose have resulted from these decisions. Sir, it is a mistake to ascribe to the decisions of your Courts, that which is the necessary result of time. The increased and increasing strength of the Federal Government, is the inevitable consequence of the development of its powers, of its action upon the People of the States, of its own multiplying resources and extended patronage. It is time which has strengthened the Federal Government, by calling into action those powers of which the full effect could not be discerned by the Sages who formed our Constitution. The question recurs, why are these considerations presented to us in the discussion of a bill to extend the Judicial System of the United States? If the evils complained of exist, they will remain. This bill does not touch them. But, gentlemen neither speak nor act without an object. Is it desirable to weaken the Judicial department? Is it the purpose of this bill to effect that object indirectly? If so, it is time to call upon the friends of the Judiciary to pause, lest the spirit of concession should carry them beyond the limits of prudence.

Mr. President: We are engaged in a review of the Judicial System. The evidence that it is defective, is to be found in the repeated attempts which have been made to modify it. It was formed in the infancy of this Government, and is inadequate to the exigencies of its present condition. There are, moreover, essential defects in the system, which have existed from the commencement, and now that we are called to its revisal, we ought to perform the work thoroughly. Frequent alterations of a Judicial System are to be avoided; and there is, besides, at all times, much difficulty in reconciling conflicting opinions, even in relation to such as are indispensable. These reflections inculcate the propriety of making the remedy which we shall now adopt, co-extensive with the evils which exist. They admonish us not to content ourselves with partial and temporary expedients; but, enlarging our views, to endeavor to devise a system which

shall be permanent in its character, and adequate to the actual and prospective condition of these States.

There are certain considerations which ought to be excluded from this discussion: We ought not to be deterred from the adoption of any system, because it may tend to an increased *expense*. The most efficient administration of justice, is ultimately the most economical; but that which I propose to submit to the Senate, is free even from this objection. I would exclude, also, the consideration of the increase of *Executive patronage*. It is certainly desirable to avoid all temptations to the indulgence of this besetting sin of our Government; but the tenure of the Judicial office diminishes the danger from this source, and the importance of the object to be attained, the intelligent and impartial administration of the public justice, would authorize us, if it were necessary, to extend the patronage of the Executive for its accomplishment. That, however, against which it behoves us more especially to guard, is the prejudice which has been excited against particular systems, from circumstances wholly extrinsic, having no necessary or legitimate connection with them. In times of high political excitement, a particular system was got up—in a season not less agitated it was put down. There is reason to apprehend that the feelings of that moment yet survive, in the prejudices which now exist on this subject.

It is the object of a Judicial System to secure a prompt, intelligent, and upright administration of justice. The rule prescribed by the Legislature, should be interpreted under the guidance of wisdom. Promptitude and impartiality should mark its application. In examining any system, with a view to ascertain if these requisites have been attained by it, we should begin with the scrutiny of the Courts of original jurisdiction. If these are properly constituted, a great and primary object is attained. So far as it can be effected by any merely human institution, the *commission of error* is avoided. If this be overlooked, its structure must be imperfect. Whatever perfection may be given to other parts of the system, considered as a whole, it must necessarily be defective; and it must be so in its first and most essential principle. The utmost imaginable aptitude which can be given to the appellate tribunal, serves only to facilitate the *correction of error*. A proneness to *its commission*, is the inevitable consequence of the defective organization of the Courts of original jurisdiction.

With these prefatory remarks, I ask the attention of the Senate to the following propositions. The existing Judicial system is radically defective, in the organization of the Courts of original jurisdiction.

The bill under consideration does not remedy those defects. On the contrary, its tendency is to increase and to perpetuate them.

We have a sufficient number of Judges now in Commission, to arrange a system which shall be perfectly uniform, adequate to all the wants of the Union, and free from the evils, which have been deprecated in this discussion.

For all the purposes of the present inquiry, we may confine our view to the Circuit Court of the United States. It is the great Court of original jurisdiction in the Federal system. It exercises jurisdiction both civil and criminal, in equity, in admiralty, and at common law, and is the grand officina brevium, in which are originated, or through which must pass those cases, which are ultimately decided in the appellate tribunal. Thus important in the functions assigned to it, it exhibits this singular anomaly: It is a Court, *without a Judge*. In our earliest prelections in legal science, we are taught to consider the actor, reus et judex, as essential to constitute a Court. Here is a tribunal required to perform important Judicial functions, which has no Judges of its own. It is singularly compounded from the Court *above*, and the Court *below*; borrowing from the former, the agent of its *appellate*, from *both*, those of its *original* jurisdiction; and thus constituted, it is a legal entity, existing substantively, and practically, during the terms prescribed for its session, but only in contemplation of law, eo instanti, that they determine.

This, however, is a technical view of the subject. To determine the practical efficiency of these tribunals, the Circuit Courts of the United States, let us look to the materials of which they are composed. You have twenty-seven District Judges at a gross compensation of thirty-eight thousand dollars, and seven Judges of the Supreme Court who receive an annual salary of thirty-two thousand dollars. If the bill under consideration passes, you will have ten Judges of the Supreme Court, whose aggregate compensation will amount to forty-five thousand five hundred dollars, and who will be associated in constituting the Circuit Courts, with twenty-seven District Judges remunerated as before stated. Now, without meaning to assert that the salaries of the former are too high, or intending to offer the slightest disrespect to the latter; without suggesting the affronting proposition, that the capacity of a Judge is to be measured by the amount of his compensation, it is obvious to inquire, if means so unequal, produce like results? As a general question, can professional men of equal talents and legal acquirements, with the Judges of the Supreme Court, be induced to accept the offices of District Judges?

The compensation allowed to a Judge of the Supreme Court, the theatre on which he acts, the importance of the questions which he is called to decide, the dignity of the office, by which he becomes a member of the highest appellate tribunal in the Union; all these considerations combine to make that office an object of desire, to some of the most distinguished members of the legal profession. What are the inducements which you present to the acceptance of the appointment of a District Judge? The incumbent of that office, with a salary varying from eight to sixteen hundred dollars, finds himself in the most subordinate station of the Federal Judiciary. With a pittance too scanty for his support, his residence is in the basement story of the Judicial edifice. He is occasionally, indeed, gratified with a view of the upper apartments, and, for some short moments, encounters, on terms of *equality of power*, the dignitaries of his order. The Bishop and the Curate, sir, meet twice a year. The results of his professional skill, however necessary to the support of himself and his family, are limited to the compensation which you give him. He cannot, of course, practise in the Courts of the United States, and you have taken care, by express statute, to exclude him from the State tribunals. Consider for a moment the extensive and various jurisdiction of the Circuit Court, and say what is it that you require in the individual who presides on terms of equality of power, with his associate of the Supreme Court, in that important tribunal? One profoundly versed in the whole range of legal science, familiar with points of daily occurrence in trials at nisi prius, and capable of bringing to the decision of questions at bar, the fruits of an enlightened experience in all the various departments of the profession. And where are such men to be found? In the busiest walks of professional life; among those, and for the most part among those only, who are in the actual enjoyment of the highest honors and emoluments of private practice. What are the inducements which you offer to such men to accept the office of a District Judge, with the privilege of ascending the bench of the Circuit Court ex officio? Certainly, it is not the salary—is it the dignity of the office? Sir, our notions of dignity are relative, and the incumbent of this office, in the occasional exercise of the high powers which are confided to him, finds himself always in the presence of a superior. Can it be the hope of promotion? and how often in the thirty-seven

years of your Judicial history, do you find it recorded that a District Judge has been advanced to a more elevated station? You cannot hope by such inducements to call individuals from the higher walks of private practice. From whom then must you select? From gentlemen in easy circumstances, unwilling to encounter the labors of an active professional life. From gentlemen in advanced age, seeking relief from labor for that cause. From those to whom in private practice, an entrance into the innermost temple has been denied. Sir, the consequence is obvious; but I will not press these suggestions, lest I should unintentionally inflict a wound where I have no desire to do so. I prefer to submit the argument in this imperfect form, rather than to encounter the hazard of doing violence to individual feeling. It is most obvious, however, that you cannot give efficiency to the Circuit Courts, by selections thus restricted.

Do you look for the efficiency of this tribunal to the Judge of the Supreme Court, and why not then to him alone? Consider the constitution of the Circuit Court under the present system. Look to the theory; examine it practically. You have two Judges, each of equal authority, without regard to qualification, exercising an equal control over the other. If the practice correspond with the theory, if that equal control is in fact exercised, is not the tendency to error inevitable? Is not the efficiency of the one, necessarily diminished by the comparative inefficiency of the other? If this is not so—if the deference which mental superiority, more than any other, extorts even from the unwilling mind, avert the evil, if this equal control is not in fact exercised, is not the theory delusive? I repeat the inquiry then—if you look for the efficiency of the Circuit Court to the Judge of the Supreme Court, why not to him alone? In such an event, his exertions would correspond with his responsibility. Now he considers, and very naturally considers, the Supreme Court as his proper theatre, his appropriate sphere, and the other duties which are imposed on him as necessarily subordinate. Having an associate to divide them, it is natural that much of that duty should be thrown upon him. Thus, while in the theory of your system, the business of your Circuit Court is transacted by two Judges, in practice, it is for the most part devolved on the District Judge alone. I pretend not to assert the fact. It is not my purpose to give evidence on this occasion, but simply to speak of the result to which the system inevitably tends. In concluding this branch of the inquiry, I ask, with confidence, what professional man who hears me, will assert that a Court thus constituted, can be efficient for the purposes of its institution—can be adequate to the discharge of its duties, as the principal Court of original jurisdiction in a system so comprehensive as is the Judicial system of this Union?

But it is not only in the organization of the Courts of original jurisdiction, that this system is palpably defective. The *appellate tribunal* is also oppressed with a mass of business, which it finds itself unable to dispose of, without neglecting those other duties which are required from the individual members who compose it. I do not enter into the details on this subject; they are already before the Senate. In general terms, however, it may be stated, that the Supreme Court cannot dispose of one third of the cases on its docket. Every session exhibits a number of suitors, and of counsellors attending at great expense from distant parts of the Union, and watching its progress with intense solicitude, who are dismissed at its close, to look forward with hope for another year. It is so generally admitted, as to have passed into a maxim, that the delay of justice is often equivalent to a denial of it. It is emphatically so here. The delay, and consequently increased expense, incident to the prosecution of an appeal or writ of error in the Supreme Court, have induced many suitors to submit to erroneous judgments in the Courts below. But if those Courts be so constituted as to be prone to error, and it seems to me, that this is not to be doubted, the obligation to facilitate their correction, by giving efficiency to the appellate tribunal, becomes doubly imperative. The unfortunate suitor who flies to it for protection, from the wrath which *has* come; who is the victim of an erroneous judgment in the Court below; who has been tantalized with a pro forma decree, or a disagreement by consent, on some merely collateral question, ought to be promptly heard. But your system forbids it. The mass of duties which you have imposed on the Judges of the Supreme Court individually, subjects them to the hard necessity of administering tardy justice in the appellate tribunal.

If the system be thus defective in the organization of its Courts of original jurisdiction, and in the regulation of that which decides in the last resort, what is the remedy which the bill under consideration will furnish? Sir, by the aid of its associate, the bill to alter the time of holding the Supreme Court, it will cause that Court to meet one month earlier, and will add three Judges to its bench. This is the remedy, the whole remedy, prescribed by the legal doctors in both houses of Congress, for the grievances under which we labor. Overlooking the defective organization of the Courts of original jurisdiction, the project is to increase the number of Judges of the Supreme Court, and through them to extend this miserable system throughout the Union; to rivet it upon us; to leave the Courts of original jurisdiction in all their feebleness, and to render cumbrous and unwieldy the appellate tribunal. Why shall we do this? Is it the best system we can devise? Gentlemen do not pretend to assert this—they agree that it is defective. In all the discussions on this subject, both here and in the committee, this concession has been uniformly made. What then is its recommendation? It is, say its advocates, the best system on which you can concentrate a majority of voices. Sir, the assumption is gratuitous—it is worse. It creates that very state of things, the existence of which it assumes. Let the Senators from the Western States, whose strength has been strikingly manifested in the progress of this bill, unite with us in correcting the errors of the system, and it is done.

We are prone to mistake on this subject, by looking rather to what has been, than to what may be done—by instituting a feeble comparison between the project now proposed, and those which have been heretofore presented, rather than by grappling with the subject in our own mental strength. Two systems have heretofore engaged the public attention—that which this bill proposes, and the Circuit Court System, as it is denominated; that by which the Judges of the Supreme Court are relieved from circuit duties, and District Judges appointed to perform them. The error consists in confining the attention to these two systems, in supposing that truth is attained by determining their comparative merits. I say, distinctly, the fact is not so, and this mode of discussing the question has not seemed to me to present the subject fairly to the consideration of the Senate. If all the objections against the system of separate Circuit Judges were admitted, still, the inefficiency of this bill, nay, its mischievous character, would not be diminished.

Let us, however, for a moment, consider the objections to the separation of the Judges of the Supreme Court from the Circuits, which constitute, in the view of the advocates of this bill, so strong an inducement to its adoption, still adhering to the error that our choice of measures lies between these two systems. We are told that the Judges of the Supreme Court, if relieved from their circuit duties, will reside at Washington; that the air of the metropolis is corrupting; that the Judges will no longer enjoy the confidence of the People, which is derived from a free intercourse with them, that they will become

political agents of the Government, will be deficient in a knowledge of the local laws of the respective States, and will lose that legal acumen which is only to be acquired and retained by presiding in trials at nisi prius. Now it is not necessary to sustain the views which I am disposed to present to the Senate, that these arguments should be repelled. But they are, for the most part, professional; and, as I cannot persuade myself to believe, whatever may be the fate of this bill now, that the system which it proposes to establish can endure, it will not be improper to touch them briefly.

Sir, I have not myself been sensible of any peculiarly corrupting influence in the air of Washington. I do not believe that the integrity of a judge would be sacrificed by a residence here, and it does not seem to me that the confidence which that department of the Government justly enjoys, is to be ascribed to the semi-annual visits of its members to the People of their respective circuits. On the contrary, I believe it is derived from their personal integrity, from the intelligence and fidelity with which they have discharged their duties, and from the general correctness which has marked their decisions. But if these views are erroneous; if the arguments of the advocates of the bill be correct in its fullest extent, and the atmosphere of the metropolis is indeed so corrupt that he who breathes it must be polluted, would all this be decisive against relieving the Judges of the Supreme Court from presiding in the circuits? Sir, there is a short and conclusive answer to the objection. Inhibit them, by law, from residing here—let them be selected in different portions of the Union, and required to reside there. You propose to do this now, while you allot them to circuits. What will hinder you from doing it, when they shall be discharged from those duties? One motive to such a requisition will indeed have been removed. But, if even a small part of the evils which you apprehend from their residence in Washington could be reasonably anticipated, enough will remain to justify its enforcement. The objection then wants a foundation in fact. It is not a necessary consequence of discharging the Judges of the Supreme Court from circuit duties that they should reside here, and we are relieved from the necessity of discussing the consequences of the act, because you can, by statutory enactment, prevent its occurrence.

But if they do not attend the different Courts of the circuits, it is said they will be deficient in a knowledge of the local laws of the respective States, and therefore unqualified to decide them. The argument on this subject goes very far beyond the purpose for which it was urged. If it proves any thing, it proves that there should be no appeal from the Circuit to the Supreme Court, as those tribunals will be constituted under this bill, in cases involving questions under the local laws of the respective States. This is its tenor. The Judges of the Supreme Court, say our opponents, can acquire an accurate knowledge of the local laws of the several States, only by going down into the circuits, attending the trial of causes at nisi prius, and hearing the local statutes expounded by counsel who have been trained to their exposition. This is what is denominated a Circuit Court education, and thus instructed, each Judge of the Supreme Court acquires a knowledge of the laws of the States in which he holds the Circuit Courts, which is not possessed by any of his associates, while, according to the argument, he is himself ignorant of those of the other States. What follows? In relation to questions arising out of the local laws of the States, unquestionably this: that the Court which is best qualified to decide, is subordinate to that which is least so. Two Judges, who, having had the benefit of a Circuit Court education, are therefore familiar with the local laws, decide a question concerning them, and their decision is to be submitted to the revision of ten Judges of the Supreme Court, nine of whom, according to the argument, are ignorant of the subject; the only one acquainted with it, being that Judge whose decision is appealed from. Unless, then, they are guided by the information which they receive from the Judge whose errors they are to correct, the whole benefit of the Circuit Court education is lost to the bench. If they are guided by this information, whence the necessity of an appeal? The Judicial System of the United States, as at present constituted, is not, therefore, founded on the notion of the knowledge of the State laws to be acquired by the Judges of the Supreme Court, from attendance at the circuits, and that consideration furnishes consequently no argument in favor of its extension. If you would give to suitors the benefit of this Circuit Court education, the decision of the Judges who have received it, ought to be final. You take it from them when you subject that decision to the control of nine Judges who have not been educated in the particular circuit in which it is made.

Nor am I disposed to attach as much importance as has been given, by the advocates of this bill, to the consideration, that the legal acumen of the Judge is increased by presiding in trials at nisi prius. The decisions pronounced there, are necessarily hurried, and consequently more likely to be erroneous than those which are delivered in bank. Yet the pride of opinion is enlisted in their support, and this has an unfavorable effect upon the mind, by circumscribing its views. I do not think a profound lawyer was ever made so by presiding in trials at nisi prius. Its tendency is to give quickness and sharpness to the intellect, but not to discipline and expand the mind. Especially, I do not think it is a school most favorable to the education of a constitutional lawyer; and it is for the able discharge of the high duties which are entrusted to the Judges of the Supreme Court, as the interpreters of our fundamental charter, that I am most anxious to provide.

Certainly, sir, there are objections to the separation of the Judges from the circuits, as there are to allowing the Judge who presides in the Circuit Court to take his seat in the appellate tribunal; but it is not now necessary to consider them. For the purposes of this argument, let the former be admitted in their fullest extent. Say, with the advocates of this bill, that constant employment is necessary to qualify a Judge for the discharge of his duties; that besides the viginti annorum lucubrationes which he should bring to the bench, his mind should be kept in active exercise by presiding in trials at nisi prius; that it is not enough for him to devote himself to the studies of his closet, but that he should mingle in the crowd, and gather instruction from the living world; and that a knowledge of the laws of the several States is indispensable, and can only be obtained by presiding in the Courts of original jurisdiction. Sir, I can assent to all this; nay, in the very spirit of the objection, I can admit, that, to attain judicial excellence, the active and intelligent discharge of judicial duties should, humanly speaking, constitute the main business of a judge's life; and yet, I am equally distant from the conclusion to which it is their purpose to conduct me. The effects of the existing system are still presented in bold relief to my view, and the propriety and necessity of establishing this judicial decemvirate remain to be demonstrated.

I have already stated why I cannot approve the present organization of the Courts of original jurisdiction which it is the object of this bill to extend and to confirm. I will proceed to consider its effect on the appellate tribunal. The creation of this judicial assembly on the bench of the Supreme Court, is the distinguishing characteristic of the measure now under consideration. It is an alarming project, whether you look to its obvious consequences, or pause to consider the doctrines which have been advanced in this discussion. The evils of the existing system may be tolerated while we have an efficient appellate tribunal to correct the errors of the Courts

of original jurisdiction; but, if this system is to be extended and rivetted upon us, while at the same time the efficiency of that high tribunal is impaired, our situation will be deplorable indeed, and we shall lament in bitterness what we have enacted in folly.

In the view which I take of this subject, this multiplication of Judges of the Supreme Court will diminish their individual responsibility—will give us less of the united action of the whole bench. It will impede the business of the Court—will lessen the authority of the decisions of a divided bench, by exhibiting a numerous minority, and will have a tendency to excite feeling where judgment alone should prevail.

It will give to the tribunal, especially in the extension of its numbers, to which the principle will conduct us, the air of a popular assembly. The notion of a representative character will come to be attached to it, and the distinguishing property of representation, the periodical accountability of the representative to his constituents, will naturally follow. With the indulgence of the Senate I will briefly review these ideas.

In proportion as agents are multiplied, individual responsibility is diminished. Look to the Executive Department: a single individual is entrusted by the Constitution with the sole power of performing certain high functions, and is alone responsible to you for the manner in which they are performed. Change the organization of that department, by instituting a decemvirate, an executive council of ten, and say if each individual decemvir will feel the same responsibility as if the whole executive power were committed to himself alone. Would that responsibility be in fact the same? Would it be equally susceptible of practical enforcement?

Will it be said that the notion of executive responsibility, even where the power is lodged in a single individual, is more theoretical than practical? that it depends mainly on the tenure of office, and that even this check is rendered inoperative by force of executive patronage? Without stopping to examine these suggestions, I answer they do not touch the point of analogy. The tenure of judicial office is during good behaviour. The Judge is responsible to you only by the process of impeachment. He has no patronage, by the use of which to protect his conduct from scrutiny. Thus situated, would not a single individual, who was the sole depository of judicial power, feel more responsibility, and be, in fact, more responsible to you, than the members of a judicial decemvirate? I anticipate the suggestion, that the argument pushed to its conclusion, would prove the necessity of confining ourselves to a single Judge; and such would be the fact, if responsibility alone were consulted in the structure of a judicial system; but other considerations determine and limit the extent of its operation. Integrity, intelligence, a capacity for the despatch of business; these, combined with responsibility, must have their appropriate influence in arranging a judicial system. So far as these considerations require you to go beyond the unit, you must multiply Judges, even at the expense of diminishing responsibility. When they cease to operate, the motive for the multiplication ceases also, and the inhibition becomes imperative.

We shall not only have less individual responsibility, we shall have less also of the united action of the bench. In all numerous bodies labor is subdivided, and so it will be here. The business of the Court will come to be done by committees, whose reports will not be subjected to that severity of scrutiny which each individual would exercise in examining the subject originally, and for himself. A committee of the bench will be appointed to investigate a cause, and a sub-committee to prepare the opinion. Upon the supposition that the individual Judge so thus performs, in effect, the labor of the whole, discharges that duty with intelligence and fidelity, he will, in all probability, be the only member of the bench, who will be thoroughly conversant with the facts and principles of the cause. Let us look to ourselves to determine on this subject. In the numerous private claims which are annually decided in this body, how many members besides those on the committees, to which they are referred, are sufficiently acquainted with their circumstances to determine them intelligently?

If this is not so, the multiplication of the Judges will inevitably impede the business of the Court, if each individual Judge, without relying on his associates, is to examine every case for himself, to collect the facts by a personal inspection of a voluminous record, and to look into the authorities for the purpose of forming his separate judgment. If thus prepared they are to assemble in council, to reconcile, in free conference, the discordant opinions which they may have formed, you have only to consider in a complicated case, presenting a variety of points, how much time must be consumed in the effort to assimilate the various views which may have been taken of them.

Sir, when we look to the magnitude of the questions presented to the determination of this tribunal; when we consider how important it is to the preservation of the political harmony of this Union, and remember that it is necessary, not only that it should deserve, but that it should possess the confidence of the American people, it is a fearful reflection that the multiplication of the Judges may lessen the authority of the decision of a divided bench, by exhibiting a numerous minority. According to the provisions of this bill, questions of vital importance, deeply agitating the sovereign members of this confederacy, may be finally decided by that tribunal, four Judges dissenting. What if the dissentients should possess more of the public confidence, and equalling their associates in integrity, should be manifestly superior to them in talents; would no dissatisfaction ensue? Would it not have a tendency to bring the tribunal itself into disrepute?

It seems to me, also, that this increase will tend to produce feeling, where judgment alone should operate. I believe it to be true, that men, acting in numbers, are prone to yield to the impulses of feeling, rather than to the dictates of judgment. A single Judge, conducting himself capriciously, under the influence of excited feeling, exposes himself to public animadversion. The caprices, nay, the passions, of a numerous bench, may operate in conclave, while the result may be dispassionately, and even coldly, announced to the public.

What I most fear is, that this multiplication of Judges will take from this high tribunal its judicial character—will, in the event, strip it of its independence, by destroying the permanency of official tenure, giving in its stead a crowd of Judges, periodically appointed by the Executive, yielding obedience to its mandates, and furnishing the color of legal authority to its encroachments. I know it to be the favorite opinion of some of the politicians of the present day, that the Judges of the Supreme Court, like other public functionaries, should hold their offices for a term, and be periodically accountable to their constituents. Any direct attempt to advance this doctrine against the opposite and settled conviction of the public mind, would be harmless. But if you can introduce the idea of representation, under the suggestion that the different parts of this Union ought to contribute their respective proportions of legal information in that tribunal, especially if you can fix the principle upon us by extending it to meet the growing exigencies of the country, you will give to this Court the air and the character of a popular assembly. We shall cease to look to it with the reverence which we have been accustomed to yield to the selected few who have hitherto composed it. We shall familiarize ourselves to consider it in connection with the notions of representatives and constituents,

and the distinguishing property of representation, the periodical accountability of the representative to his constituents, will naturally follow.

Such are my objections to the increase of the number of Judges of the Supreme Court. I attach to them a greater value, perhaps, because I have been accustomed to look to the preservation of that tribunal in its efficiency and vigor, as of infinite importance to this Union. By those who are fearless of future collisions between the Federal and State authorities, or who are not willing that such controversies should be referred to this arbitrament, these suggestions will be disregarded. But what is their reliance? The Federal Government is already too strong for the States. In the gradual development of its powers it must become stronger. This tribunal alone has the power to stay its march. If it fails, we are without other hope than that which may be found in the physical vigor of the people of the States.

I cannot, then, assent to the bill under consideration. It leaves unredressed the evils of the present system: nay, it extends and perpetuates them, while it diminishes the efficiency of the appellate tribunal. To the grievances of the West I am willing to apply a remedy, but not this remedy. They require that justice shall be administered uniformly throughout the United States, and I am disposed to yield what they require.

If we were free from the embarrassment which arises from having a number of Judges in commission, who are not available for all the purposes of the proposed plan, it would be easy to arrange the Courts of original jurisdiction on the principle of uniformity, and to render them at once efficient by the creation of Circuit Judges, in whom should also be invested the powers now exercised by the Judges of the District Court. Confining our attention at present to these Courts, it is most obvious that the original selection of Judges, with a view to their performance of these various and important duties, and compensating them liberally, so as to call from the profession its most distinguished members, would give to these tribunals an efficiency, which it is in vain to expect from an association of the Judges of the District and Supreme Courts according to the present system: but we have twenty-seven District Judges already in commission. The present incumbents have, in many instances, claims on the Government arising from long and honest service, in all, those which belong to good faith. Whatever, therefore, may be the powers of Congress in this respect, they ought to be exercised with a just regard to those claims. What it is desirable to effect is, to secure Judges of the Circuit Courts who shall be competent to the discharge of all its various and important duties, without the aid of the Justices of the Supreme Court, which last should be no farther connected with the circuits, than may be necessary to the exercise within their limits of appellate powers in minor cases, and, perhaps, temporarily of original jurisdiction. These objects, it is believed, may be accomplished by the plan which I will proceed now to state and to explain.

Let the United States be divided into seven Circuits, to each of which shall be assigned a Judge of the Supreme Court, who shall be required to reside therein: this requisition of residence to be prospective, and not to operate as to the present incumbents, who should be left to the provisions of existing laws. Give to the District Judges associated in the manner hereafter mentioned, the original jurisdiction now exercised by the Circuit Courts; let the District Judges of three or more contiguous States hold two terms of this Court in each State in every year; let them separately exercise their present powers as District Judges; compensate them liberally; but provide, if you please, that the increased compensation shall not take effect until after a vacancy; let a Judge of the Supreme Court hold one term in every year, in each State, in his Circuit, exercising the same original jurisdiction as the Circuit Court does at present, and, under certain restrictions, jurisdiction in error and appeal. In all cases beyond a specified amount, let the appeal or writ of error from the Courts held by the District Judges, whether separately or associated, be direct to the Supreme Court; in cases below that amount, to the Court held in the Circuit by the Judge of the Supreme Court, whose decision, if concurrent with that of the Court of original jurisdiction, shall be final; inhibit each Judge of the Supreme Court from sitting in appeals or writs of error brought up to that Court, from the Circuit in which he presides.

In the operation of such a system, the great desiderata of the advocates of this bill will be attained; the Judges of the Supreme Court will be kept in constant employment; they will reside in their Circuits, will mingle with the People; and, by presiding in Courts held in those Circuits, will have all the facilities for acquiring a knowledge of the local laws of the different States, the value of which has been so highly estimated in the course of this discussion; they will, moreover, not be inconvenient in number; the exclusion of the Judge presiding in the Circuit, from sitting on the appeal, besides, that it is proper in itself, and is recommended by the practice of other nations, will also be productive of this further benefit. By such an arrangement, a full Bench will consist of six: a number more appropriate than any other for an appellate tribunal, as probably combining the requisite legal intelligence, without being too numerous for the despatch of business, and what is particularly important in such a tribunal, especially when called to the decision of great questions of constitutional law, requiring a majority of two to one, for the reversal of the judgments of the Courts below: such an arrangement will also allow ample time to the Judges of the Supreme Court for their appellate duties. Those which they are required to discharge in their respective circuits, will be performed consecutively at one season of the year, and will not interfere with the sitting of the Supreme Court. It will take much less time for a Judge of that Court, to hold a term once a year in three, four, or even five States, in immediate succession, than to perform the Circuit duties required from him under the present system.

In the operation of the proposed plan, justice will be administered in the Courts of original jurisdiction, by Judges familiar with the State laws, known to the People of the States in which they preside, and enjoying their confidence. If it be objected that the present District Judges are not adequate to the discharge of those duties, my first answer is, that such a suggestion comes with an ill grace from the advocates of this bill, who require from these Judges the performance of the same duties. But another and more decisive answer presents itself: The objection, admitting it to be well founded, can only be temporary. When the office of the District Judge shall have acquired the importance which will be given to it in the plan which I have proposed, and an adequate salary shall have been annexed to it, it will become an object of desire to professional men qualified for the discharge of its various and important duties. From among the persons trained on a Bench thus constituted, most of those who would hereafter be called to preside in the appellate tribunal, would, I have no doubt, be selected.

Meantime the evil, which, with such singular mal-adroitness, is suggested by the advocates of this bill, will be avoided by the original jurisdiction exercised in the several Circuits, by a Judge of the Supreme Court; who, although he will hold but one term in each year, will proceed with sufficient despatch, since the issues can be previously made up at rules.

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years of your Judicial history, do you find it recorded that a District Judge has been advanced to a more elevated station? You cannot hope by such inducements to call individuals from the higher walks of private practice. From whom then must you select? From gentlemen in easy circumstances, unwilling to encounter the labors of an active professional life. From gentlemen in advanced age, seeking relief from labor for that cause. From those to whom in private practice, an entrance into the innermost temple has been denied. Sir, the consequence is obvious; but I will not press these suggestions, lest I should unintentionally inflict a wound where I have no desire to do so. I prefer to submit the argument in this imperfect form, rather than to encounter the hazard of doing violence to individual feeling. It is most obvious, however, that you cannot give efficiency to the Circuit Courts, by selections thus restricted.

Do you look for the efficiency of this tribunal to the Judge of the Supreme Court, and why not then to him alone? Consider the constitution of the Circuit Court under the present system. Look to the theory; examine it practically. You have two Judges, each of equal authority, without regard to qualification, exercising an equal control over the other. If the practice correspond with the theory, if that equal control is in fact exercised, is not the tendency to error inevitable? Is not the efficiency of the one, necessarily diminished by the comparative inefficiency of the other? If this is not so—if the deference which mental superiority, more than any other, extorts even from the unwilling mind, avert the evil, if this equal control is not in fact exercised, is not the theory delusive? I repeat the inquiry then—if you look for the efficiency of the Circuit Court to the Judge of the Supreme Court, why not to him alone? In such an event, his exertions would correspond with his responsibility. Now he considers, and very naturally considers, the Supreme Court as his proper theatre, his appropriate sphere, and the other duties which are imposed on him as necessarily subordinate. Having an associate to divide them, it is natural that much of that duty should be thrown upon him. Thus, while in the theory of your system, the business of your Circuit Court is transacted by two Judges, in practice, it is for the most part devolved on the District Judge alone. I pretend not to assert the fact. It is not my purpose to give evidence on this occasion, but simply to speak of the result to which the system inevitably tends. In concluding this branch of the inquiry, I ask, with confidence, what professional man who hears me, will assert that a Court thus constituted, can be efficient for the purposes of its institution—can be adequate to the discharge of its duties, as the principal Court of original jurisdiction in a system so comprehensive as is the Judicial system of this Union?

But it is not only in the organization of the Courts of original jurisdiction, that this system is palpably defective. The *appellate tribunal* is also oppressed with a mass of business, which it finds itself unable to dispose of, without neglecting those other duties which are required from the individual members who compose it. I do not enter into the details on this subject; they are already before the Senate. In general terms, however, it may be stated, that the Supreme Court cannot dispose of one third of the cases on its docket. Every session exhibits a number of suitors, and of counsellors attending at great expense from distant parts of the Union, and watching its progress with intense solicitude, who are dismissed at its close, to look forward with hope for another year. It is so generally admitted, as to have passed into a maxim, that the delay of justice is often equivalent to a denial of it. It is emphatically so here. The delay, and consequently increased expense, incident to the prosecution of an appeal or writ of error in the Supreme Court, have induced many suitors to submit to erroneous judgments in the Courts below. But if those Courts be so constituted as to be prone to error, and it seems to me, that this is not to be doubted, the obligation to facilitate their correction, by giving efficiency to the appellate tribunal, becomes doubly imperative. The unfortunate suitor who flies to it for protection, from the wrath which *has* come; who is the victim of an erroneous judgment in the Court below; who has been tantalized with a pro forma decree, or a disagreement by consent, on some merely collateral question, ought to be promptly heard. But your system forbids it. The mass of duties which you have imposed on the Judges of the Supreme Court individually, subjects them to the hard necessity of administering tardy justice in the appellate tribunal.

If the system be thus defective in the organization of its Courts of original jurisdiction, and in the regulation of that which decides in the last resort, what is the remedy which the bill under consideration will furnish? Sir, by the aid of its associate, the bill to alter the time of holding the Supreme Court, it will cause that Court to meet one month earlier, and will add three Judges to its bench. This is the remedy, the whole remedy, prescribed by the legal doctors in both houses of Congress, for the grievances under which we labor. Overlooking the defective organization of the Courts of original jurisdiction, the project is to increase the number of Judges of the Supreme Court, and through them to extend this miserable system throughout the Union; to rivet it upon us; to leave the Courts of original jurisdiction in all their feebleness, and to render cumbrous and unwieldy the appellate tribunal. Why shall we do this? Is it the best system we can devise? Gentlemen do not pretend to assert this—they agree that it is defective. In all the discussions on this subject, both here and in the committee, this concession has been uniformly made. What then is its recommendation? It is, say its advocates, the best system on which you can concentrate a majority of voices. Sir, the assumption is gratuitous—it is worse. It creates that very state of things, the existence of which it assumes. Let the Senators from the Western States, whose strength has been strikingly manifested in the progress of this bill, unite with us in correcting the errors of the system, and it is done.

We are prone to mistake on this subject, by looking rather to what has been, than to what may be done—by instituting a feeble comparison between the project now proposed, and those which have been heretofore presented, rather than by grappling with the subject in our own mental strength. Two systems have heretofore engaged the public attention—that which this bill proposes, and the Circuit Court System, as it is denominated; that by which the Judges of the Supreme Court are relieved from circuit duties, and District Judges appointed to perform them. The error consists in confining the attention to these two systems, in supposing that truth is attained by determining their comparative merits. I say, distinctly, the fact is not so, and this mode of discussing the question has not seemed to me to present the subject fairly to the consideration of the Senate. If all the objections against the system of separate Circuit Judges were admitted, still, the inefficiency of this bill, nay, its mischievous character, would not be diminished.

Let us, however, for a moment, consider the objections to the separation of the Judges of the Supreme Court from the Circuits, which constitute, in the view of the advocates of this bill, so strong an inducement to its adoption, still adhering to the error that our choice of measures lies between these two systems. We are told that the Judges of the Supreme Court, if relieved from their circuit duties, will reside at Washington; that the air of the metropolis is corrupting; that the Judges will no longer enjoy the confidence of the People, which is derived from a free intercourse with them, that they will become

political agents of the Government, will be deficient in a knowledge of the local laws of the respective States, and will lose that legal acumen which is only to be acquired and retained by presiding in trials at nisi prius. Now it is not necessary to sustain the views which I am disposed to present to the Senate, that these arguments should be repelled. But they are, for the most part, professional; and, as I cannot persuade myself to believe, whatever may be the fate of this bill now, that the system which it proposes to establish can endure, it will not be improper to touch them briefly.

Sir, I have not myself been sensible of any peculiarly corrupting influence in the air of Washington. I do not believe that the integrity of a judge would be sacrificed by a residence here, and it does not seem to me that the confidence which that department of the Government justly enjoys, is to be ascribed to the semi-annual visits of its members to the People of their respective circuits. On the contrary, I believe it is derived from their personal integrity, from the intelligence and fidelity with which they have discharged their duties, and from the general correctness which has marked their decisions. But if these views are erroneous; if the arguments of the advocates of the bill be correct in its fullest extent, and the atmosphere of the metropolis is indeed so corrupt that he who breathes it must be polluted, would all this be decisive against relieving the Judges of the Supreme Court from presiding in the circuits? Sir, there is a short and conclusive answer to the objection. Inhibit them, by law, from residing here—let them be selected in different portions of the Union, and required to reside there. You propose to do this now, while you allot them to circuits. What will hinder you from doing it, when they shall be discharged from those duties? One motive to such a requisition will indeed have been removed. But, if even a small part of the evils which you apprehend from their residence in Washington could be reasonably anticipated, enough will remain to justify its enforcement. The objection then wants a foundation in fact. It is not a necessary consequence of discharging the Judges of the Supreme Court from circuit duties that they should reside here, and we are relieved from the necessity of discussing the consequences of the act, because you can, by statutory enactment, prevent its occurrence.

But if they do not attend the different Courts of the circuits, it is said they will be deficient in a knowledge of the local laws of the respective States, and therefore unqualified to decide them. The argument on this subject goes very far beyond the purpose for which it was urged. If it proves any thing, it proves that there should be no appeal from the Circuit to the Supreme Court, as those tribunals will be constituted under this bill, in cases involving questions under the local laws of the respective States. This is its tenor. The Judges of the Supreme Court, say our opponents, can acquire an accurate knowledge of the local laws of the several States, only by going down into the circuits, attending the trial of causes at nisi prius, and hearing the local statutes expounded by counsel who have been trained to their exposition. This is what is denominated a Circuit Court education, and thus instructed, each Judge of the Supreme Court acquires a knowledge of the laws of the States in which he holds the Circuit Courts, which is not possessed by any of his associates, while, according to the argument, he is himself ignorant of those of the other States. What follows? In relation to questions arising out of the local laws of the States, unquestionably this: that the Court which is best qualified to decide, is subordinate to that which is least so. Two Judges, who, having had the benefit of a Circuit Court education, are therefore familiar with the local laws, decide a question concerning them, and their decision is to be submitted to the revision of ten Judges of the Supreme Court, nine of whom, according to the argument, are ignorant of the subject; the only one acquainted with it, being that Judge whose decision is appealed from. Unless, then, they are guided by the information which they receive from the Judge whose errors they are to correct, the whole benefit of the Circuit Court education is lost to the bench. If they are guided by this information, whence the necessity of an appeal? The Judicial System of the United States, as at present constituted, is not, therefore, founded on the notion of the knowledge of the State laws to be acquired by the Judges of the Supreme Court, from attendance at the circuits, and that consideration furnishes consequently no argument in favor of its extension. If you would give to suitors the benefit of this Circuit Court education, the decision of the Judges who have received it, ought to be final. You take it from them when you subject that decision to the control of nine Judges who have not been educated in the particular circuit in which it is made.

Nor am I disposed to attach as much importance as has been given, by the advocates of this bill, to the consideration, that the legal acumen of the Judge is increased by presiding in trials at nisi prius. The decisions pronounced there, are necessarily hurried, and consequently more likely to be erroneous than those which are delivered in bank. Yet the pride of opinion is enlisted in their support, and this has an unfavorable effect upon the mind, by circumscribing its views. I do not think a profound lawyer was ever made so by presiding in trials at nisi prius. Its tendency is to give quickness and sharpness to the intellect, but not to discipline and expand the mind. Especially, I do not think it is a school most favorable to the education of a constitutional lawyer; and it is for the able discharge of the high duties which are entrusted to the Judges of the Supreme Court, as the interpreters of our fundamental charter, that I am most anxious to provide.

Certainly, sir, there are objections to the separation of the Judges from the circuits, as there are to allowing the Judge who presides in the Circuit Court to take his seat in the appellate tribunal; but it is not now necessary to consider them. For the purposes of this argument, let the former be admitted in their fullest extent. Say, with the advocates of this bill, that constant employment is necessary to qualify a Judge for the discharge of his duties; that besides the viginti annorum lucubrationes which he should bring to the bench, his mind should be kept in active exercise by presiding in trials at nisi prius; that it is not enough for him to devote himself to the studies of his closet, but that he should mingle in the crowd, and gather instruction from the living world; and that a knowledge of the laws of the several States is indispensable, and can only be obtained by presiding in the Courts of original jurisdiction. Sir, I can assent to all this; nay, in the very spirit of the objection, I can admit, that, to attain judicial excellence, the active and intelligent discharge of judicial duties should, humanly speaking, constitute the main business of a judge's life; and yet, I am equally distant from the conclusion to which it is their purpose to conduct me. The effects of the existing system are still presented in bold relief to my view, and the propriety and necessity of establishing this judicial decemvirate remain to be demonstrated.

I have already stated why I cannot approve the present organization of the Courts of original jurisdiction which it is the object of this bill to extend and to confirm. I will proceed to consider its effect on the appellate tribunal. The creation of this judicial assembly on the bench of the Supreme Court, is the distinguishing characteristic of the measure now under consideration. It is an alarming project, whether you look to its obvious consequences, or pause to consider the doctrines which have been advanced in this discussion. The evils of the existing system may be tolerated while we have an efficient appellate tribunal to correct the errors of the Courts

of original jurisdiction; but, if this system is to be extended and rivetted upon us, while at the same time the efficiency of that high tribunal is impaired, our situation will be deplorable indeed, and we shall lament in bitterness what we have enacted in folly.

In the view which I take of this subject, this multiplication of Judges of the Supreme Court will diminish their individual responsibility—will give us less of the united action of the whole bench. It will impede the business of the Court—will lessen the authority of the decisions of a divided bench, by exhibiting a numerous minority, and will have a tendency to excite feeling where judgment alone should prevail.

It will give to the tribunal, especially in the extension of its numbers, to which the principle will conduct us, the air of a popular assembly. The notion of a representative character will come to be attached to it, and the distinguishing property of representation, the periodical accountability of the representative to his constituents, will naturally follow. With the indulgence of the Senate I will briefly review these ideas.

In proportion as agents are multiplied, individual responsibility is diminished. Look to the Executive Department: a single individual is entrusted by the Constitution with the sole power of performing certain high functions, and is alone responsible to you for the manner in which they are performed. Change the organization of that department, by instituting a decemvirate, an executive council of ten, and say if each individual decemvir will feel the same responsibility as if the whole executive power were committed to himself alone. Would that responsibility be in fact the same? Would it be equally susceptible of practical enforcement?

Will it be said that the notion of executive responsibility, even where the power is lodged in a single individual, is more theoretical than practical? that it depends mainly on the tenure of office, and that even this check is rendered inoperative by force of executive patronage? Without stopping to examine these suggestions, I answer they do not touch the point of analogy. The tenure of judicial office is during good behaviour. The Judge is responsible to you only by the process of impeachment. He has no patronage, by the use of which to protect his conduct from scrutiny. Thus situated, would not a single individual, who was the sole depository of judicial power, feel more responsibility, and be, in fact, more responsible to you, than the members of a judicial decemvirate? I anticipate the suggestion, that the argument pushed to its conclusion, would prove the necessity of confining ourselves to a single Judge; and such would be the fact, if responsibility alone were consulted in the structure of a judicial system; but other considerations determine and limit the extent of its operation. Integrity, intelligence, a capacity for the despatch of business; these, combined with responsibility, must have their appropriate influence in arranging a judicial system. So far as these considerations require you to go beyond the unit, you must multiply Judges, even at the expense of diminishing responsibility. When they cease to operate, the motive for the multiplication ceases also, and the inhibition becomes imperative.

We shall not only have less individual responsibility, we shall have less also of the united action of the bench. In all numerous bodies labor is subdivided, and so it will be here. The business of the Court will come to be done by committees, whose reports will not be subjected to that severity of scrutiny which each individual would exercise in examining the subject originally, and for himself. A committee of the bench will be appointed to investigate a cause, and a sub-committee to prepare the opinion. Upon the supposition that the individual Judge who thus performs, in effect, the labor of the whole, discharges that duty with intelligence and fidelity, he will, in all probability, be the only member of the bench, who will be thoroughly conversant with the facts and principles of the cause. Let us look to ourselves to determine on this subject. In the numerous private claims which are annually decided in this body, how many members besides those on the committees, to which they are referred, are sufficiently acquainted with their circumstances to determine them intelligently?

If this is not so, the multiplication of the Judges will inevitably impede the business of the Court, if each individual Judge, without relying on his associates, is to examine every case for himself, to collect the facts by a personal inspection of a voluminous record, and to look into the authorities for the purpose of forming his separate judgment. If thus prepared they are to assemble in council, to reconcile, in free conference, the discordant opinions which they may have formed, you have only to consider in a complicated case, presenting a variety of points, how much time must be consumed in the effort to assimilate the various views which may have been taken of them.

Sir, when we look to the magnitude of the questions presented to the determination of this tribunal; when we consider how important it is to the preservation of the political harmony of this Union, and remember that it is necessary, not only that it should deserve, but that it should possess the confidence of the American people, it is a fearful reflection that the multiplication of the Judges may lessen the authority of the decision of a divided bench, by exhibiting a numerous minority. According to the provisions of this bill, questions of vital importance, deeply agitating the sovereign members of this confederacy, may be finally decided by that tribunal, four Judges dissenting. What if the dissentients should possess more of the public confidence, and equalling their associates in integrity, should be manifestly superior to them in talents; would no dissatisfaction ensue? Would it not have a tendency to bring the tribunal itself into disrepute?

It seems to me, also, that this increase will tend to produce feeling, where judgment alone should operate. I believe it to be true, that men, acting in numbers, are prone to yield to the impulses of feeling, rather than to the dictates of judgment. A single Judge, conducting himself capriciously, under the influence of excited feeling, exposes himself to public animadversion. The caprices, nay, the passions, of a numerous bench, may operate in conclave, while the result may be dispassionately, and even coldly, announced to the public.

What I most fear is, that this multiplication of Judges will take from this high tribunal its judicial character—will, in the event, strip it of its independence, by destroying the permanency of official tenure, giving in its stead a crowd of Judges, periodically appointed by the Executive, yielding obedience to its mandates, and furnishing the color of legal authority to its encroachments. I know it to be the favorite opinion of some of the politicians of the present day, that the Judges of the Supreme Court, like other public functionaries, should hold their offices for a term, and be periodically accountable to their constituents. Any direct attempt to advance this doctrine against the opposite and settled conviction of the public mind, would be harmless. But if you can introduce the idea of representation, under the suggestion that the different parts of this Union ought to contribute their respective proportions of legal information in that tribunal, especially if you can fix the principle upon us by extending it to meet the growing exigencies of the country, you will give to this Court the air and the character of a popular assembly. We shall cease to look to it with the reverence which we have been accustomed to yield to the selected few who have hitherto composed it. We shall familiarize ourselves to consider it in connection with the notions of representatives and constituents,

and the distinguishing property of representation, the periodical accountability of the representative to his constituents, will naturally follow.

Such are my objections to the increase of the number of Judges of the Supreme Court. I attach to them a greater value, perhaps, because I have been accustomed to look to the preservation of that tribunal in its efficiency and vigor, as of infinite importance to this Union. By those who are fearless of future collisions between the Federal and State authorities, or who are not willing that such controversies should be referred to this arbitrament, these suggestions will be disregarded. But what is their reliance? The Federal Government is already too strong for the States. In the gradual development of its powers it must become stronger. This tribunal alone has the power to stay its march. If it fails, we are without other hope than that which may be found in the physical vigor of the people of the States.

I cannot, then, assent to the bill under consideration. It leaves unredressed the evils of the present system: nay, it extends and perpetuates them, while it diminishes the efficiency of the appellate tribunal. To the grievances of the West I am willing to apply a remedy, but not this remedy. They require that justice shall be administered uniformly throughout the United States, and I am disposed to yield what they require.

If we were free from the embarrassment which arises from having a number of Judges in commission, who are not available for all the purposes of the proposed plan, it would be easy to arrange the Courts of original jurisdiction on the principle of uniformity, and to render them at once efficient by the creation of Circuit Judges, in whom should also be invested the powers now exercised by the Judges of the District Court. Confining our attention at present to these Courts, it is most obvious that the original selection of Judges, with a view to their performance of these various and important duties, and compensating them liberally, so as to call from the profession its most distinguished members, would give to these tribunals an efficiency, which it is in vain to expect from an association of the Judges of the District and Supreme Courts according to the present system: but we have twenty-seven District Judges already in commission. The present incumbents have, in many instances, claims on the Government arising from long and honest service, in all, those which belong to good faith. Whatever, therefore, may be the powers of Congress in this respect, they ought to be exercised with a just regard to those claims. What it is desirable to effect is, to secure Judges of the Circuit Courts who shall be competent to the discharge of all its various and important duties, without the aid of the Justices of the Supreme Court, which last should be no farther connected with the circuits, than may be necessary to the exercise within their limits of appellate powers in minor cases, and, perhaps, temporarily of original jurisdiction. These objects, it is believed, may be accomplished by the plan which I will proceed now to state and to explain.

Let the United States be divided into seven Circuits, to each of which shall be assigned a Judge of the Supreme Court, who shall be required to reside therein: this requisition of residence to be prospective, and not to operate as to the present incumbents, who should be left to the provisions of existing laws. Give to the District Judges associated in the manner hereafter mentioned, the original jurisdiction now exercised by the Circuit Courts; let the District Judges of three or more contiguous States hold two terms of this Court in each State in every year; let them separately exercise their present powers as District Judges; compensate them liberally; but provide, if you please, that the increased compensation shall not take effect until after a vacancy; let a Judge of the Supreme Court hold one term in every year, in each State, in his Circuit, exercising the same original jurisdiction as the Circuit Court does at present, and, under certain restrictions, jurisdiction in error and appeal. In all cases beyond a specified amount, let the appeal or writ of error from the Courts held by the District Judges, whether separately or associated, be direct to the Supreme Court; in cases below that amount, to the Court held in the Circuit by the Judge of the Supreme Court, whose decision, if concurrent with that of the Court of original jurisdiction, shall be final; inhibit each Judge of the Supreme Court from sitting in appeals or writs of error brought up to that Court, from the Circuit in which he presides.

In the operation of such a system, the great desiderata of the advocates of this bill will be attained; the Judges of the Supreme Court will be kept in constant employment; they will reside in their Circuits, will mingle with the People; and, by presiding in Courts held in those Circuits, will have all the facilities for acquiring a knowledge of the local laws of the different States, the value of which has been so highly estimated in the course of this discussion; they will, moreover, not be inconvenient in number; the exclusion of the Judge presiding in the Circuit, from sitting on the appeal, besides, that it is proper in itself, and is recommended by the practice of other nations, will also be productive of this further benefit. By such an arrangement, a full Bench will consist of six: a number more appropriate than any other for an appellate tribunal, as probably combining the requisite legal intelligence, without being too numerous for the despatch of business, and what is particularly important in such a tribunal, especially when called to the decision of great questions of constitutional law, requiring a majority of two to one, for the reversal of the judgments of the Courts below: such an arrangement will also allow ample time to the Judges of the Supreme Court for their appellate duties. Those which they are required to discharge in their respective circuits, will be performed consecutively at one season of the year, and will not interfere with the sitting of the Supreme Court. It will take much less time for a Judge of that Court, to hold a term once a year in three, four, or even five States, in immediate succession, than to perform the Circuit duties required from him under the present system.

In the operation of the proposed plan, justice will be administered in the Courts of original jurisdiction, by Judges familiar with the State laws, known to the People of the States in which they preside, and enjoying their confidence. If it be objected that the present District Judges are not adequate to the discharge of those duties, my first answer is, that such a suggestion comes with an ill grace from the advocates of this bill, who require from these Judges the performance of the same duties. But another and more decisive answer presents itself: The objection, admitting it to be well founded, can only be temporary. When the office of the District Judge shall have acquired the importance which will be given to it in the plan which I have proposed, and an adequate salary shall have been annexed to it, it will become an object of desire to professional men qualified for the discharge of its various and important duties. From among the persons trained on a Bench thus constituted, most of those who would hereafter be called to preside in the appellate tribunal, would, I have no doubt, be selected.

Meantime the evil, which, with such singular mal-adroitness, is suggested by the advocates of this bill, will be avoided by the original jurisdiction exercised in the several Circuits, by a Judge of the Supreme Court; who, although he will hold but one term in each year, will proceed with sufficient despatch, since the issues can be previously made up at rules.

The proposed plan presents also this further advantage. The appellate jurisdiction, in minor cases, will be brought

home to the domicil of the suitor. In many instances, in which appeals and writs of error are allowed under the present system, the expense which is incident to them forbids their prosecution. A Judge of the Supreme Court, familiar with the doctrines and opinions of his associates, will go down to the Circuits, there to exercise appellate jurisdiction in such cases, and when, in process of time, the system proposed shall have had its operation in the selection of the District Judges, this will be the chief duty which he will have to perform, perhaps the only one which ought then to be required from him in the circuits. The confidence inspired by the local Courts of original jurisdiction constituted in the mode proposed, would render it unnecessary to provide any other tribunal for objects within the scope of their powers.

These are some of the considerations which have induced me to yield a cordial support to the motion of the Senator from New Hampshire, to re-commit this bill; as I have before said, I do not deceive myself concerning its fate. The spirit of concession is abroad—and we must give it way; the struggle seems to be, who shall be most forward in acknowledging its influence. A decisive majority of this House are impatient to give to this bill their creative fiat: let it be so, sir: I will no longer delay the consummation.

Mr. HOLMES then rose in reply to Mr. BERRIEN, and said, by this time the Senate began to appreciate the resolution offered by the gentleman from New Hampshire. That resolution was to re-commit this bill to the Judiciary Committee, with general instructions to ascertain if they cannot do *something*. We have heard, said Mr. H. several gentlemen on this subject who were opposed to the bill, and who were in favor of the re-commitment; and to what does it all amount? Neither of these gentlemen have proposed any plan in which they can themselves agree. It is a general reference for the committee to inquire if they cannot find some plan by which the duties of the Supreme Court can be performed without any increase of their number. When the question was before the Senate on a former occasion, the bill was objected to, and gentlemen proposed a substitute. One gentleman from Virginia, proposed to take from the Judges their circuit duties; this failed: another gentleman, from the same State, proposed three additional Circuit Judges, who should not be members of the Supreme Court; this also failed; and it was found that no better plan could be devised; and the question was, whether this bill should pass, or whether they should pass none. That should have been the course pursued on the present occasion: some gentlemen should have made a definite proposition by resolution, and having that before us, the Senate would have been able to have acted and decided on that plan. If the bill were again referred to the committee, which, of all the plans that have been proposed, could the committee take? I say that a majority of the committee would have taken neither of them. But, if you give the committee special instructions, they will execute your order: but till you give us those instructions, knowing what the opinions of the committee has been on the subject, why give us the trouble to decide a system? You know they must report the bill as it is.

Mr. WOODBURY said, by the resolution the committee were directed to report some plan which should not increase the numbers of the Judges; that certainly was specific.

Mr. HOLMES resumed. We are then to do something which it is impossible for us to do. We are to devise the ways and means when the committee are satisfied that nothing is to be done. You are not to increase the number of Judges, and with these you are to provide for the administration of justice in the best way you can! How, what way? We have seen none, and the gentleman from N. Hampshire proposes none. Does the gentleman call this specific instructions? One method, however, *is* proposed by the gentleman from Rhode Island. He says, deprive the Judges of the Supreme Court of their Circuit duties; and let them be a Court of final jurisdiction only; and he apprehends that we have all been mistaken, and that all the powers that have been given to the Judges of the Supreme Court to perform Circuit duties, have been given contrary to the letter of the Constitution. If indeed the Judges have, ever since the adoption of the Constitution, been exercising circuit powers contrary to its provisions, it is a little alarming. In the case of every criminal that has been hanged the Judges have committed murder; every thing that has been done by them is illegal, for the Judges have been deciding without legal authority. It does not appear to me, sir, that we are quite in such a dangerous situation. The framers of the Constitution themselves, established our first judiciary, and we have now for the first time been told, that we have no authority to assign to the Supreme Court circuit duties. It will not be necessary to answer all the objections made by the gentleman from Georgia, as many of them were made in reply to other gentlemen. Mr. H. was proceeding to animadvert on the alleged dangers from Federal usurpation; when

Mr. BERRIEN said, whatsoever opinion he might entertain on the subject he had expressed none; the assertion simply was that the uniform tendency of these decisions had been to strengthen the Federal Government; the operation of time itself was to strengthen the Federal Government. As to the question whether these decisions were correct or otherwise, he had not expressed any opinion.

Mr. HOLMES resumed: It has been said that the increase of the number of Judges on the bench of the Supreme Court will have a tendency to introduce feeling into that Court. I should think it a blessing instead of an evil; and though an increase of number may, in some measure, diminish their responsibility, it goes to the preservation of those very local rights which we are afraid will be prostrated. By having Judges from the small States, you will have the small States represented in a point where it is all important they should be represented. We legislate, and we may transcend the bounds of the Constitution. The judicial power legislates, because they expound, and they may transcend the powers of the Constitution, as in the very case where they were established as umpires between sovereign States. I do not think it is quite so important whether a Judge comes from a small State, from the East, the West, the North, or the South; the interests of the small States, as it regards the large, are all alike. In increasing the Judges of the Supreme Court, you must select some from the small States, provided you take care to associate the small States to compose a circuit.

The gentleman from Georgia, has given the present system the name of a miserable system. He says it is radically defective; and one reason for that assertion is, that there is an inequality in the Judges of the Supreme Court and the Judge of the District Court. My reply to this will be, that we have tested this system by an experience of forty years, and we have found no great inconvenience; that would be answer enough. I do not think that it is so important that the District Judge should have a salary, or that his dignity should be equal to that of a Judge of the Supreme Court of the United States, to make him a correct, or an intelligent, or an honorable Judge; experience proves that a very great salary, and very great dignity, does not make a Judge much better. A Judge in his own district, who has a knowledge of the local laws, will have as much influence as he ought to have, notwithstanding his small salary.

The gentleman asks why we do not adopt the *best* system. I say let us have the best system, and I should like

to see one that is better than this; but let them shew it to us: hitherto this is the best that has been proposed; for no one has been found which is better. Now, is the system which the gentleman from Georgia has proposed the best that has been offered?

The gentleman from Georgia has answered the arguments of the gentleman from Tennessee, in regard to the separation of the Judges from the Circuits, and seemed to fall in with the course of that argument, that if there was a school to form a Judge, it should be the Courts of nisi prius. This is undoubtedly correct. An experience of twenty-five years has led me to the conviction, that no place is so fit to make a Judge in the Supreme Court, as trying causes at nisi prius. If he has defects, they will be there discovered; if he is indolent, there it will be known. His duties will require him to be always on the alert, active, ready, and prompt. Action is necessary to constitute and construct a great mind: the human mind is like the oak of the mountains; the more it is agitated by the wind, the more it is invigorated.

The evils which would be produced by the ten Judges, could not be very great. As to what number will diminish responsibility, every man's standard must be in his own mind. I do not see what difference there is between the responsibility of seven and of ten; if I were a member of that Court, I should not, I think, feel less responsibility or less activity, if I were associated with ten than with seven. Believing, therefore, that this difference would not alter, in a material degree, the responsibility of the Judges, it is not an argument of any importance with me.

As the gentleman has shown that this system is objectionable, let us see what he proposes as a substitute; if this is not a good one let him show a better.

The system proposed by the gentleman from Georgia may appear very well on paper, very plausible indeed in theory, but let us like practical men see what it will become. Let us test it by examination and practice. I have seen many very fine and splendid theories which dwindled to nothing when they came to be reduced to practice. Mr. Jefferson wrote a most eloquent essay on the properties of the plough; it was really philosophical, and was one of his best productions: every body admired it. It was noticed in Europe, and inserted in the Edinburgh Encyclopedia. The plough was constructed on his plan, it was very philosophically constructed, and looked very neat: the only objection to it was, you could not work with it, you could not make it plough. The gentleman's plan will, also, do very well in theory, but you cannot make it go. Let us, however, try. I began East, and got along very well in forming the *seven* of the Circuits, but in the other three, particularly the *last*, I found much difficulty. I began at the North—and first, number one is to consist of Maine, New Hampshire, Vermont, and Massachusetts; very well, there will be four Districts in that Circuit, and there will be four District Judges. Number two, is to consist of Connecticut, Rhode Island, and New York. This is well, and here are attached together four Districts and four Judges. Number three, Pennsylvania, New Jersey, and Delaware, with five Districts and four Judges. Number four, Virginia, Maryland, and North Carolina, four Districts and four Judges. Number five, the difficulty begins—a Circuit must be formed out of the Atlantic and Western States. It is impossible to do otherwise, unless all these nine Western States are thrown into two Circuits. Number five, South Carolina, Georgia, Alabama, and Mississippi; six Districts with four Judges. Number six, Ohio, Kentucky, and Tennessee; you cannot associate any other that I see; five Districts and three Judges. Number seven, Illinois, Indiana, Missouri, and Louisiana; I do not see what else you can do without leaving Louisiana out—four Districts and four Judges. If you are to throw all the Western States into two Circuits, and make five Circuits of the Atlantic States, you will find you must take Alabama, Tennessee, Mississippi, and Louisiana, for one, and for another, Kentucky, Ohio, Indiana, Illinois, and Missouri. Is it possible, on the gentleman's own plan, that it can be carried into effect immediately? The first suggestion is that one of the Judges of the Supreme Court shall reside in each of these Circuits. You have seven Judges—according to this arrangement of the Circuits, you would have one in the East Circuit, one in New York, none in Pennsylvania, three in the Virginia Circuit, one in Carolina, and one in the Kentucky Circuit. What is to be done? These men ought to reside there, because an old gentleman in Virginia would not if he could, and could not if he would, go once a year into Louisiana. You will have to make men remove out of this Circuit where there are three Judges. A Judge in Maryland must go to Pennsylvania; and one residing in Virginia, would have to go, where? In each of the other Circuits, except the remotest, there is a Judge, and you must, therefore, remove one of the Virginia Judges into the Louisiana Circuit, for there there is none. To Judge Marshall, it would be an exile, and you would not send him there, for various reasons. He has duties to perform at the seat of Government; it was intended by the Constitution that he should reside near it to administer the oath to the President of the United States, and, in cases of impeachment of certain officers of the United States, he is to preside in the Senate; he has business, moreover, to perform by law, which requires him to be here every session of Congress—he is one of the Commissioners of the Sinking Fund. A Judge of the Supreme Court has now to reside, or to try the causes once a year, in each of the Circuits of the United States. Whether he resides there, or that he must go there from this quarter, makes very little difference. The adoption of this system will be certain death to one of the Judges. What benefit is to result to the Western People from this change? You will take seven-eighths of the business of the Circuit at the East, and transfer it to the District Courts, because there will be but one Circuit Court in the year, and we have now eight. You take from us, then, seven-eighths of our Circuit Courts, and transfer the business to such District Courts as we have, to be determined by such Judges as we have, and we are to wait for time to cure the evil. Pursuing this plan, there are to be three or four District Judges, who are to constitute a Court, and there is to be an appeal from them to one man, the Circuit Judge. I should consider such a court, consisting of competent Judges, as being far preferable to a single Judge of the Supreme Court, who went there but once a year. It would be an appeal from a superior to an inferior court. What benefit is to accrue to the West by this sacrifice? and who is to be benefitted by this law? You cannot carry this system in the Western country into execution. Three or four Judges in the remotest Western districts are to be associated to four Circuit Judges—they cannot do it. Take, for example, the districts as I suppose them, (and I do not see that you can form a better,) Illinois, Indiana, Missouri, and Louisiana. One Judge lives at New Orleans and another at St. Louis, fifteen hundred miles distant from each other; and what sort of a system would it be, if you could ever have them associated? They would be performing their journeys nearly all the year round. I throw out these difficulties—we have examined the system, and found the objections to be utterly insuperable. Your present District Judges, with some exceptions, are not fit to be made Circuit Judges; but, in process of time, this evil will be done away it is said; and, all this time, your system is becoming more and more unequal, because, while these inefficient men remain on the bench of the District Court, your system is constantly becoming more unequal; and I do not know that men with small salaries and talents, are more likely to die than men with large ones. Gentlemen seem very willing to propose different plans,

and this bill is now to be committed, with general instructions not to do one thing, but to do whatever else you can.

Mr. BERRIEN said, if the system he had proposed was correct in theory, he would protest against its being tried by the practical illustration of the gentleman from Maine. It was not liable to the inconsistencies which that gentleman was disposed to impute to it, by a misapplication of its principles to existing facts and to the circumstances of the country. Mr. B. said his idea would be illustrated by reference to the example to which that gentleman had referred. The plough, of which he had spoken as having been formed on scientific principles, failed in its practical application, probably, because its construction was committed to some bungling mechanic, or its management, when constructed, to an ignorant and unskilful ploughman.

Mr VAN BUREN said it was with some reluctance that he relinquished his intention of vindicating the act of 1802, from what he considered the unjust attack made upon it by the gentleman from Rhode Island. The recommitment of this bill to the Judiciary Committee, on the resolution of the gentleman from New Hampshire, with the explanations which had been made by the gentlemen from New Hampshire, Rhode Island, and Georgia, could be productive of no good, unless specific instructions were given as to the character of the bill which the Senate wished the committee to report. To commit it, without such instructions, would have no other effect than, in all probability, to defeat the bill.

Mr. FINDLAY, of Pennsylvania, said he had listened with much attention to the arguments which had been advanced both for and against the proposition; and which, together with other considerations which he should notice, had resulted in the conviction, that it was proper to recommit the bill.

As it is much easier to create Judges who hold their offices by the undefined and undefinable tenure of good behaviour, than to remove them from office, he could not vote to increase the number, unless it should be demonstrated that the public interest imperiously required the measure.

From the representations of the Legislature, the Bar, and Representatives on this floor, of some of the Western States, it cannot be questioned, but that they experience inconveniences from the present organization of the Courts of the United States. But from the silence on the subject, of the People, the Legislature, and the Bar of other of those States to which the bill contemplates extending the circuit system, it may be inferred that the inconveniences are not so great as some are ready to apprehend. As far, however, as they exist, they claim an efficient and prompt remedy; and it is admitted that the Judicial System, whatever it may be, should be uniform throughout the Union. All have to contribute to the support of the system, and all should have an equal opportunity, as far as circumstances may permit, of participating in its benefits.

The inquiry then is, whether the present number of the Judges of the Supreme Court be sufficient for the extension of the circuit system to every State in the Union; or, if an increase of the number be indispensable, whether fewer than three additional ones would not be commensurate with the object?

In adding to the number of the Judges, and creating new circuits, it was not necessary to take into consideration State pride, equal representation, or the exercise of executive patronage, which had been occasionally alluded to in the course of the discussion. The number of the States, the extent of territory, the population and their general pursuits, that shall compose the respective circuits, are the only proper objects of inquiry. That there must necessarily be more litigation among a commercial population, whose daily business consists in making contracts and exchanges, than among a manufacturing people; and greater among the latter than those who are exclusively agricultural: as they make more contracts, the source from which the greater part of the litigation of the country arises, that there must be more litigation in the States where the titles to land have been granted by different States, than in those in which the titles have been derived from the same State: and also more among a dense than a sparse population, whatever their pursuits may be, as they must necessarily come more frequently into collison with one another.

If, said he, these positions be correct, which he believed them to be, then, though there be no data upon which they can be carried into operation with mathematical precision, they ought to be kept steadily in view in the formation of the circuits, in order that they may be so formed, that the justice of the country may be speedily and satisfactorily administered, or, at least, that there be not a delay tantamount to a denial of justice. The experience which we have had under the present system, the circuits of which, it would appear, have been in fact predicated on those principles, furnishes the best guide for our deliberations on this interesting subject. The judicial act of 1789 has been referred to as a precedent to justify the increase of the number of Judges, and it is worthy of imitation, inasmuch as the Congress that enacted it, consisted of Revolutionary sages, and many of whom were members of the Convention that framed the Constitution. This act created five Judges of the Supreme Court and as many circuits. The number of representatives in that Congress has been taken as data to show that the average population of the circuits were entitled to twelve members and a fraction in the House of Representatives, or, in other words, to demonstrate that Congress then deemed it necessary that there should be a Judge of the Supreme Court for every twelve members and a fraction of the House of Representatives. And it has been contended that this principle, from the enlightened and patriotic body by which it was adopted, is entitled to the highest respect—that the increase of population, and the creation of new States, would warrant an increase of the number of Judges far beyond what is contemplated in the bill. He said there was no one more disposed than himself to respect any principle adopted by that Congress, if it was founded on experience, or on a full knowledge of the subject. The act in question was enacted, when human sagacity could not have foreseen the extent of litigation that might arise under the new system of government. That Congress had no criterion by which they could Judge of this, more than by comparing what it might probably be, with that of the respective States, which was not sufficient to enable them to arrive at any certain conclusion in the case. Their opinion, formed under such circumstances, cannot claim implicit confidence; and, moreover, subsequent experience has shown it to have been erroneous.

To illustrate which, and that an addition to the present number of Judges is not indispensable, he would, in imitation of the example of other gentlemen, take the number of members of the House of Representatives as the data to show the population of each of the present Circuits; of which he had formed a synopsis that he would take the liberty to read, and is as follows:

1st. Circuit, consisting of the States of New Hampshire, Massachusetts, Rhode Island, and Maine, entitled to twenty-eight Representatives.

2d. Connecticut, New York, and Vermont, forty-five Representatives; deduct the Western part of New York, not included in the Circuit, (supposed fifteen,) leaves thirty Representatives in the Circuit.

3d. New Jersey and Pennsylvania, thirty-two; deduct eleven not included in the Circuit, leaves twenty-one Representatives in the Circuit.

4th. Delaware and Maryland, eleven Representatives.

5th. Virginia and North Carolina, thirty-four Representatives. The Western District of Virginia is not included in the Circuit.

6th. South Carolina and Georgia, fourteen Representatives.

7th. Tennessee and Kentucky, twenty-one Representatives.

The States of Ohio, Indiana, Illinois, Missouri, Mississippi, Louisiana, and Alabama, are entitled to twenty-six Representatives, and not included by the present Circuit system.

It thus, said he, appears there is a great inequality in the extent of population and the number of the States, and consequently of Judicial business, in the existing Circuits. There is no evidence before the Senate but that the business is faithfully and satisfactorily performed in the large as well as in the small Circuits, with the single exception of the seventh, which demonstrates that there were more Judges created by the act of 1789, than were necessary, unless, indeed, it can be shown that there was more litigation in the Union at that period than at present, which he presumed would not be attempted.

As the first Circuit embraces a population engaged in agriculture, manufactures, and commerce, the three great branches of national industry, the extent of litigation therein may be safely taken as an average of that which may prevail in any Circuit that may be formed, containing the like number of States and population. There may be more litigation among the land-holders in a Circuit, consisting of those in which the grants of land have been made under the authority of different States, than among the land-holders in the first Circuit; but as none of those States are, or ever can be, extensively commercial, with the exception of Louisiana, the aggregate of the various kinds of suits may not be as many in the States respectively, as in those which compose the first Circuit. If, however, they should be more numerous, the existing controversies respecting lands must necessarily be adjusted in the course of a few years; the consideration, therefore, of a temporary inconvenience, ought not to influence the principles of a system which, according to the observations of some gentlemen, is to continue without modification at least for half a century.

The second Circuit, though it includes but two States, and part of another, contains a greater population than the first, and which, like that, carry on the three great branches of industry alluded to, but which, as it includes the city of New York, must be more extensively commercial than the first, and no complaints, if any exist, as to the delay of the administration of justice in this Circuit, has been made known to the Senate.

Hence it results from these facts, that four States, containing a population entitled to twenty-eight Representatives in Congress, is not too extensive for a Judicial Circuit, and that no inconvenience has arisen from a Circuit being composed of a less number of States containing a greater population. By the enlargement of the Circuits to the extent which these principles and experience would justify, the States in the Union may be arranged into seven Circuits, and thereby supersede the necessity of adding to the number of Judges of the Supreme Court. The admission of gentlemen that the third, fourth, and fifth Circuits may be conveniently formed into two Circuits, and that the sixth may be enlarged, and, also, that the number of States of which a Circuit shall consist, is more to be taken into consideration than the extent of territory and population of the States respectively, of which the Circuit shall be composed, render it so probable that such an arrangement can be made, that it is at least worthy of an inquiry.

If this should be found impracticable, he was persuaded the States at all events may be conveniently arranged into eight circuits, averaging three to the circuit, which would require the addition of one Judge only to the Supreme Court. The facilities now afforded in almost every portion of the Union for travelling, compared with what they were when the present circuits were formed, the fatigue, time, and expense, would not be equal in travelling through the extended circuits, to what they were at that period. The duties of each Judge, annually presiding at two terms, in the States respectively composing the circuit, and sitting once a year for a few weeks on the Supreme Bench, would not be unreasonable to impose, nor so great as many of the State Judges perform.

It may be inferred from the observations of more than one of the committee, as the enlargement of the circuits would affect the situation of some of the present Judges, that this presented an insurmountable objection to the measure. This, he was ready to admit, evinced the good feelings of the human heart; the indulgence of which, in private life, is worthy of applause; but he did not think it comported with the principles of a Republican government, to suffer them to operate on a great public measure, which this is declared to be, or permit considerations of delicacy towards a few officers of the Government, however meritorious they may be, to conflict with the general interests.

Arguments, he said, had been adduced, in favor of an uniform extension of the Circuit System, not warranted by the provisions of the bill, which had been properly noticed by the mover of the resolution to recommit it, (Mr. WOODBURY,) and to which he had not heard a satisfactory reply.

He would not refer to the Western Districts of New York and Virginia, to which the benefits of the Circuit System has not been, nor is not intended by the present bill to be extended. He would only observe, that the Western District of Pennsylvania contains a much greater population than eight of the States, which, by the provisions of the bill, the benefit of the Circuit System, if it be a benefit, is to be afforded. He was not prepared to say, but that issues could be tried as well before a District as a Circuit Court. He understood that important land, and other causes, had been decided by the Judge of that district, and never heard any dissatisfaction indicated, much less expressed, with the manner in which justice was administered in that district since the appointment of the present incumbent: nor none previous thereto but what unavoidably arose from the protracted ill-health of his deceased and worthy predecessor. Whether the general satisfaction that prevails in the district on the subject arises from the distinguished talents, inflexible integrity, suavity of manner, and untired industry of the Judge, or from the character and habits of the People, it was not for him to say. But, knowing this to be the posture of things in the district, he was at a loss fully to account for the general dissatisfaction that is stated to prevail under the District System, in some of the Western States. The number of actions of ejectments that have been tried, or are pending in those States, as has been suggested, may account for this in part, but not to the extent to which it has been stated to exist.

He said, notwithstanding the grounds on which the bill had been predicated by the arguments of its friends would, on the principles of consistency, require the Circuit System to be extended to every portion of the Union, yet, as the People of the Western District of Pennsylvania had not applied for this, or any other modification of the Judicial System, and being persuaded that they are satisfied with the present order of things, he did not wish the bill to be recommitted for this purpose.

But there was another point, apart from all other considerations, which imperiously required him to vote for its recommitment. The law makes it the duty of the Circuit Judges to reside within their respective Circuits,

with the single exception of the Judge of the third Circuit, and though something invidious may appear in this exception, believing nothing of this kind was intended by the law, and that it arose from circumstances which could not well be controlled, it has not been deemed of much consequence. It has, it is true, been a standing theme for the wits of other States, that the States of New Jersey and Pennsylvania, which compose the third District, had not a person qualified for the station of a Circuit Judge, and had to borrow one who was qualified, from the "Ancient Dominion." He had been entirely regardless of such witticisms, as he did not perceive that the residence of the Judge in his Circuit, would either redound to the credit, or conduce to the advantage of the States of which it may be composed.

The discussion, however, which took place a few days since on the amendment reported by the Committee on the Judiciary, to the bill under consideration, including the State of Ohio, instead of the State of Missouri, in the seventh Circuit, fully satisfied his mind, that the residence of the Judge in his Circuit was highly important.

It was contended by some of the committee, as well as by other gentlemen, that the amendment was proper, inasmuch as the distance between the seat of Government of Kentucky and that of Missouri, was too great for the Judge to travel twice in the year, and, consequently, disappointments would occur, and the Courts not be regularly held. It was still more impressively urged on the occasion, that, as the services of a Judge were often required between the terms of the Court, it was indispensable he should, for the convenience of suitors, reside in his circuit.

How, then, said Mr. FINDLAY, can the bill be supported on the grounds of the uniformity of its provisions, whilst they do not remove the existing and unequitable exception as it relates to the third circuit? If the residence of the Judge in the other circuits be deemed essential to the due administration of justice, as has been stated by those fully conversant with judicial proceedings, must it not be the case in this circuit? Why, then, he would ask, is it that this shall be dispensed with, without even an effort to arrange the circuits in the Atlantic States, so as the circuit may either include the Judge, or the Judge be brought to reside in the circuit. He trusted, when the committee reflect that they had, by their own declarations, impressed him with the necessity of this residence, that they shall, if there were no other cause, agree to recommit the bill in order to attain this object, to which their candor must admit the third district is entitled.

He would not enter into a discussion of the probable tendency and effects of the bill in case it should become a law, but he entertained the opinion that they would not be so beneficial, nor inspire the public confidence in the judiciary in the degree which some gentlemen seemed to anticipate.

From his experience and observation, he was induced to believe that the People of the respective States would generally prefer having justice administered under the judicial systems of the States, as far as they may be constitutionally competent, than by the courts of the United States. The confidence of the public in the Supreme Court of the United States is, by no means, unlimited. There are many, very many, who seriously apprehend that the constructive powers, which they indicate no reluctance to exercise to the utmost extent, must, neccasarily, impair the sovereignty, and lead to the consolidation, of the States. Whether such apprehensions shall be increased or diminished, by adding to the number of the Judges, no one can foretell with certainty. Something may depend on the sentiments of those who may be appointed.

The most efficient measure which he had heard suggested, to inspire the confidence in the court which they ought to possess, was that which the gentleman from New Jersey, (Mr. DICKERSON,) brought to the notice of the Senate a few days ago. According to his recollection of the suggestion, it was to repeal the acts of Congress which enabled the Courts to carry into operation certain powers which they claim under the Constitution, the exercise of which is offensive to the States and the People. He believed the gentleman would render an acceptable service if he would submit his suggestions to the Senate in a legislative shape. This, with due deference to his opinion, would be the proper time to act upon the measure. If it be postponed till the bill under consideration becomes a law, the additional number of Judges created by it may be urged as an argument against abridging the jurisdiction of the court, on the ground that the Judges would not then have business sufficient to employ them.

FRIDAY, APRIL 14, 1826.

JUDICIAL SYSTEM.

The Senate having resumed the consideration of the bill, and the motion to recommit—

Mr. HARPER, of South Carolina, rose and said, it seems to me, Mr. President, that there are objections to the remedy proposed by the bill on the table, which will occasion danger and inconvenience to the rest of the United States, including the Western States, greater than the inconveniences which they complain of. A better remedy, it seems to me, has been devised in the plan which was proposed by the gentleman from Georgia yesterday. Some of the objections which exist against the bill which lies on the table, have been stated by the committee of this House. They consist in these principally: that it will make the Supreme Court too numerous, perhaps it is too much so already—in the necessary course and progress of affairs it must become more numerous still; and, what is worse than this, it will render it subject to fluctuation, and make it so to be considered by the public at large. There are few who dissent from the proposition, that too numerous a judicial body is an evil, and then the question recurs, what number is too great for a judicial body? Some of the evils attending, are these—It is unfavorable to dispassionate consultation: very numerous assemblies are less capable of it than those which are limited; and as you extend the body, so is it less capable of deliberating without excitement. In a judiciary body, consisting of more than seven, their consultations are not properly consultations, but debates; they are a deliberative body, and the individuals composing it, instead of interchanging ideas, make speeches to influence the rest. There are other inconveniences attending too numerous a judiciary—they are liable to be divided into knots and cabals. If men of a superior character are found, they will have their followers; and this is more likely to be the case in a large, than in a small body. If the body is too numerous to allow them to consult in the way of free intercourse of thought and conversation, you make it a deliberative body, you assimilate it to a legislative body, and you have the spirit of competition and opposition. What number is the proper one? Why is it that an appellate tribunal must consist of more than one individual? Because you require the lights of various understandings; because one man, be his talents and acquirements what they may, will not look at the case in every point of view; another reason is, that any casual bias in the individual may be corrected. How many understandings brought into consultation, are likely to throw light on the subject? The consultations of a judicial body are different in character from those of a legislative one. In this, or other legislative assemblies, it is not expected that every member should be conversant with every subject brought before him; it is not expected that he should understand every question. But this is expected of every member of a judicial body: He must be conversant with every

question that comes before the court, and know all its bearings upon the whole system. As regards the light thrown on the subject by various understandings, I should say, that, in general, it is not advantageous to go beyond four or six: circumstances may render it necessary to go beyond that; yet, if that is as large a number as can consult advantageously, exceed it no further than is requisite: have no more evil than that which you cannot avoid. We find it practically even in our deliberative and other bodies. Subjects are brought before us—a few have investigated them, and they have to form our opinions for us, and indicate how we are to act in the particular point brought under consideration. When we do desire to get exact and detailed information, such as is necessary for a Judge to have on every question, the matter is referred to a committee; nor would it be possible for this body, acting as a whole, to get the full information which would be considered as necessary for a Judge. A General calling a formal council of war, collects a numerous assembly; but when was a formal council of war known to give useful, practical advice? Wanting such advice, he will resort to, at most, three or four of his most intelligent and best informed officers.

It is said there are other numerous judicial tribunals, from which no inconvenience is found: that there are twelve Judges in England who consult each other, and that many cases are decided by the House of Lords. With regard to the twelve Judges, they consult, but do not decide; the decision is with the Court which has requested the consultation; although, perhaps, it has never happened that the judgment of that particular Court has been contrary to the opinion of the twelve Judges. It is not expected in the House of Lords, that every Lord should be conversant with the subject brought before the House? The Judges decide it. The Lords may be termed the law jury, and the Judges point out, if they can, the error on a particular point that has occurred in the adjudication below. It is but rarely that cases are brought before them; the institution would not answer if appeals were numerous, if the Lords were to consider the bearings and operations of the whole system, and the effect every decision was to have on the whole system. They may be considered as discharging political functions even in the exercise of their legal jurisdiction. They guard against the political effects which might be produced by the decisions. The Court will not only be too numerous for dispassionate consultation, but its composition will, in all probability, be inferior to what it is at present.

Perhaps it would be well to consider for a moment, what the Supreme Court of the United States ought to be, and what ought to be the qualifications of its Judges. It has been observed that the Supreme Court of the United States has more important functions to perform than any other tribunal that exists on the face of the earth. It decides in the last resort cases of common law jurisdiction, of admiralty, of equity, and is required to be in some degree conversant with the systems of twenty-four States. It has still more important functions to perform, important political functions. It is made, by our Constitution, the arbiter between the conflicting elements of our very complicated system. It is among its functions to restrain every department within its proper orbit. It has offices of immense difficulty and delicacy to perform; it has not only to restrain the power of the States, but, also those exercised by the General Government. It may have this important duty to perform, to declare the solemn act of the confederated Legislature void, to resist the voice of a majority of this whole country. This has been delegated to it by the Constitution, and in some cases it will unquestionably be incumbent on it to discharge it. To what sort of a body should the discharge of these important functions be committed? Every one will say, its members ought to possess, in a high degree, talent, firmness, and integrity; and more than these: the individuals discharging duties on that bench should possess qualifications beyond those; they should all be statesmen. They should be capable of combining the complicated relations and parts of our system; our home relations to our foreign relations: they should be conversant with international law: they should be without the manner, party, or passions and views, of politicians: they should be perfectly acquainted with men, with the workings of human passions without being subject to the influence of those passions. These are some qualifications, and such as are not likely to be met with very often. Are they more likely to be found in a larger judiciary than in a small one, in a body of ten, than in one of seven? It may seem like a very insignificant proposition to say, that it is easier to find four such men than ten; yet the proposition is true. It might seem at first view, that, by selecting a numerous Court, the chance is increased of finding among them a certain number possessing the requisite qualifications, but such is not the fact. Hitherto it has been the case, and it will be again, that a few individuals will be distinguished, will be designated by the public voice as being peculiarly adapted for this, as well as other situations, and but a few. There is one instance to which every body refers: to the gentleman who now fills the highest seat on our Judicial Bench. He is recognized by the public voice as having, in a peculiar degree, the qualifications that fit him for that situation. It is reasonable to expect that there will always be a few individuals, who will be thus pointed out by the public voice, as appropriate for such situations; and as you mix them with inferior material, you detract from their value. In a Court of ten, the voice of Marshall might not be heard. You diminish the general weight of such men, by putting them in a numerous body. Genius may operate in a crowd; her voice may be heard in a popular assembly, but the calm dispassionate wisdom which peculiarly befits a man for a Judicial station, is not so likely to be attended to as in a small body.

If individuals are thus indicated by the public voice as fit for such situations, are they likely to be selected by the administration of the day? Is there any security for that? Yes, there is. There is a feeling that will operate on every administration—that this department of Government is sacred: however, in making other appointments, petty views may operate; yet in this they will not. This has been the feeling of all the administrations we have hitherto had, and it is probable it will be the feeling of all future administrations; and if it should not be, public opinion will impose on them the necessity of this course. Nothing could excite louder clamor; nothing would draw down public execration more strongly, than that any administration of this country should select a judicial officer for any purpose of political management.

Are we not more likely also, to get individuals qualified for the situation by selecting them from large districts? Perhaps the present number of Judges is greater than is necessary; perhaps the whole of the United States might be advantageously divided into six circuits, six being one of the most convenient numbers to form a quorum. If you have a large circuit from which to select, the Judge of the circuit must in general be selected from the circuit. You have a better chance of getting an individual qualified from three or four States, than from one or two. But this is not all; the selection is less likely to be influenced by partial views, or oblique motives. In a single State a man may make himself of consequence by his party zeal, by subserving some purpose of temporary interest; and an individual may be chosen, having an ephemeral reputation founded on other causes than his merit. It is more difficult when you require him to have a reputation over three or four States. He must have something substantial in his character and mind to sustain this extended reputation.

But all these considerations are of less importance with me than that to which I am about to refer. The Judiciary should not be put on a footing that will render it liable to fluctuation; if it is, we have, in effect, no judiciary; we have, in effect, no constitution, so far as the judiciary are the guardians of it. If the judiciary is liable to fluctuation, to be diminished three or four to-day, or to be augmented fifteen or twenty to-morrow, we might as well have no judiciary, so far as it is requisite the judiciary should be, from the consistency of its views and decisions, the guarantee of the Constitution.

The idea of judicial representation is on all hands disclaimed in this House, and is admitted to be absurd. We cannot be ignorant, however, of the language which has been used out of doors in the United States. It has been said in the newspapers, and the doctrine has been the subject of discussion, that the particular views and feelings of particular sections of the country, on particular subjects, and those perhaps of temporary interest, should be represented on the bench of the Supreme Court. All admit here that this doctrine is detestable. It is impossible to have impartiality if those views are carried into effect. Do you adopt this doctrine by adopting the bill on your table? If individual Judges are appointed, believing that they were selected with these views, they will be likely to give effect to those views. It is a part of human nature for a man to act up to the character which is attributed to him. If you expect firmness, moderation, and wisdom, he will endeavor to sustain the character which the world has given him. If you take it for granted that he is to act under the impulses of intemperance and passion, there is no motive for him to attempt to preserve a better character than that which the world has given him; and if individuals are placed on the bench with these views, they will be likely to act in conformity with them.

It has been said that the increase of the number of the Judges in the Supreme Court will have a tendency to set afloat all the decisions that have been made in constitutional questions. Whether this is true or not, I do not pretend to say, but certainly it may have that effect. It was intended that the three departments of the Government should be perfectly independent of each other; it was not intended that the individual Judges of the Supreme Court, or their decisions, should be under the control of the other branches of the Government; but if, in time of excitement, the majority, having become a faction, is not satisfied with the decisions of the constitutional Court, will it not at any time be in the power of the other branches of the Government to over-rule those decisions? In England much alarm was once taken at the creation of many new lords. It was regarded as a dangerous innovation, and an attempt was made to restrain the power of the crown in this respect, though that restraint would have been a change of one of the fundamental principles of their constitution. Yet the check of that branch of their legislature is perhaps less important and essential than that of the judiciary with us. The independence of the judiciary is at the very basis of our institutions. With regard to the act of 1802, whatever may be said of it in other respects, none doubt it was a hazardous precedent, and every individual will join with me in wishing that it may not be necessary to follow in these times. It is in times of faction, when party spirit runs high, that dissatisfaction is most likely to be occasioned by the decisions of the Supreme Court. I do not believe that the Supreme Court, or the Constitution itself, will ever be able to stand against the decided current of public opinion. It is a very different thing from the temporary opinion of a majority; for a majority acting unjustly and unconstitutionally, under the influence of excitement, a majority though it be, is nothing more than a faction, and it was the object of our Constitution to control it. The Constitution has laid down the fundamental and immutable laws of justice for our Government, and the majority that constitutes the Government should not violate these. The Constitution is made to control the Government; it has no other object; and though the Supreme Court cannot resist public opinion, it may resist a temporary majority, and may change that majority. However high the tempest may blow, individuals may hear the calm and steady voice of the judiciary warning them of their danger; they will shrink away; they will leave that majority a minority; and that is the security the Constitution intended by the Judiciary. These are the motives that prevent me from voting for the bill on the table.

It may be asked, do you secure this fixedness and permanency of the Judiciary, by rejecting the bill? If you confine them to the present number, or reduce them to six, do you provide that they shall be a permanent, unfluctuating body? will you not stand on the same footing as before? It will still be in the power of Congress to add to or diminish its numbers. My object is to place it on such a footing, as that there may be no temptation, no necessity to innovate; that its organization may continue permanent for so long a time, that public opinion may settle on it as the common law of our Constitution. By adopting a scheme similar to that proposed by the gentleman from Georgia, alteration may be unnecessary for half a century to come. It is not merely what is written on the parchment, that is to be considered Constitution. The composition of the English Courts is not fixed by any positive law, yet the English Parliament would as soon think of changing the succession to the throne, as of changing the Constitution of the Courts at Westminster. It may become so with us, and I wish to put it on such a footing that it may become so.

Does the project of the gentleman from Georgia provide a remedy for the grievances complained of by the Western Country? Those evils are, that there has been a great accumulation of business in the Courts of the Western Country; and this objection is the less insisted on, because it is admitted that this accumulation is owing to temporary causes. The most important grievance that is complained of, is, that incorrect decisions are given, for want of ability in the local Courts; and a want of information as respects the local laws in the Supreme Court.

According to the plan of the Senator from Georgia, the number of the Judges of the Supreme Court, and the number and distribution of the District Judges, are to remain as at present. I would throw out for consideration, whether the Judges of the Supreme Court may not be conveniently reduced to six. The quorum of that Court will be four, and the majority of the quorum three.

Instead of associating three District Judges to form a Circuit Court, I would propose that the District Courts should exercise an unlimited jurisdiction, as the Circuit Courts at present. Let each Circuit Judge hold a single Court of original and appellate jurisdiction, annually, in each District of his Circuit. Where the amount in controversy is less than two thousand dollars, let there be an appeal, as at present, from the District to the Circuit Court, and let the determination of that Court be final. When the amount exceeds two thousand dollars, let it be at the option of the party to take an appeal either to the Circuit or Supreme Court; but, in either case, let the decision be final. Where causes are brought originally in the Circuit Court, let the appeal be as at present. It seems to me, that this plan is not liable to any serious objections; that it will provide an effectual remedy for the grievances which are complained of; and that it contains as little innovation as any effectual and unobjectionable plan that can be devised.

It will provide for the transaction of business. There is no ground to apprehend that the District Judges will find any difficulty in transacting the business of their Districts, as at present arranged, for a century to come; and

if, by any possibility, the business of a District should accumulate beyond the power of a Judge to discharge, it may be divided. It will likewise render the duties of the Supreme and Circuit Courts less burdensome, and enable the present number of Judges to discharge them for an indefinite period of time. Many cases in which appeals are now taken to the Supreme Court, will be finally decided in the Circuit Court. It is plain that the Circuit duty will be lessened at least one half. The Judges of the Supreme Court are now tasked to the utmost extent of their powers. As business increases in the natural progress of society and population, it is plain that they will be unable to perform it. Almost the whole year is divided between the Circuit and the session of the Supreme Court. The appointment of additional Judges will rather add to the difficulty than palliate it; for a numerous Court must of course get along with its business more heavily than a limited one. The proposed system will, in some measure, accommodate itself to the exigency of affairs. If the District Judge is a competent one, almost all the business will, in the first instance, be carried into that Court. If otherwise, much of it will be commenced in the Circuit Court. The original jurisdiction of the Circuit Court will, for some time, answer a valuable purpose, where the District Judges are at present incompetent, in consequence of having been appointed to small salaries, and duties comparatively unimportant. If the Supreme Court is burthened with business, and confidence is reposed in the Circuit Judge, many appeals will be carried from the District Court to him. There is no reason to doubt, that, on the proposed plan, the whole business of the country may be transacted without difficulty, or an increase of Judges, to as distant a period as it is necessary for us to look forward.

Complaints are also made, that the District Judges are incompetent, and that there is a deficiency of information in the Supreme Court, with respect to local law. The source of the incompetency of the District Judges, every one traces to their having been appointed with a view to limited duties, and their salaries being too small to command the services of individuals properly qualified. It is obvious that the only remedy, is to enlarge their salaries and their jurisdiction. I have no great opinion of the benefits to be derived from the Judges travelling into the several States to acquire a knowledge of local law, and communicating their acquisitions to their brethren. There are serious objections to allowing an appeal from a Judge to a Court of which he is a member. His opinions are seldom weighed with an entirely impartial scrutiny. But, how infinitely is the objection increased when he is supposed to possess exclusive information with respect to the subject on which he has decided. The Court will infallibly run into the habit of referring the case to the Judge who is supposed to have peculiar qualifications for determining it; and the rest of the members will become careless of understanding it for themselves. No method has been devised for the investigation of a question as to have an able advocate on each side, interested to bring forward every thing that can favor his own view of the subject. You are much more likely to inform the Supreme Court on the subject of local laws, by rendering the District Judges able and enlightened, than by sending its members on a Circuit into the several States. The District Judge should understand the laws of his own State thoroughly. By sound reasoning—by an enlightened opinion, he may inform the Supreme Court—this is the legitimate mode by which a Judge, in the first instance, should influence the appellate tribunal. It is to be observed, too, that all the States, with a single exception, have the same general system of common law. When the case arises under the statute of a State, the statute itself will be before the Supreme Court, and, in general, the decisions of the State tribunals giving construction to it. Whatever benefit, however, is to be derived from the information which the Judges of the Supreme Court are to acquire by travelling into the States, will be obtained in about an equal degree under either system—that proposed by the amendment of the Senator from Georgia, or by the bill on your table. The only difference will be, that the Judges will go into three or four States instead of two or three.

The plan proposed by the amendment will also be free from the objections which have been urged against the system which would give the Supreme Court appellate jurisdiction exclusively, and locate it at the seat of Government. It is said that an appellate Judge should not be out of the habit of transacting business at nisi prius. That this is necessary by way of discipline and as a test of his talent—that confined to an appellate Court, Judges are likely to become indolent—some will rely on the judgment, and obtain a reputation by the aid of the talents, of others. If there is some truth in these remarks, they are to be taken with much qualification. It may fairly be taken for granted, that no Judge will be appointed to the Supreme bench, whose talents have not been well ascertained. He will have the stimulus, which alone, (besides the sense of duty,) can operate on any Judge—the desire of personal reputation—and not only reputation with the public, but the desire to maintain his weight and consideration with his brethren of the bench. The benefits to be derived from the intellectual discipline of presiding at nisi prius are, in my apprehension, very limited. It is said, that a Judge, exercising appellate jurisdiction, is likely to become abstracted and impracticable. It is not easy to conceive how this should happen in any injurious degree, when he is daily conversant with the details of business, and the practical operation of human affairs. The nisi prius discipline may render a Judge more prompt and acute, and teach him to rely on his own resources. He may be a better Judge of men, and more able to detect the perjury of a shuffling witness. But I am not aware that these qualifications will render him more fit to discharge the duties of a Judge in the last resort. An Old Bailey Solicitor is likely to be prompt, acute, and dextrous, but I should not expect from him a very profound or correct judgment on a difficult or intricate subject. A Judge who employs all the intervals from his appellate duties in presiding at nisi prius, must come to the discharge of those duties with a mind exhausted, with habits unsuited to deliberate investigation. Perhaps an appellate Judge ought to be, in some degree, abstracted and impracticable—at all events, not so practical and dextrous as to accommodate his rule to what he conceives fitting in every particular case. Under the system proposed by the amendment, the Judges of the Supreme Court will discharge a portion of nisi prius duty—as much as can be serviceable by way of discipline, without overburdening them, or giving the peculiar and exclusive character of nisi prius Judges.

It is said the Judges should not be *shut up at Washington*; that they are likely to have an improper devotion to the power of the Government in whose service they are, and from which they derive their support; that this is to be corrected by the Judges residing in the various States and having intercourse with the People; that, having political functions to discharge, they should be conversant with public opinion, and imbibe the spirit of the times; that this is not only necessary to fit the Court for discharging its duties ably and with safety to the rights of the States, but to command that public confidence in the Court which is necessary to support it. By the amendment we propose, the Judges will, in general, reside within the limits of their Circuits, and, consequently, be dispersed over the United States. They will have a wider intercourse with the People than at present, and, consequently, more ample means of ascertaining public opinion. It is difficult to foresee the operation of any new system

beforehand. There may be something in the plan we propose, to prevent its working successfully. Yet it seems that it is necessary to do something, and we must adopt what seems least objectionable. The plan proposed by the amendment, seems likely to remedy the inconveniences of the present system, without being liable to the objections which exist with respect to the system of the bill on your table.

Mr. H. concluded his speech by some observations on the objections to the details of the system, which he briefly replied to and refuted.

Mr. TAZEWELL, of Virginia, spoke at length in favor of the bill, and in opposition to the recommitment.

Mr. REED, of Mississippi, said, that, after the protracted and very able discussion which the motion to recommit the bill had undergone, he well knew that he should have occasion to ask the indulgence of the Senate, while he offered his views upon the subject under consideration, so interesting to the State which he had the honor, in part, to represent in this body. If, said Mr. R. it were a subject of general interest to the Union, in which the State whence I come had no peculiar concernment, I should have consulted my own inclination, as well as the respect due to the Senate, in remaining silent, and trusting the discussion of a subject involving a common interest, to abler and more experienced Senators. As the six new States in the West and Southwest have a particular interest in the success of the principal measure now under consideration, I have looked, said he, with the deepest anxiety, to see some one or more of the Senators from those States rise to participate in this discussion. But, as the question draws towards a conclusion, and none of the Senators from those States have thought proper to present their views upon this occasion, I have considered it a duty imposed upon me, to submit to the Senate, in a very inadequate manner I fear, the wishes and interests of my constituents in the subject-matter now before the Senate. I know full well that self-respect, and the deference due to the older members of this body, should have a just influence in restraining its younger members from participating in the discussion of the general topics of legislation which come before the Senate. They may be safely trusted to the more experienced Senators, and can receive but little additional light from the discussions of the junior members of this honorable body. But, upon the present occasion, the six new States, last admitted into the Confederacy, have a peculiar interest, as the bill reported by the Judiciary Committee was intended for their benefit and relief, by extending the Judicial system, long in use in the older States of the Union, to them likewise; and thereby equalizing the benefits of the Confederacy, which should be alike common to all. It is this peculiar interest which the State of Mississippi claims, as well as the other new States similarly situated with her, which compels me, under a sense of duty, though with great diffidence and reluctance, to engage in this discussion, after the very able arguments which have been delivered by some of the most illustrious men of the Senate.

The immediate question before the Senate, said Mr. R. arises upon a motion to recommit the bill, for the purpose of making amendments which are not designated by the mover, farther than to provide for the remedy of any existing grievance, without increasing the number of Judges of the Supreme Court. How the evil is to be repaired, is not pointed out by the mover of the resolution; but that is left to the sagacity and invention of the Judiciary Committee. But, at all events, care is taken that the number of Judges of the Supreme Court shall not be augmented. And the remedy which they are to have the power to apply, is to be such as will forbid any increase of the Judges of that tribunal. This latter is considered an evil greater than any of which the new States complain; and the committee are, therefore, prohibited to provide any remedy for these evils, which does not, at the same time, repress this still greater evil of a too numerous Court, in the last resort. The immediate question appears confined to narrow limits, and not to require very ample discussion. But, as I consider the recommitment of the bill as tantamount to its rejection, and as other Senators who have preceded me, have gone fully into the merits of our Judicial system, I hope to be pardoned while I, in imitation of their example, enter somewhat at large into a survey of the material circumstances, which, in such a discussion, should form the basis of our judgment.

The considerations applicable to this bill very obviously divide themselves into three classes—

1st. What are the merits and defects of the present Judicial system of the United States, which the bill proposes to extend equally and impartially to all the States?

2d. What are the grounds of remonstrance and complaint urged by the new States, on account of the non-extension of the Judicial system to them? And,

3d. An examination into the merits of the several propositions which have been urged in debate, as necessary amendments to the system, before it receives any further extension to the new States, as they request.

First, as to the merits and defects of the present Judicial system, as organized, and in use among the older members of the Confederacy. The first consideration which applies to this part of the subject, is the unseasonable occasion upon which amendments, either good or bad, are sought to be made in this system. This bill, which came from the other House, and has been reported by a committee of the Senate, has been brought forward upon the remonstrances of the new States, and under a strong sense of the injustice which has been done them, in refusing, so long, to extend to them, with justice and impartiality, an equal participation in the Judicial system of the Union. The defects in the system, which are now so much spoken of, had not been discovered from the passage of the Judicial Act, in 1789, until the new States proffered their claims to Congress, to be admitted upon the footing of the Constitution, to a participation, with their elder brethren, in its benefits; which had been consecrated by time and experience. Until then, the system, so long in use, with a partial exception, (which will hereafter be noticed,) was acquiesced in by our wisest Statesmen and Jurists, and approved by the People, and by the States. As it had received the sanction of experience, and the approval of time and long acquiescence, it was supposed to be a system of Judicial organization well calculated to administer justice, and give satisfaction to the People. I need not remark that every material innovation upon old institutions, which have been found to be salutary, are always attended with more or less of inconvenience, and hazard of national discontent. It is true, that inveterate institutions, though sanctioned by time and long acquiescence, must sometimes be dilapidated by civil convulsions and ultimate revolution. And those are the only remedies which, in such cases, can be applied to the derangements in the social order. But where institutions under the test of experience, have been found beneficent in their results, a change in them is always attended with more of hazard and inconvenience than of good to mankind. It is believed that the Judicial system of 1789 was one of those early institutions which was found fruitful of good by the experience of the American People, and that no material change in it should ever be contemplated, but upon the profoundest consideration. And such was the general sentiment in those States where the system prevailed, until their brethren of the Western and Southwestern States, under the urgent sense of their unequal posture in the Union, brought forward their claims before the Legislative Assembly of the Nation, to be admitted to an equal participation in the benefits of this Judicial system. I would ask, then, of the Senate, if this is the proper

time or occasion to propose *projets* for amending the system—when the question is about its extension to other members of the Union? It is true, that it would not be correct to extend further a system which had been found pernicious. But it is not upon this ground that the advocates for the recommitment place their objections. They say, as the subject is before the Senate, it becomes us to make a trial of experiment, and amend the system, according to their notions, before it receives any further extension, beneficent as the present one is acknowledged to be. While I say, in behalf of the new States, "extend your system, which experience has shown to be wise; make the new States parties to it; and then seeing its evils, (if there be any,) we will lend our aid in removing them." But, Mr. President, I must protest against curing defects, real or imaginary, and about which no two Senators agree, until we have applied a remedy to those sovereign ills of inequality and injustice of which your brethren in the Western and Southern States have so much right to complain. It is acknowledged on all hands, that the non-extension of the Judicial system to those States is an injustice of the first magnitude; because it carries with it the idea of inequality in the political and social order of these United States. It is conceded that this measure has been proposed to remove this eye-sore, this rot in the Western extreme of the Union, and to allay the feelings of discontent which begin to unfold themselves in that quarter of the Confederacy. Partial evils, the effect of accident and inadvertence, may be borne for a time with patience; but the wrongs of inequality and injustice, suffered, or even imagined, by sovereign, co-equal States, standing upon a Constitutional footing of equality, require to be treated with the hand of a master, to allay discontents, which are always the forerunners of civil convulsions. Why then should we be disputing about the distempers of this system, upon which no two persons agree, when we are called upon to remedy a much higher evil, acknowledged to exist by all? I say, then, sir, that this is not a fit occasion to propose amendments, but is one to extend relief. In this point of view, we might well consider that all propositions, now, to amend the system, were inopportune, and out of place. But, if we must examine the system as we find it, what are its merits and its general features, and does it require the aid of amendments before you will extend it to your brethren of the West and Southwest? The Judicial act of 1789 was drafted shortly after the adoption of the present Constitution, and by some of the greatest statesmen who have illustrated the character and history of our country. I do not mean to defend all its provisions; but its defects, in my opinion, are not to be found in those parts to which the various amendments proposed would seem to apply. Its organic features are admirable; and I do not know that they are susceptible of material amendments. The local Judge brings home justice to every man's door, among the People with whom he resides. The Circuit Court is an intermediary tribunal of appeal, filled with more talent and science, and is somewhat further removed from too close a contact with the People upon whom it is called to act. The Supreme Court is a still more venerable tribunal, and, by its elevated position, must poise itself alone upon the principles of the Constitution and the law. The twenty-fifth section of that act, I always thought too great an extension of the Judicial powers of the Federal Courts, and as going too near the vital powers and independence of the State tribunals; and yet the powers conferred by this section have not been found objectionable in this debate; and, liable to objection, as I think its provisions are, I cannot persuade myself that this is a fit occasion, amidst discordant opinions, to propose its modification or repeal. It has, nevertheless, given the Supreme Court the high and transcendental powers, both Judicial and political, with which it is acknowledged on all hands to be invested. Upon a fit occasion, as at present advised, I should be prepared to try the experiment of repealing that section, and making the State judicatories supreme in all matters instituted before, and tried by them. But this is beside my present purpose. The act of 1789 continues to be the Judicial system of the United States, with few, or no material modifications. The memorable act of 1801, passed in times of agitation, is the only effort made to change the system established by that act. This law had a very short existence, and was repealed, in 1802, with the general consent of the nation. The one was the most unpopular act of Mr. Adams' administration: the other the most gracious and acceptable of Mr. Jefferson's, which succeeded it. I mention these things, not to revive unpleasant controversies; but to show how deeply the system of 1789 had become engraven upon the affections of the American People; and how little consonant to their feelings was the temporary aberration from it. It is but a common occurrence in the history of human affairs. If that history teaches any thing more useful than another, it is the great lesson, that nations are most wise, (I mean those who are free,) who return, occasionally, to a feeling of reverence for their early institutions; and derive lessons of wisdom from experience. Perhaps the precepts of real wisdom are only to be learned, especially among nations, in schools established by time and experience. Accordingly, we find that, by the repeal of the act of 1801, we did but restore the act of 1789 again to existence. From that time until the claims of the new States were made upon Congress, no material alteration has been made, or proposed, in the original act of 1789; and it seems to me to be very unseasonable, now, to clog this proposed extension of a beneficial system to the new States, with untried expedients and amendments; in which but few agree, and the utility of which, is not very apparent. I apprehend the new States, whose claims this bill is intended to appease, will see in those measures nothing but pretexts for delaying to them rights which are acknowledged by all. And I need only suggest to the Senate, the fatal consequences which too often result in the intercourse of nations, from the opinion, well or ill founded, that rights are withheld under pretences derogatory to the dignity, the independence, and the pride of those who claim them; and I might ask, will not those new States have too much ground to believe, if this bill fails, that it will be, not so much because their claims are unfounded, as because other motives, partial and sectional, and exclusive, may have found their way into the national councils? And the more especially, as it has been stated by the Chairman of the Judiciary Committee, (Mr. VAN BUREN, the Senator from New York,) that, for two or three successive sessions, this subject has been before the Committee, and every expedient, which wisdom or experience could suggest, to effect amendments in the Judicial system, had been attempted, and attempted in vain.

Each one of the Committee, perhaps of the Senate, had his *projet*; but in not one of them could a majority be brought to concur. And all seemed to agree, that the ancient system, tried by time and experience, could alone be safely extended to their new brethren of the West and Southwest. Do not, I pray you, sir, in their behalf, taunt those new, but patriotic communities, coequal members of the confederacy, with untried experiments. Do not leave them room to say, I beseech you, that the older States have reaped and enjoyed the first and best fruits of our Judicial System, and that they are left to glean the uncertain vintage of a new experiment; and which the first blast may wither and destroy in their hands. Place them upon an equality with the older States. Let us feel upon the banks of the Mississippi, the Wabash, and the Illinois, that we are brethren upon a footing of equality with the States upon the Potomac,

and the Delaware, and that the beneficent genius of the confederacy has made us *de facto* as we are *de jure*, in this grand scale of political and social order, coequals with our compeers; and then, with spirit and firmness, we will engage in the work of amelioration and reform. But, until then, those States must consider all propositions of reform as entirely illusory, and as the means of depriving them of their essential rights.

2dly. What are the grounds of remonstrance and complaint urged by the new States, on account of the non-extension of the Judicial System to them?

It will be recollected by the Senate, that the ordinance of 1787, for the government of the Territory of the United States Northwest of the river Ohio, and which was successively, in most of its articles, applied to all the territories, contains a provision that the territories should, at certain times, be admitted into the Union as States, "*upon an equal footing with the original States, in all respects whatever.*" The Constitution of the United States contains the same provision in substance and effect, though not precisely in the same words. When it provided for the admission of new *States* into the Union, it must be construed to mean, that they should be admitted upon a footing of entire equality. If the Constitution had contemplated any possible inequality in the condition and political independence of the States, it would seem to be necessary to have inserted therein an express provision to that effect. But I need not discuss this point before the Senate, which owes its existence to the constitutional equality of the several States. It will be found, upon examination, that most, if not all, the acts of Congress passed for the admission of new States into the Union, adopt the very words of the ordinance, and incorporate them into the confederacy upon an express footing of equality with the original States, "*in all respects whatever.*" It is agreed by the representatives of the new States, that they cannot, under all circumstances, claim an equal participation of federal rights with the other States at the very moment of their admission. It may, perhaps, be sufficient for the purposes of the Constitution, that the new States, at the epoch of their incorporation into the confederacy, should enjoy, with the other States, an equality of *political* rights. To deprive them of such rights as pertain to their sovereignty, and are secured by the fundamental act, would be at once to proclaim an inequality subversive of the Union. And hence, those rights which may be called purely *political*, and pertain to their condition of sovereign States, have never been denied to the new States, at the very instant of their admission into the Union. And yet the Constitution and the laws for the admission of the new States, make no distinction between rights which are simply *political*, and rights which may be contradistinguished from them as *civil* rights. On the contrary, such a distinction would seem to be excluded by the words used upon their admission; that they shall stand upon an equal footing with the original States "*in all respects whatever.*" It is agreed, however, that convenience and construction have introduced into practice the distinction I have adverted to, and the new States have cheerfully acquiesced in it; though, upon principles of strict right, they might have found some cause of remonstrance against this inequality, introduced by implication to their prejudice. All that the new States contend for, on this occasion, is, that the Judicial System of the United States should be extended to them, since it can now be done with perfect convenience, and consistently with the rights of the other States of the Union. It has been said by the Senator from New York, (MR. VAN BUREN,) that Vermont existed some time as a State before the Circuit Court System was extended to her; and that the same system was not extended West of the mountains to Ohio, Kentucky, and Tennessee, until 1807; and after they had been members of the Union a longer time than most of the States who now claim a similar extension to them. Louisiana was admitted into the Union in 1812, fourteen years ago; Indiana in 1815 or 16; Mississippi in 1817; Illinois about the same time; Alabama in the year 1818; and Missouri in the year 1820.

And all these States are so situated, in their relative localities, as conveniently to admit the extension of the Circuit Court system to them many years ago. And yet they have waited patiently upon the movements of the Government in this regard, and have never, until recently, ventured to bring their claims to an equal participation in the laws and justice of the country, by respectful memorials before the National Legislature. It by no means follows, that because we were tardy in extending the Circuit Court System to the States of Ohio, Kentucky, and Tennessee, (where, before 1807, there was but little business for the federal tribunals,) we should follow the same bad example in withholding the system from the new States who now assert their claims, and are ripe for the enjoyment of the fruits of this system. Louisiana, while she was an insulated State in the extreme Southwest of the Union, and surrounded by *Territories*, and not by conterminous *States*, was not so unreasonable as to claim the extension to her, insulated as she was, of the Circuit Court System. But those *Territories*, or some of them, are now converted into *States*; so situated with respect to each other, as to make it convenient and proper, at this time, to extend the system to all of them. I need not urge, because it is sufficiently known, that the state of business, and especially the condition of land titles in those States, or some of them, appropriate to the federal tribunals, requires an extension to them of the present Judicial System of the Union. And one is at a loss for any adequate reason for longer withholding from them the benefits of this system, which they have, respectfully to the national councils, but with energy and firmness, claimed at our hands. If the Constitution or laws of the United States had not been extended to the new States, or had been but partially and imperfectly extended, who would venture to say that such a privation could be defended on any Constitutional principle or pretext of expediency? And I much doubt whether such a case differs very widely in principle, from the privation of which the new States now complain, in the non-extension of the entire Judicial System of the Union to them; and the more especially, as they are now in an unquestionable condition to receive its extension, in the most ample and unqualified manner.

It is no agreeable task to me, as a Senator from one of the new States, to contrast their condition in many respects, with the older members of the confederacy. It is painful to proffer, in the language of complaint, their just reclamations of rights of the highest import, which they begin to think are injuriously withheld from them. I need not remark upon the unpleasant heart-burnings which States as well as individuals are apt to experience, whose rights, not only real, but imaginary, are, as they suppose, invidiously monopolized by others. It would, perhaps, be the part of better wisdom, and certainly, very often, of prudence, properly to appreciate and enjoy the rights which we have, than to repine at the want of those which we do not possess. But all experience proves that such is not the reasoning of States; and it might be made a question, perhaps, of political casuistry, whether it is not safest for them, though often less convenient, with a cautious jealousy, to reason upon an opposite principle? It cannot be said, with justice, that your infant brethren of the West and Southwest, have been restless or importunate, in reference to the subject now under discussion. They have long waited the voluntary movements of the General Government in this regard, and their memorials, especially the one from Mississippi, is characterized by equal moderation and firmness. If these States were disposed to be restless, and contend for the *summum jus* of their

Constitutional rights, might they not ask, (and how would the question be answered?) in what manner has the pledge been redeemed, held out to them upon their admission into the Union, that they should stand upon a footing of "equality with the original States, *in all respects whatever?*" The older States have a full sovereignty in a matter where sovereignty is most vital and interesting. They are sovereign over their own soil; and in this point their sovereignty may be said to be plenary and exclusive. But how is it with the new States? They are erected, and have their very basis upon the domain of the confederacy. They have no power to grant a foot of land within their own territorial limits, which is all held under the grants of foreign Governments, or the Government of the United States. They have entered into a covenant not to interfere with the primary disposal of the public lands, and to exempt them for five years after sale from the taxing power of the State. And it has even been decided in the Courts of some of the new States, that their Legislatures have no power to pass escheat laws; because, by a necessary rule, lands escheated for defect of heirs, devolved again to the United States. All the titles to lands in those States being derived under acts of Congress, may not, in the course of time, the federal tribunals claim cognizance, upon that ground, to settle disputes in relation to them? And if the States erected on the territory of the Union cannot pass laws of escheat, may they not, in process of time, be refined out of their power to pass laws regulating the course of descents, prescribing the form of conveyances, last wills and testaments, concerning real estate, and, in fine, the whole mass of legislation which may be called *territorial?* More than one-half of the territory of the State of Mississippi is in the occupancy of the Indian tribes, who use it for no beneficial purpose, even of savage life, but abuse it as a sanctuary for debtors, criminals, and vagabonds, who are there placed beyond the reach of our laws. And yet it is said we stand in the Union upon an "equal footing with the original States, *in all respects whatever.*" We are equal, I cannot hesitate to say, in devotion, pure and undefiled, to the sacred interests of the Republic. In moments of danger we have equally borne the burthens necessary to our defence; and the valley of the Mississippi, from the river Raisin to the memorable field of New Orleans, can testify to the present age, and to an impartial posterity, that the people of the West and Southwest were "*equal*" in war, as they are in peace, to their brethren of the older States, in a patriotic devotion to the country's cause. And we trust, that as they have been equal in bearing the burthen incident to their position in the Union, so they will now, in some small degree, be permitted to an equal participation of the benefits derived from the administration of justice in the national tribunals. But it may, perhaps, be proper to explain somewhat more in detail, the evils under which the new States labor, on account of the defects in the Judicial System, as it is in force among them. These evils may be reduced to two classes: 1st, those which result from the want of a Circuit Court in those States; and, 2dly, from the want of a Judge or Judges from those States, on the bench of the Supreme Court.

Under the Circuit Court System, as established by the act of 1789, an appeal is allowed, in all cases where the amount or value of the thing in controversy exceeds 50 dollars, and is under 2000 dollars, from the District to the Circuit Court. In those States where the Circuit Court is wanting, and the District Court substituted in its place, this privilege of appeal is absolutely denied: and the judgments of the District Court, in all cases, not exceeding 2,000 dollars, is definitive and conclusive. This evil is one not merely speculative, but is felt, most grievously, in actual practice. It will be observed that most of the litigation in the new States, especially, as it is supposed in those Northwest of the Ohio, grows out of transactions where the matter in controversy is less than two thousand dollars; and a great portion of the litigation in Mississippi and Louisiana, is of the same character. The judgment, therefore, of the District Judge, in all cases under 2000 dollars, is peremptory and despotic in the new States; while, in the old, an easy appeal is allowed in such cases, to the Circuit Court, which may be called a domestic tribunal. This is a grievous inequality between the old and the new States, which the one ought not to exact, and to which the others cannot be expected patiently to submit. It is an inequality in the practical affairs and operations of the Judicial Department of the Government, which comes home to the understanding, the interest, and the feelings of every individual who has claims upon the administration of justice. Again: under the Circuit Court System, the criminal code, which, of all others, is the most interesting to a free People, is much milder in its forms, than under the partial and imperfect system hitherto extended to the new States. I need not remark upon the jealousy with which a free and enlightened people will always view the administration of criminal justice. Though few may be practically concerned in the dispensations of the penal code; yet, all are interested that its decrees should be mild and impartial. The illustrious Fox has well observed, "that it is much better that many guilty persons should escape the penalty due to their crimes, than that one innocent man should suffer, by a violation of those rules to which all owe their safety." The District Judge has an unlimited power in the new States over the criminal code entrusted to his administration; and a power, without control, over the lives, the liberties, and reputation, of individuals. But, under the Circuit System, upon a division of the Judges in opinion, no punishment can be inflicted in a criminal case, without a judgment of the Supreme Court. The matter then stands thus: That in the new States the rights of the citizens to life, liberty, and property, are of less value; because dependent upon the judgment of a single man, without any resort to the Supreme Tribunal of the Nation. Whereas, in the other States, where the circuit system prevails, they are guarded, in difficult and doubtful cases, by the highest sanction which the law can afford. It is needless to dwell upon other considerations which render the administration of civil and criminal justice more secure and impartial in the old States, where the Circuit Court System prevails, than in the new, where it is wanting. The Circuit Judge, in the system, is presumed to be a man of more learning, and higher aim in the administration of justice, than the District Judge, whose functions are more local, and whose closer contact with the people is better calculated to promote feelings of favor or hostility.

But the great evils under which the new States labor, from the want of Judges from among themselves, on the Bench of the Supreme Court, acquainted with their laws, statutory and traditional, require to be unfolded somewhat more at length. It is by no means intended to be urged as a principle, that any thing like representation, upon the scheme applicable to legislative assemblies, should be introduced into the Supreme Court. And yet we know that the representative principle is justly dear to the American People, and, like the elemental one of heat and electricity, intermingles itself more or less in all our institutions. But what I mean to urge is, that the States, and the People, are every where entitled to a faithful representation of their *laws*. The State of Louisiana has been successively governed by the laws of France and Spain; and the code of *civil* law, as contradistinguished from the *common*, yet prevails in that State. Her ancient jurisprudence, under her former monarchs, was made of the "Customs of Paris" "the Recopilacion des Indies," the "Leys de toro," the "Partidas," composed in a dark and barbarous age of the Spanish monarchy, and the whole

"Corpus juris civilis," and they are still quoted as authorities in her Courts. Missouri, formed out of a part of the Territory of the former colony of Louisiana, was also governed, until lately, by the civil law, and most of the titles to real estate must there depend upon the principles of that law. Mississippi was successively under the dominion of France, of England, and of Spain, and many large estates are there held, the titles to which are derived under the authority of the two latter Governments.

Many of the most important contests about property in that State, depend upon the principles of the civil law, and the ancient ordinances of the Spanish Crown. And it may truly be said, that all the Western and Southwestern States have a traditionary law, or what may be called common law, modified by their statutes, and peculiar to themselves. Their laws relative to last wills and testaments, conveyances, descents, and entails, all vary from one another, and form for each a code peculiar to itself. It is difficult, therefore, to conceive that Judges resident upon the shores of the Atlantic can carry upon the Bench of the Supreme Court a competent knowledge of all those various laws prevailing in the West and Southwest, composed as they are of a mass of foreign laws and ordinances, and legislative enactments and customs, depending upon tradition and usage from time immemorial. We may, therefore, conceive what a deep interest the People of these States have in the composition of the Supreme tribunal of the nation, and how much a correct administration of justice would be promoted, by having Judges on the Bench of that Court intimately conversant with the laws they are called upon to enforce. It is not in the nature of things that the Supreme Court, as now constituted, can administer justice in a manner either safe or satisfactory to those States. The laws of twenty-four independent States, differing widely as they do, can only be known with accuracy on the Bench of the Supreme Court, when the Judges are drawn from the various parts of the Union. It is unnecessary to urge how important it is so to administer justice as to give satisfaction to, and conciliate the confidence of, the great mass of the citizens; and this consideration certainly should not be lost sight of by the wise legislator, who seeks to found the stability of his institutions upon the free and voluntary acquiescence of the People. At present, the People of the new States are not satisfied with the organization of that tribunal. They have, it is believed, a just respect for the members of the Court individually, and especially for the illustrious man who presides with so much mildness, wisdom, and dignity, over its deliberations. But they believe that a competent knowledge of their own peculiar laws and usages cannot exist in that tribunal, under its present form and organization.

I will now proceed to an examination of the several propositions which have been urged in debate as necessary amendments to the system, before it receives any further extension to the new States; and to answer the objections made to an increase of the number of Judges on the Bench of the Supreme Court.

The proposition of the Senator from New Hampshire, (Mr. WOODBURY,) does not contemplate any specific mode by which existing grievances in the new States are to be remedied; but leaves that to the judgment and discretion of the Judiciary Committee. Its terms, however, are sufficiently distinct on another point, and that is—that there shall be no further increase of the Judges of the Supreme Court. This appears to him a *sine qua non*, without which no relief of any kind is to be extended to the suffering States. I cannot perceive, that, in the nature of things, any just criterion is afforded for this or that number of Judges in the tribunal of the last resort. It is true, the Judges should not be so numerous as to resemble a popular assembly, and to be agitated by its feelings and passions. In legislative assemblies, under a popular form of government, it is wise and proper that the representatives of the people should partake of the feelings, and, in some measure, of the passions, which belong to the constituent body. Reason alone should not operate in those assemblies, but should be tempered by a just intermixture of popular sentiment and feeling. Upon the bench of Justice, it is agreed, in a free Government, that the voice of the law alone should be heard. And the tribunals of Justice should be so composed as not to weaken responsibility too much, and excite the contagion of the passions. One remark of the Senator from Virginia, (Mr. TAZEWELL,) deserves consideration; and it was, that the Supreme Court should be so organized, in respect to its numbers, that by no possibility could the decisions of a majority of a quorum of the Court be overruled at a subsequent time by a union of the dissenting minority, with other Judges not present at the decision. There is great force and wisdom in this remark. But it forms no objection to an increase of the Judges to the number ten; because the evil mentioned by that Senator is as applicable to the number seven, (the present number of the Court) as to the number ten, to which it is proposed to increase it. But it is said that ten is too great a number of Judges for the Supreme Court, though I have not heard any satisfactory reason for the objection.

The Senator from New York, (Mr. VAN BUREN,) in his eloquent and lucid expose of the judicial system, has answered this objection in a most satisfactory manner, by examples drawn from the juridical institutions of other countries, and it is not necessary for me to repeat them. I will only add one other example from one of the most eminent tribunals in the world; and one which has made such a figure in the early, and still more recent history of France. I mean the "Parliament of Paris." I know the character of that venerable body has varied with the fluctuations of the French monarchy; and that at one time, when the prerogatives of royality were in their zenith, it was reduced to the humble function of "registering the decrees of the monarch;" while, at other times, it was the benefactor of the French People, by asserting, with undaunted firmness, the liberty of the subject. Its inherent tendency was, though sometimes diverted by the royal power, to the popular side; and hence it is remarked, by Montesquieu or Beccaria, that the Parliament of Paris, from its numbers, was not congenial to the spirit of monarchy; and I believe it may be safely said, that numerous Judges conform to the spirit of a Republic; while, on the other hand, one, or a few, is more congenial to the temper of a monarchy. This Parliament of Paris was a judicial tribunal, with some functions of a political character, and, I think, from its history, many important lessons may be drawn which apply to the subject now under discussion. Its numbers were too great for a monarchy, and hence it was one of the principal agents before, and at the French Revolution, in subverting the royal authority.

A tribunal *merely judicial* ought, perhaps, from the nature of the institution, to be circumscribed in the number of its members. But I would remark a striking feature in the organic powers of the Supreme Court of the United States. Its powers are far, very far, from being *simply judicial*. It is not only called upon to apply the civil code between contending parties, and to enforce the penal laws against delinquent citizens; but it is also vested with *political* powers of the gravest and most important character. It has the power, by the fundamental law, to decide *controversies* between the States, which must, from their nature, generally, be of a political character; and which, elsewhere, are consigned to the functions of diplomacy, and settled by negotiation and treaty. It claims and exercises the power of controlling all the other Departments, by declaring laws unconstitutional and void. In this mysterious and august tribunal, the constitution and laws of the several States pass in review, and it holds in its hands,

and balances in the emblem of the judicial order, the fate of twenty-four republics. Can it then be said that analogies can be drawn, applicable to this court, from tribunals merely municipal, and which have a power only to apply the ordinary codes of civil and penal justice?

The criterion, therefore, which would justly designate the safe and proper number of Judges of the Supreme Court, should result from combined considerations, applicable to a legislative assembly, and to a tribunal *merely* judicial. And I cannot persuade myself that, under this view of the subject, the number ten is too great a number for this extensive country, in the tribunal of the last resort. I trust other reasons against the increase of the Judges will never find their way into this great and venerable body. I am well persuaded that the justice of the Senate will never be swayed by considerations drawn from the condition of society in the new States, and from our supposed incompetency to supply materials for the Supreme Court. This would be adding insult to injustice, and adding, to inequalities already existing in our political rights, an intellectual inferiority, than which nothing is better calculated to estrange our people from their brethren, and sap the very foundation of the social edifice. In my view of the subject, therefore, a principal grievance of the new States is to be found in their want of Judges upon the Bench of the Supreme Court; and, therefore, that it is impossible to remove the evil upon the plan proposed by the Senator from New Hampshire, (Mr. WOODBURY.) The propositions submitted in the course of this debate, are inconsistent with themselves, and no two Senators agree upon the same *projet*.

The Senator from Rhode Island, (Mr. ROBBINS,) proposed a scheme similar to that provided by the act 1801, which makes the Supreme Court a separate body of magistracy, and one merely of revision and appeal. To this system I never can agree, for the reasons so ably pointed out by the Senator from New York, (Mr. VAN BUREN,) I cannot consent to remove the Judges entirely from the People, in the States, and to locate them under the direct beams of the Executive power. Under such a system, the Judges would cease to be *practical* expounders of the law; and would soon become, like the Monks of a cloister, intent only upon building up a system of political law, composed of *constructions*. The Senator from New Hampshire, (Mr. WOODBURY,) and the Senator from Georgia, (Mr. BERRIEN,) have made propositions to the Senate somewhat differing, but agreeing in this—that the Judges of the Supreme Court shall be required to go into their Circuits only *once* a year, instead of *twice*, as now provided by law. The Judges of the District Courts, at each alternate term, to hold Circuit Courts. According to the plan of one, however, the Judge of the Supreme Court, when on the Circuit, is to hold the Circuit Court *alone*. While, by the other plan, he is to hold it together with the District Judge. In addition to other objections which might be made to each of these plans, there is one equally applicable to both. Any dispensation of the services of the Judges of the Supreme Court in their Circuits, will gradually, if not rapidly, lead to their entire disuse on the Circuits, and end in the establishment of a separate Supreme Court. So that all the plans proposed would, more or less, distinctly tend to this common point of Union, towards which I take leave not to advance a step.

I beg pardon of the Senate for having trespassed so long upon their time and attention. It was due to the State which I represent, claiming, as she does, through me, her feeble Representative, her equal rights in the Union, to have said thus much. And, in conclusion, I must beseech the Senate to make some small sacrifice of conflicting opinion upon the altar of concord. The people in the new States are "bone of your bone, and flesh of your flesh." Those of the Southwest have braved the dangers of a sultry and unhealthful climate, and committed themselves to the current of 'the Great Father of Waters,' to extend the empire of liberty and the laws, and the glory of the American name. Those of the West have silenced the war-hoop of the savage, have felled the forest, and sowed the seeds of civilized society in the midst of a howling wilderness. Both the one and the other have extended your empire, have fought your battles; and have, every where, erected monuments consecrated under the banners of the Republic. In the best days of Rome, her citizens had equal rights upon the Danube and the Rhine, and upon the banks of the Tiber. It was only after liberty perished, or was nearly extinct, that the decaying rights of the Roman citizen were confined to the seven hills of the Capital. Let us learn wisdom by the lessons of history, and not give cause to your citizens on the banks of the Mississippi, the Illinois, and the Wabash, to perceive, in the very morn of our political career, that they stand upon a footing of inequality with their brethren of the older States.

Mr. VAN BUREN said it became those whose special duty it had been to examine into this subject, to make some reply to the views which have been taken by the gentlemen from New Hampshire, Rhode Island, and Georgia.

The resolution of the gentleman from New Hampshire, (Mr. WOODBURY,) Mr. V. B. said, was general in its terms, referring this matter back again to the Committee on the Judiciary, with the single instruction not to increase the number of Judges on the bench of the Supreme Court. The objection to the bill under consideration had been stated by the gentleman with his usual force and perspicuity. But he had offered no substitute. Other schemes had, however, been presented by some of the gentlemen who had addressed the Senate, one by the gentleman from Rhode Island, (Mr. ROBBINS,) another by the gentleman from Georgia, (Mr. BERRIEN.) Whatever else might be objected to the gentleman from Rhode Island, he could never be accused of an indisposition to show his hand. However erroneous his positions might be, he had the merit of looking his subject direct in the face, taking his ground frankly, boldly, and, no doubt, honestly. That gentleman was for reviving the act of 1801. He wished the revival of that system, on the ground that, when it was adopted, it was a wise one, and the act of repeal in 1802, improper and unjustifiable. His position was, that the grounds assigned for the repeal were but pretences, whilst the real cause was opposition to the men who had passed the act of 1801, which the gentleman, by way of description, calls the midnight Judiciary act.

Mr. V. B. said he venerated the men of 1802, and highly approved their acts. Of those acts, the Judicial system of 1802 stood in the foreground. After having conquered an opposition without parallel in the history of the country; after having resisted the attack which had been made on it with all the force of talent and character, it has worked its way steadily into the confidence of the people; and stands now as a monument of the wisdom and patriotism of the men of that day. Looking at it in this light, Mr. V. B. said, he could not suffer an attack to be made on it, of so violent a nature, and of so unjust a character, without affording it the protection of the little he was able to say in its behalf. What were the circumstances at the time of the passage of the act of 1801? The population of this country was then between five and six millions, there were then but sixteen States in the confederacy, and but three Circuits. There were sixteen District Judges, and six Judges of the Supreme Court; and under these circumstances the act of 1801, added seventeen Circuit Judges to the number—to hold their offices during good behaviour. The measure was opposed by the Republicans of that day, on two simple grounds: In the first place they contended that the bill had for its direct object, or at least that its unavoidable tendency would be, to

bring the Judges of the Supreme Court from the Circuits, to the seat of Government. That, if this was effected, a power would be established here, possessed of greater force than any other known to the Constitution, and, through the agency of which the States of this confederacy might be reduced to the condition to which they were attempted to be reduced in the convention which formed the Constitution, an attempt which had never for a moment been lost sight of, a condition to which it had, with premature exultation, been alleged they were already reduced—that of mere *corporations* represented on this floor by their committees. This was their leading objection to the bill: The same objection is taken now, and will be made to every substitute containing the same principle. It was further contended, and experience has shewn with what justice, that there was no occasion for this extraordinary accumulation of Judges of the Supreme Court; that the business of the country could be done without it; and that the idea then and now advanced, that we should establish a system that should provide for a possible but remote condition of the country, was untenable; that there were Judges enough to answer for years to come, and to do all the business necessary to be done in the discharge of the duties of the Supreme Court. Within fourteen months after the passage of the bill, the people of this country tumbled from power the men who passed it, and their representatives finished the work, by the repeal of the act. The men who effected that object, were abused without limitation; they were held up to the community as a set of Goths and Vandals, who had defaced if not destroyed the strongest pillar in our political edifice. These denunciations were repeated by many an honest soul who believed that all this violence and injury had been done. What followed? The sun rose and set as before. The business of the courts went on. Twenty years have rolled away, during which time eight States have been added to the confederacy, the population has increased from five millions, to between nine and ten, and until within four or five years, we have had (with the addition of a single Supreme Court Judge,) as perfect an administration of justice, as has been enjoyed by any country on earth. Now, sir, standing on this eminence and looking at the past, let it never be said that the men of 1802, who denounced the system of 1801, either acted unworthily or labored unsuccessfully.

The Circuit Courts were every where held; the District Courts were held; and the term business of the Supreme Court was done. It was not till within the last four or five years, that from the increased number of States, complaints were heard, not of the system, but that the system was not extended so far as it ought to be by Legislative acts. The great increase of the number of States has put it out of the power of the present Judges to hold Circuit Courts in all the States: and, it is just, that new States should be admitted to an equal participation in the administration of justice. It is necessary to extend that system to the States, or to substitute another. The bill on the table proposed to extend it, by having three additional Judges. Would the bill, said Mr. V. B. answer the object for which it was intended? To ascertain that, it would be necessary to look at it in two points of view. No one doubted that it would extend the Circuit System to all the States.

The gentleman from Rhode Island wished to adapt the provisions of the bill now to be passed to a future and imaginary increase of population. He would reply in the language of 1802, leave that to the future. However wise and provident it might be, in the formation of a constitution, to be governed by such views, that reason does not apply to a measure which, from its nature, is temporary, and which may be altered at pleasure. That answer, he thought, would be sufficient. It was not a permanent thing they were about to do. They were establishing a Constitution; they were passing a law to secure the administration of justice, and to adapt the law to the condition of the country, as it is; and when those unborn millions should settle the lands to, and beyond, the Rocky Mountains, (of whom the gentleman from Rhode Island had spoke,) it would be time enough to consider the propriety of making provision for the administration of justice amongst them.

Mr. V. B. said it was more the accumulation of the number of States, than the increase of the population within the States, that rendered it necessary to increase the number of Judges in the Supreme Court. In 1802, the circuit composed of the States of New York, Vermont, and Connecticut, comprised a population of between 8 and 900,000 souls. The population in that Circuit had increased to two millions and a half: and a single Judge still does all the Circuit business; and could do it, were the population a million more. It is not, therefore, so much the increase of population that may take place hereafter, as of the number of the States, that will render it necessary to increase the number of Judges. He admitted that, in all probability, additional States will be admitted: but, he thought, our zeal on that subject had somewhat abated. He hoped, without wishing to say any thing disrespectful of what had been done, that it would still more abate. There was, he thought, but little probability, that in our day, more than two or three States will be added; and when that should take place, all that would be necessary to be done could be easily effected. The Circuit composed of the States of Delaware and Maryland, might, with propriety, be broken up on the death of the present Judge of that Circuit; and an additional Judge could thus be thrown into the new States. The State of Delaware might be added to Pennsylvania and New Jersey, and Maryland to Virginia and North Carolina, and those circuits would not then be too large.

It might be said, why could not that course be adopted at the present moment? There were objections to it—the present Judge is a venerable, and a good man, and has but a few short years to serve his country, in his present situation; to compel him to remove beyond the mountains would be but another form of driving him from office: an act, which he was sure, would not meet with favor from any quarter.

This system, Mr. V. B. said, would not only suffice at present, but it would be sufficient to the end of time. Is it liable to any great and serious objections? It was liable to one difficulty: the number of the Judges. If the shoe pinched any where, Mr. V. B. said, it was there; and to that point, the gentlemen who had spoken on the subject, with their characteristic good sense, have applied their objections. He had never contended that the subject, in that point of view, was free from embarrassment; the ground he had taken was this: that it was the least objectionable of any scheme that had yet been proposed, as a substitute for it. It was difficult to say what the truth was on this point. It would be impossible to tell with mathematical precision, how many Judges could sit on the Bench, without making the number too large. What then must they resort to, to guide their judgment? Speculations are at best uncertain—experience is the only safe test that could be applied to difficulties of this description. The Bench is now composed of seven Judges—was that too large a number? He had never heard any such complaint; they have discharged, with ability, the high duties which devolved on them; he would, therefore, lay it down as incontrovertible, that the number seven was not too large. Would the addition, therefore, of two or three to the Bench, produce such an alteration in the system, as to make it objectionable on the score of numbers? It might: but he hoped and believed it would not. He had referred gentlemen to precedents, to the

Court of Exchequer in England. The attempt made by the gentleman from South Carolina to weaken it, was bottomed on an error, which had already been detected by the gentleman from Virginia. It is an intermediate Court of Appeal; its decisions may be reviewed in the House of Lords. This Court has existed for ages; and, down to the present day, the objection of number has never been made in England.

Mr. V. B. said he had, in his opening remarks on this subject, referred to the writ of error to the House of Lords. The gentleman from South Carolina had answered that case, by saying that the House of Lords had a political, as well as a legal power: he was not aware how that circumstance weakened the force of the precedent; he believed the inference drawn from the fact, by the worthy gentleman, was unfounded. He had referred to the Court of last resort in Scotland. The judicial character of that country, it would be allowed by all, stands high; that Court is composed of fifteen. It had been in existence for years, and had operated successfully.

The Supreme Court of the United States decides facts as well as law. The gentleman from South Carolina had supposed that the number of the Judges would lead to excitement, in the course of these decisions and consequent discussions.

It is the character and examination of facts that can alone produce excitement. For the trial of facts, what has been the number that the wisdom of all nations has every where directed? Twelve is the number of Jurors here, in England, and in France. It might be, with the same propriety, objected that the number is too large, and that five, six, or eight, would decide on the subject more favorably and with less acrimony.

It had been supposed by the gentleman from South Carolina, that this system was objectionable inasmuch as it exposed the Supreme Court to the control of the Legislature. If they could add to it the number they proposed, they could control it. According to the letter and spirit of the Constitution, the Supreme Court is subjected to a degree of dependence on the Legislature, and it should be so. The entire independence of the different branches of the Government, if desirable, was not designed by the framers of the Constitution, and it is fit and proper that the Legislative should be the predominant power.

If I understand the gentleman from Georgia, he proposes that the District Courts shall remain as they are, and that the Circuit Courts shall be held by three District Judges. The Supreme Court is to remain as it is, and the Judges are to hold a Circuit Court once a year. Two years ago I reported a bill from the Judiciary Committee, containing every one of these provisions in the form in which they are now submitted, save that which directs one Circuit to be held in each State by the Justices of the Supreme Court. It was discussed, and it failed. The objections to it were various. The Judges of the District Courts were not supposed to be competent; the small amount of their salaries, and the circumstance of their original selection, had been such as to prevent the appointment of competent men. Seven Judges of the Supreme Court could not, he said, perform this service, and discharge the other duties devolving upon them. The provision would be the first inroad on the principle of the act of 1802, and the next step would be to exonerate the Judges altogether. He was satisfied the scheme of the gentleman from Georgia would not do.

Mr. V. B. said there were several other remarks which he intended to notice, but the great length to which the debate had already been extended, admonished him to desist. He knew he would best consult the wishes of the Senate by doing so.

Mr. WOODBURY said as he had presented this motion, he should ask the indulgence of the Senate to explain some circumstances. When he spoke of the number of Judges as being dangerous, he meant not merely that the number would create inconvenience in the transaction of business, but that it would diminish the responsibility. He referred to the Court of Exchequer Chamber as a Court chiefly for consultation on questions adjourned there from the other Courts. He knew that the Exchequer Chamber was a Court by itself, and independent. It is a Court of Error from the other Courts. The Court, as a Court of Exchequer Chamber, acts by virtue of the commissions of the judges, as judges of other courts—there is no danger of having twelve together in that way, merely deciding as a Court of Appeal, and chiefly acting as a Court of Consultation. There is no *esprit de corps*.

With respect to the reference to the House of Lords, it was not that they acted in a legislative capacity, or that the New York Court of Errors acted in a legislative capacity. If gentlemen will cite any Court in any country as numerous as ten, under the same responsibility with this Court, he would withdraw his motion. He did not wish to embarrass the great leading feature of the bill, but simply to take the question on it alone, whether it was necessary and safe, under all the circumstances of the case, to carry it into effect.

Mr. BERRIEN said he should be very sorry that the debate should close with the admission, that the suggestion made by the gentleman from South Carolina, as to the character of the Court of Exchequer Chamber in England, was an incorrect one. The proposition laid down by him was, that the twelve Judges in England, when they sat in the Court of Exchequer Chamber, did not sit to pronounce judgment in the causes they heard. That proposition, although it had been denied, Mr. B. said he thought was a correct one. The Court of Exchequer Chamber sits for the purpose of trying causes in error, which have been decided on the common law side of the Court of Exchequer. It is composed of the Lord High Chancellor, the Lord Treasurer, and the Judges of the Courts of Common Pleas and King's Bench.

Another Court of Exchequer Chamber sits for the purpose of hearing writs of error from the King's Bench, and this is composed of the Justices of the Common Pleas, and the Barons of the Exchequer; observing always the salutary principle which we have lost sight of, that the Judges who preside in the trial of the cause below, do not sit in the Appellate Court.

When the twelve Judges sit in the Exchequer Chamber, they do not pronounce judgment; the causes are not brought before them by writ of error, but are adjourned from the other Courts as cases of difficulty, and, the opinion of the Judges being ascertained, the judgment is pronounced in the Court in which the cause was pending.

Mr. RANDOLPH addressed the Senate for upwards of an hour in opposition to the bill.

The question was then taken on the motion to re-commit, and was decided in the negative, by yeas and nays, as follows:

YEAS.—Messrs. Berrien, Branch, Clayton, Findlay, Harper, Randolph, Robbins, Woodbury.—8.

NAYS.—Messrs. Barton, Bell, Bouligny, Chambers, Chandler, Chase, Cobb, Dickerson, Eaton, Edwards, Harrison, Hayne, Hendricks, Holmes, Johnson, of Kentucky, Johnston, of Louisiana, Kane, Lloyd, Macon, Marks, Mills, Noble, Rowan, Ruggles, Sanford, Seymour, Smith, Tazewell, Thomas, Van Buren, White, Willey, Williams.—34.

Mr. MILLS then moved to amend the bill, so as to have but two additional Judges instead of three, proposing to throw Kentucky and Tennessee into one circuit; Louisiana, Mississippi, and Alabama, into a second; and Ohio, Indiana, Illinois, and Missouri, a third.

After some discussion between Messrs. MILLS, VAN BUREN, JOHNSTON, of Lou. FINDLAY, and KANE,

Mr. BERRIEN, wishing for time to consider the proposed amendment, moved an adjournment, which motion was lost—Ayes 18, noes 20.

The question was then taken on Mr. MILLS' motion, and decided, by yeas and nays, in the negative, as follows:

YEAS.—Messrs. Berrien, Branch, Findlay, Hayne, Macon, Mills, Woodbury—7.

NAYS—Messrs. Barton, Bell, Chambers, Chandler, Chase, Clayton, Cobb, Dickerson, Eaton, Edwards, Harrison, Hendricks, Holmes, Johnson, Ky. Johnston, Lou. Kane, Lloyd, Noble, Reed, Rowan, Ruggles, Sanford, Seymour, Smith, Tazewell, Thomas, Van Buren, White, Willey, Williams—30.

The bill was then reported to the House, and the amendment made in committee of the whole concurred in.

Mr. FINDLAY then offered the following, as an additional section:

"Any Judge of the Supreme Court of the United States, before whom any case has been or shall hereafter be tried, shall not give his opinion on the same in the Supreme Court."

The amendment was rejected by yeas and nays, as follows:

YEAS—Messrs. Bell, Berrien, Branch, Chambers, Chandler, Clayton, Cobb, Dickerson, Findlay, Macon, Sanford, Smith—12.

NAYS—Messrs. Barton, Chase, Eaton, Edwards, Harrison, Hayne, Hendricks, Holmes, Johnson, Ken. Johnston, Lou. Kane, Lloyd, Mills, Noble, Reed, Rowan, Tazewell, Thomas, Van Buren, White, Willey, Williams, Woodbury—23.

Mr. FINDLAY then moved the following as an additional section:

"That no member of either House of Congress shall appear or act in the Supreme Court of the United States, as an attorney or advocate in any case, during the period for which he shall have been elected."

This amendment was also rejected, by yeas and nays, as follows:

YEAS—Messrs. Findlay, Macon—2.

NAYS—Messrs. Barton, Bell, Berrien, Branch, Chambers, Chandler, Chase, Clayton, Cobb, Dickerson, Eaton, Edwards, Harrison, Hayne, Hendricks, Holmes, Johnson, Ky. Johnston, Lou. Kane, Lloyd, Mills, Noble, Reed, Rowan, Ruggles, Sanford, Smith, Tazewell, Thomas, Van Buren, White, Willey, Williams, Woodbury—34.

The bill was then passed to a third reading.

SATURDAY, APRIL 15, 1826.

The bill "further to amend the Judicial System of the United States," was read a third time, PASSED by yeas and nays, and returned to the House for concurrence in the amendments.

For the bill—Messrs. Barton, Bell, Benton, Chambers, Chandler, Chase, Cobb, Eaton, Edwards, Harrison, Hayne, Hendricks, Holmes, Johnson, of Ken. Johnston, of Lou. Kane, King, Lloyd, Marks, Mills, Reed, Rowan, Ruggles, Sanford, Seymour, Smith, Tazewell, Thomas, Van Buren, White, Williams—31.

Against it—Messrs. Berrien, Branch, Clayton, Findlay, Harper, Macon, Randolph, Robbins.—8.

RESCINDING RULES.

On motion of Mr. RANDOLPH, the Senate then proceeded to consider the motion submitted by him to rescind the two rules of the Senate which place the power of appointing the Committees, and the supervision of the Journal, with the Presiding Officer.

A debate of two hours duration took place on this motion, in which Mr. RANDOLPH spoke repeatedly in support of the expediency and constitutional necessity of the proposed change in the Rules—or rather, their restoration to what they had been—and, in explanation of his views in regard to parliamentary forms—of the rights and duties of presiding officers and members of legislative bodies—especially of those of the Senate of the United States—and contending, amongst other positions, that it is not the duty, nor the right, of the President of the Senate to call a member to order, until the call be made by a member, and an appeal be made to the chair, &c.

Messrs. JOHNSON, of Ken. HOLMES, MILLS, VAN BUREN, EATON, and HAYNE, entered, also, into the debate, chiefly in explanation of the considerations that had led the Senate to make the existing change in its rules; their experience of the effects of the change, and their views of its propriety or impropriety—the comparative merits of the two modes of appointing Committees, &c. &c. [As the debate at large has not been reported—it is proper to state, that all the gentlemen who favored the present motion, as well as the one who opposed it, disclaimed the remotest intention to impute to the Vice President an improper exercise of the duties devolved on him by the rules; the change was supported on the score of its abstract propriety; and, that the conduct of the Chair might not be impugned by the procedure, Mr. HOLMES took occasion to express his satisfaction that the motion had proceeded from an intimate personal friend of the Vice President, which itself would contradict the presumption that any conduct of that officer had induced the proposition.]

A division of the question being demanded, it was first put; on taking the appointment of committees from the hands of the President of the Senate, and restoring it to the Senate itself, and was decided in the affirmative, by yeas and nays, as follows:

YEAS—Messrs. Barton, Bell, Benton, Branch, Chambers, Chandler, Chase, Clayton, Cobb, Dickerson, Edwards, Findlay, Harrison, Harper, Hayne, Hendricks, Holmes, Johnson, of Ken. Johnston, of Lou. Kane, King, Lloyd, Macon, Marks, Mills, Noble, Randolph, Reed, Robbins, Rowan, Sanford, Seymour, Smith, Tazewell, Thomas, Van Buren, White, Willey, Williams, Woodbury—40.

NAYS—Messrs. Eaton, Ruggles—2.

The question was then taken on the second branch of the proposition, viz: to take from the President of the Senate, the control over the Journal of Proceedings; and was also carried, by the following vote:

YEAS—Messrs. Barton, Bell, Benton, Branch, Chandler, Chase, Dickerson, Edwards, Findlay, Harper, Harrison, Hayne, Hendricks, Holmes, Johnson, of Ken. Johnston, of Lou. Kane, King, Lloyd, Macon, Marks, Mills, Noble, Randolph, Robbins, Sanford, Seymour, Smith, Tazewell, Thomas, Van Buren, White, Willey, Williams, Woodbury—35.

NAYS—Messrs. Chambers, Clayton, Cobb, Eaton, Rowan, Ruggles—6.

The resolutions having been agreed to—

The VICE PRESIDENT rose and said, he trusted that the Senate would indulge him in making a few observations before he resumed his seat, as the debate on the subject just decided, had relation necessarily to the duties of the Chair.

No one, more than myself, said the VICE PRESIDENT, can be more deeply impressed with the great truth, that the preservation of rights depends, mainly, on *their exercise*. That nation deserved to conquer the world, which called its army *exercitus*; and so will the nation deserve that its liberty shall be immortal, which lays the foundation of its system of Government on the great principles, that no power ought to be delegated which can be fairly exercised by the constituent body, and that none ought ever to be delegated, but to responsible agents. These have been my maxims through the whole of my political

life, and I should be inconsistent with myself, if I did not give my entire assent to the principles on which the rules in question have been rescinded. I trust, said he, that it never will be the ambition of him, whose lot it is now to occupy this Chair, to enlarge its powers. My ambition, I hope, pursues a different direction—not to enlarge powers, but to discharge, with industry, fidelity, and firmness, the duties which may be imposed on me. Thus feeling, I shall witness, with pleasure, the resumption of all the powers which can be properly exercised by the Senate, as they will be then placed, where alone they can be with perfect safety.

From the direction which the debate, in some degree, took, as well as from what has been said without these walls, it becomes, on this occasion, proper that I should state, for the information of this body, the construction that the Chair has put on the 6th and 7th rules of the Senate. They are in the following words:

"When a member shall be called to order, he shall sit "down, until the President shall have determined whe- "ther he is in order or not; and every question of order "shall be decided by the President, without debate; but "if there be a doubt in his mind, he may call for the sense "of the Senate.

"If the member be called to order, for words spoken, "the exceptionable words shall immediately be taken "down, in writing, that the President may be better ena- "bled to judge of the matter."

The Chair, said the VICE PRESIDENT, has bestowed its most deliberate and anxious attention, by night and by day, on the question of the extent of its powers, under a correct construction of these rules, and has settled in the conviction, that the right *to call to order*, on questions touching the *latitude* or *freedom* of debate, belongs exclusively to the members of this body, and not to the Chair. The power of the presiding officer, on these great points, is an appellate power only; and, consequently, the duties of the Chair commence when a Senator is called to order by a Senator. Whenever such a call shall be made, the chair will not be found unprepared to discharge its only functions in such a case—that of deciding on the point of order submitted. What the opinion of the presiding officer is, in relation to the freedom of debate, in this body, it will be time to declare, when a question may be presented; but, such as it is, it will be firmly, and I trust I may add, fearlessly maintained. But, I rejoice that the rules of the Senate, on a point so important, gave to the chair no original power, and that it can exercise no control till called on by the Senate itself. It was right in itself, he said, in strict conformity to the principles which had guided the Senate in the vote just taken, that so high a power should be placed only in the custody of the body. The VICE PRESIDENT said he prided himself on his connection with the Senate; but it was impossible that he should forget that that connection was created by the operation of the Constitution. In discharging his duty in this seat, it would be unpardonable in him not to recollect, that he was placed in the Chair, not by the voice of the Senate, but by that of the People; and that to them, and not this body, he was ultimately responsible. Standing in the relation he did to the Senate, he had laid it down as an invariable rule, to assume no power in the least degree doubtful; and to confine himself to a just but firm exercise of the powers clearly delegated. In conclusion, he tendered to the Senate his sincere acknowledgments, that, in rescinding the rule, such delicate regard had been paid to his feelings in the debate. Ample justice had been done to the industry and fidelity with which he had honestly attempted to discharge his arduous duties. Deeming himself called on by the debate that had taken place, to say thus much, in explanation, he begged the indulgence of the Senate for having done so; and resumed his seat.

MONDAY, APRIL 17, 1826.

Mr. RANDOLPH rose, and said, I rise to ask for an explanation. In my newspaper of this morning, in a report of the proceedings of Saturday last, I find this statement:

"And, that the conduct of the Chair might not be im- "pugned by the procedure, Mr. HOLMES took occasion to "express his satisfaction that the motion had proceeded "from an intimate personal friend of the Vice President, "which itself would contradict the presumption that any "conduct of that officer had induced the proposition."

Meaning, I presume, my motion to rescind the late rules, and to reinstate the former ones. I certainly, sir, offered the resolution in no such character; neither have I appeared in the character, at any time, of the personal friend or enemy of any gentleman on this floor with one exception—as the personal friend of one gentleman. I do not think it necessary, sir, to say any thing more in reference to that matter, than that I have no doubt that the gentleman from Maine had grounds, that seemed very good to him, for the allegation that he has been pleased to make—grounds satisfactory to him. I could go on, and say very handsome things, but time as well as propriety requires me only to say that which is necessary—that the gentleman from Maine never had from me any authority to make any such declaration, in reference to myself, nor in reference to any other gentleman whatever. I go for the fact, sir—I am a matter-of-fact man—I said expressly that, as I cast no imputations, so would I make no disclaimers.

I don't think it necessary at all to state my motives for action on this floor; and I shall not state them, now or at any time; and, not stating them myself, I cannot consent that they shall be stated for me by another, with whom, however much it may be desired, I am on no such footing of intimacy, or even of acquaintance, as to justify that other in stating my motives for me, or in describing the relations in which it is his pleasure that I shall stand towards any individual, however humble or exalted.

I here state another fact; I wish my words to be taken, now and always, such as they are, and for no more: my motives will be judged by my acts. I think I know the use of my tools, and I will not consent that the scalpel shall go beyond the very mark that I have made. In nine cases out of ten, I judge not by what a man says, not by his mere words, but by the tone, the voice, the look, and other circumstances; the mere words are of subordinate consideration. I rise only to say, that I came forward under no such character as that which has been gratuitously imputed to me—and why? I reserve to myself the formation of my own friendships and my own enmities, and I trust that no gentleman will undertake to create for me either the one or the other. In saying this, I can say with the utmost truth, that I mean nothing personally offensive to the gentleman from Maine. I could say, if it were necessary—but why is it necessary?—have we got to this, that no man can act here—can submit a motion without prefacing it or larding it with periphrastical disclaimers of this bad motive, or that bad motive? Can we carry on the machine of Government by no other way than by this fulsome adulation? If I make a motion, let the motion speak for itself. If I utter an argument, let the argument speak. If I declare political hostility to any man on this floor, it may be said—not in the very words of Tacitus—as Latin seems to be the very stumbling block of all our editors, from Maine to Florida, I will therefore give it in English—"they who are false in their friendships, do not feign in their enmities." However much I might desire the friendship of the presiding officer of this House, that relation never has subsisted between that gentleman and myself, personally or politically. I say so to take away that which does not belong to him any more than to me. The presiding officer of the House might not choose to have this

thing put on that footing. When I say this, do I declare any personal or political hostility to him? Not at all. We may at last become so extremely astute and diplomatic, as never to see the object before our noses; because we are looking under it, or over it, or beyond it, to discover some ulterior or latent meaning. If I had heard the words of the gentleman from Maine—as no man on earth has any authority to create for me friendships or enmities—I should have noticed them; and I presume that they must have been spoken while I had stepped out of the Senate.

Before I sit down, permit me to add, in illustration of this subject, an anecdote which I heard lately: A gentleman, remarkable for the beauty and splendor of his domain and establishment, was given to understand, by one of the friends of the King, (then Regent,) that it would not be disagreeable to his Majesty to pay a visit to the seat of that gentleman, and examine his fine grounds, and fine pictures, and all the rarities of that unique and sumptuous establishment; to which the other very dryly replied, that he was an English gentleman, and claimed the privilege, as such, of inviting his own company to his own house. I, said Mr. R., claim the privilege of forming my own friendships and enmities, and shall not consent to their being formed for me by any one else. I will not agree that any man shall place me in the relation of friendship to another, however desirable it might be; or that he shall place me in the relation of enmity to any other man, who does not stand in that relation toward me. As regards friendship, I have perhaps my peculiar opinions—

> "Friendship, like Love, is but a Name,
> Unless to one you stint the flame.
> The child, whom many fathers share,
> Has seldom felt a father's care:
> 'Tis thus with Friendship—who depend
> On many, rarely find a friend."

Of the truth of this sir, I can speak in my quality of an orphan boy, left to make my way in the world as I might.

Mr. HOLMES said he did not consider himself answerable for any thing which appeared in the newspapers of what he said here. He did not know why the gentleman should take up the paper and suppose it had given a correct report of what he said, when it did not profess to report what he said. If the gentleman would look at the paper again, he would see that it did not purport to give the words used by him. The gentleman from Virginia was in his seat, said Mr. H. when I made use of the remark referred to in the newspaper. [Mr. R. said he was not, or he should have heard it.] He was in his seat, I think, said Mr. H. as he replied to a part of the remarks which I then made, and that it was which produced an explanation of what I did mean. Mr. H. said he never thought it necessary to recur to newspapers. He recollected what he said, which was, that he was pleased that the proposition came from the quarter that it did: for he had understood and believed it was from the personal friend of the Vice President. These were his expressions.

Mr. RANDOLPH replied—if the gentleman disavows the words, I have nothing more to say. If he denies the words, there is an end of it. And, sir, while the gentleman was speaking I *was* absent—I went out while the gentleman was speaking. Let me observe, that I certainly must understand the evidence of my own senses, and what I heard or did not hear, as well as the gentleman from Maine could do for me. This is a further specimen of the gentleman's care of others who do not aspire to his good offices. I did say before, that, what I said was offered in no offensive spirit to the gentleman from Maine. I shall not say that again. If once I make an overture of that kind, and it is repelled, I shall not renew it. I go further, sir: I suffer no man to play fast and loose with me. If the gentleman had disavowed his words, that was another affair: but, if that gentleman once plays loose with me, he shall never play fast again with me, that I can assure him. The gentleman's expression of "understanding" and "believing," and all that, has, at this time of day, a very awkward sound in my ear. There is more of caution and circumlocution than comports with that gentleman, in matters of assertion, who talks of "understanding" and "believing" that one man stands in such a relation to another. I say, unhesitatingly, that I shall trust the notes of the note-taker in a question of that sort, sooner than the *memory* of the gentleman from Maine. It is a liberty which the gentleman from Maine never had any right to claim, by any sort of relation subsisting between us. I wish it to be so distinctly understood, and I rise here to notice it, because I am determined that it shall be so understood. Why did not some of my bosom friends undertake to make friendships and enmities for me? They know me better. I have only one favor to ask of the gentleman from Maine—that, in pursuing the line of his duty here, he will permit me to pursue the line of mine, without impinging upon my course—for there is not a member in this body whom I have less disposition to touch, in any way, than the gentleman from Maine.

[Here the conversation ended.]

TUESDAY, APRIL 18, 1826.

On motion of Mr. VAN BUREN, the Senate took up the bill to alter the time of holding the terms of the Supreme Court of the United States; (from the first Monday in February, to the second Monday in January, annually.)

Mr. BERRIEN, after stating that a change of the time for holding the term of the Supreme Court would render a corresponding change necessary in holding the terms in the 6th circuit, (embracing the districts of Georgia and South Carolina) moved an amendment to the bill—changing the term in Georgia from the 14th day of December to the fourth Monday in November, and that of South Carolina from the fourth Tuesday in November to the second Monday in December. This amendment having been agreed to, and no other being offered to the bill—

Mr. VAN BUREN observed, that the bill simply proposed to extend the term of the Supreme Court three weeks. The necessity for this, and all the reasons on the subject being so fully understood by the Senate, it was unnecessary to consume its time by stating them. The judiciary bill was now before the other House, and if this bill were passed and sent there, that House would have the whole subject before it.

The bill was then ordered to be engrossed for a third reading.

DISCRIMINATING DUTIES.

The Senate then proceeded to the consideration of the report made by Mr. LLOYD, from the Committee of Commerce, unfavorable to the petition of certain merchants, ship owners, and manufacturers, of the City of Baltimore. The memorialists set forth, "that Great Britain having lately opened the trade of her North American and West India Colonies, insomuch that not only are almost all articles admitted, but the trade of those colonies is accessible to all parts of the world, on far more favorable terms than those now enjoyed by merchants of the United States." "They, therefore, submit the propriety of abolishing the discriminating duties of 96 cents per ton, on British colonial vessels, and of 10 per cent. additional on the duties on their cargoes, and of admitting British vessels, from whatever ports, on the same terms as the vessels of the most favored nations."

The committee of Commerce, on the 31st ult. made a long report on the subject, comprehending an argumentative and historical view of it, to shew the inexpediency of legislating on the subject, and concluding their report

as follows: "From all these views, which might be extended, and from the Committee having reason to believe, that an adjustment of the commercial intercourse between the United States and the British Colonial possessions forms one of the special and prominent objects which have been committed to the Minister of the United States at the Court of London; that a corresponding desire to arrange it on a satisfactory footing, appears to exist on the part of the British Government; and that the negotiations respecting it are expected to come to a definitive issue, before the next session of Congress; the committee, although fully agreeing with the Memorialists in the wish to cultivate and extend the trade in question, which they trust may be done to the mutual advantage of the parties concerned in it, are still unanimously of opinion, that it is not expedient, at this time, to legislate on the subject; and, therefore, asked to be discharged from the further consideration of the memorial."

Mr. SMITH, of Maryland, addressed the Chair as follows:

Mr. PRESIDENT: The motion is to discharge the Committee of Commerce from the further consideration of the Memorial of the Merchants of Baltimore, which prays that British ships may be admitted from the Colonies of Great Britain, on payment of the same duties of tonnage and impost as are levied by law on the vessels of the United States.

That subject had engaged much of my attention during the recess, and I had come to the conclusion, that the United States had acted against its own interest, in not having declared the Colonial trade in British ships free of discriminating duties; and soon after the commencement of the present session, I had conversations with the Secretary of State and the President on the subject.

I believe, Mr. President, that there is no difference of opinion; that all who have considered the subject, agree "that our discriminating duties ought to be repealed," as far as they relate to the subject before us; the only difference is *the manner*. The Committee of Commerce think it better to be done by negotiation. Others think that it can be effected by an act of Congress, which shall meet at once, and *without delay*, the very liberal offers of Great Britain, made by her act of Parliament of the 27th June, and her two acts of 5th July, 1825. In this last mode I most fully concur; we know what we mean when we act by law. All the branches of the Government then concur, and our acts go into execution without delay. Whereas, if we wait for negotiation, we know not whether instructions have yet gone, nor when the negotiation will terminate. Of this we are certain, that a convention, if made with Great Britain, could not be acted on by the Senate before the next session; in the mean time, our Merchants are paying to the Colonial Treasuries from fifty to sixty thousand dollars per annum. On whom does this tax fall? On the Agriculturists: for the Merchant must charge what he pays on his commerce; and every charge of the kind must be a deduction from the price of the articles he purchases. It is that great interest of our country, that we are most particularly bound to protect and assist. The farmer and planter, at this time, require every aid that can be given, by lessening charges that may exist, and by reducing the duties on such articles as enter into the consumption of every family, and thereby lessen their family expenses. The middle or grain-growing States, have *now* few markets for their produce, and the demand is small. It is my duty to attend particularly to that interest—in doing so, on the present occasion, I shall also, (if I succeed,) facilitate the merchant and ship owner in their occupation.

Mr. President: Before I proceed to take a general view of the subject, I think it best to examine the report of the Committee of Commerce. I have very seldom differed with the very able Chairman of that Committee on commercial subjects. In fact, we do not now differ on the general subject. We only differ as to the best mode of obtaining the same object.

The first point made in the report is, "that a just reciprocity does not exist," "inasmuch as our merchants must pay the colonial duties in *cash*, whilst the British merchants have a credit of six and nine months on the duties on their cargoes arriving in the ports of the United States."

Those, sir, are municipal regulations adopted by each nation for its own convenience, and against this difference we have never complained. Great Britain has always exacted cash for the duties imposed by her. But in cases where the duties are very high, she has (to facilitate the importation,) given the privilege of depositing the article in the public warehouses (as for instance, tobacco,) paying only the duty thereon, as drawn out for consumption.

Her warehousing system has been extended in like manner by her late acts, to the free ports of her colonies, to which a free trade has been opened for our produce and *our manufactures*, (with a few exceptions which I shall notice,) on which the duties may be paid, or they may be deposited in the public warehouses, where they may remain for two years—no duty payable unless drawn out for consumption; during that period, they may be sold, either in whole packages, or opened and sold in such parts, as may best suit the purchaser, for making up an assorted cargo for the new States. This mode gives a great facility to commerce, and may induce our own merchants to make up their cargoes for that commerce from Jamaica. In fine, if we do not adopt a similar system, our commerce must suffer. Under our drawback system, we can only ship in the original packages; we, therefore, cannot prepare our cargoes properly for the market; if we break a package we lose the drawback, which amounts to a prohibition to the export of the articles. In fact, Mr. President, the British Government are playing a great game. They understand the subject, and unless met by a similar liberal policy, on the part of other nations, they will monopolize the commerce of the world.

The second point made by the Committee, is, "that bonds are required for the landing of the return cargo in a specified port of the United States."

That, sir, was the case formerly, but is not now in existence; the 16th section of the act of 5th July, 1825, designates *all that is requisite*, on exportation from the Colonies: no bond is now required. [Here the section was read.]

In fact, Mr. President, the 4th section of that act permits our vessels, (if our restrictions shall be removed,) to export goods from the Colonies, "*to be carried to any foreign country whatever.*"

The third point made by the Committee, is, "that an export duty of 2 per cent. is imposed on the return cargo to the United States." This is an error, I presume. The late Secretary of State complained of an export duty of 4 per cent. levied on goods shipped from the colonies in vessels of the United States, and not payable in British ships. That was a strong objection, if it could have been sustained. It was an error, however; at least, it has so appeared to me. That act passed in Parliament many years past, at a time when no vessels from any foreign country were admitted; of course, the export duty of 4 per cent. could not attach to any but British subjects. It did not affect us until our vessels were admitted, and then (both parties paying the same duties) took from us all fair cause of complaint. The duty, in fact, fell on the planter; ... got just so much less for his sugar, the price of which would be regulated by that of the neighboring Islands. Jamaica protested against that export duty, as contrary to her charter; and as the reason assigned for levying *that duty*, was, that England paid the expense of

the troops for the defence of the Island, the Colonial Assembly agreed to pay those troops; and no export duty has since existed in Jamaica. In some of the Windward Islands, the duty is payable; in Trinidad it is not. The American will only subject himself to its payment at his pleasure; he can take the proceeds of his outward, and go elsewhere for his return cargo. The British cannot: for foreign sugars are not admitted for consumption in Great Britain.

The fourth and fifth points made are: "That an American vessel arriving at a bad market, cannot proceed to another Island without paying double duties, and that onerous and heavy duties, and colonial fees, are exacted."

It is true, sir, that onerous and heavy duties, and colonial fees, had been exacted in the Colonies, and operated as stated in the report, and it is equally true, (as the report says,) that they were highly reprobated by Mr. Huskisson in his speech. That great man and his colleagues form the most able, the most wise, and the most useful administration, that has ever existed in Great Britain—they are doing great good to commerce, great and useful service to the nation, and opening the eyes of the world to the advantages of a free trade; and, sir, Parliament has freed the commerce of the Colonies from almost all the shackles imposed upon it. None of those onerous duties on navigation, or Colonial fees, now exist; all have been repealed, and the Custom House Officers are now paid by fixed salaries. If we repeal our alien duties, our vessels will only have to pay the moderate duty of six cents per ton, and they will not have to pay *that*, at more than one port—that is, if they remain only 24 hours to inquire the market at one port, and proceed therefrom to another.

The sixth point made is, "that heavy duties are imposed on articles imported into the Colonies from the United States, when no duty is imposed on similar articles, if imported from the North American Colonies;" and the report might have added, that those articles paid no duty, if imported from Great Britain or Ireland into the Colonies.

That point was the great cause why the United States did not repeal (as to the Colonies) its alien duties; it was that which induced the United States to refuse to the Colonies the same free intercourse that had been accorded to the mother country. Our Government, in the negotiation, insisted, that there should be charged the same duty on the flour (to take one article) of Great Britain, Ireland, and Canada, as would be payable on the same from the United States. Mr. Canning thought it unreasonable to expect that a duty paid on foreign produce should be charged on their own, passing from one of the British ports to another, and said, that Great Britain has the same right to complain (but she had not) that her Colonial sugar, when imported into the United States, has to pay a most heavy duty, when the sugar of Louisiana is free from duty. Whatever, sir, of argument we might have had whilst the Colonies were considered as such, it is now taken from us. *The possessions abroad* (as they are now called) are considered as integral parts of the British Empire, and of course, we cannot complain, that Great Britain refuses to revert back to feudal times, and exact duties on goods going from one part of the Empire to another. I will, perhaps, advert to this subject in the general view I mean to take. The fact is, Mr. President, that, by refusing to open our ports (as we ought to have done) under the act of Parliament of 1822, we have lost the *monopoly* which that act gave us, and have compelled Great Britain, in *self-defence*, to open the Colonial ports to all the world, and we *now* have to compete with Hamburg, Bremen, and other parts of Europe. Can we do so, if we, by our own folly, continue on our navigation the extra duty of 94 cents per ton, and the 10 per cent. additional to the duties we have to pay, whilst other nations pay no such charges? It is in our power, by an act, to relieve our commerce and navigation from those burthens, and the sole question is, shall we do so, or remain eight or nine months, until a long negotiation, on that and other subjects, shall terminate?

The Committee say that the memorialists have stated, "that the Colonial ports were closed in mid winter to the vessels of the United States, under the construction of an act of Parliament, of July, 1825," which construction the Committee say, is now admitted, even by the British authorities, to have been erroneous. The act of Parliament will best speak for itself. The act appears to me, in the most positive manner, to close the Colonial ports on the 5th January, 1826.

Section 1. "That, from and after the 5th January, 1826, this act shall come into, and be, and continue in full force and operation, for the regulating of the trade of the British possessions abroad."

"Section 4. And whereas, by the law of navigation, foreign ships are permitted to import into any of the British possessions abroad, from the countries to which they belong, goods, the produce of those countries, and to export goods from such possessions, *to be carried to any foreign country whatever;* and whereas it is expedient that such permission should be subject to certain conditions: *Be it therefore enacted*, That the privileges thereby granted to foreign ships shall be limited to the ships of those countries, not having Colonial possessions, which shall place the commerce and navigation of this country and its possessions abroad, upon the footing of the most favored nation."

Mr. President, the United States have not placed that commerce and navigation upon the footing of the most favored nation. In consequence, the ports of those possessions were about to be closed, but have been kept open, through the intercession of the British Minister and the request of the officer sent out from London by the Customs, until the British Government shall give orders on the subject. But how are they open? Why, by our paying the enormous duty of 94 cents per ton, &c. on our vessels, and I shall not be much surprised, if they should consent that they should be kept open, by order of Council, forever, on those terms. We pay to their revenue 190 dollars, when they pay to ours only ten. It is simply a financial operation.

I have been told by a high officer of the Government, that the act of Parliament of 5th July, 1825, prohibits the importation of certain articles of our produce and manufactures into those possessions.

Well sir, that is true. But it is a *curious coincidence*, that the United States do, by prohibitory duties, exclude the importation of the *same articles* into the United States. What are they? Gunpowder, Arms, Ammunition, or utensils of war. Well sir, our duties effectually prohibit them.

Beef, fresh or salted Pork—these also are prohibited by our high or prohibitory duties.

Tea.—Well, sir, Tea is not the produce of Great Britain or her possessions abroad, and, of course, is prohibited to any foreign nation.

Fish, dried or salted, Train Oil, Blubber, Fins, or Skins, the produce of creatures living in the sea.

These are a list of the articles, the importation of which is prohibited to the British possessions abroad, and equally prohibited from importation into the United States by our prohibitory duties. Now, sir, I will ask a question. Suppose Great Britain was to make this offer? Great Britain will repeal her prohibitions on condition that the United States will repeal her prohibitory duties: I believe I risk little in saying that the answer would be—No, we will not.

Mr. President, the Chairman, (Mr. LLOYD,) made an able report against the memorial of certain Merchants of

Baltimore, who prayed that the duty on dried fish might be reduced, to enable them to make up their cargoes for South America. Sir, Maryland could not consent to a repeal of those prohibitory duties; she has extensive fisheries. I think there are about one hundred thousand barrels of shad and herring, and ten thousand barrels of pork annually inspected in Baltimore. Not the pork of Maryland, but of Virginia, Ohio, Pennsylvania, and Maryland.

I will now proceed to a more general view of the whole subject. I will take up as little of the time of the Senate as I can possibly avoid.

For a correct understanding of the causes which have intervened to check a free commerce between the United States and the British colonies in America and their West India Islands, it may not be irrelevant to revert to certain occurrences, and to make some introductory observations.

Commerce and navigation are considered by many as one great whole; but you know that they are *separate* and *distinct* interests, however nearly allied. Commerce can exist without the nation being its own carrier, but certainly not with the same advantages, activity, or enterprize.

The Eastern States own nearly one-half of the shipping of the United States; they have little of their own produce, *comparatively*, and therefore are compelled to seek employment in the Southern States, and elsewhere, for their ships. Their merchants, in consequence, look attentively to every thing that relates to navigation.

The Southern States having the great and valuable articles of export, are more attentive to commerce; it is not of such vital importance to them, whether their produce is carried by the vessels of the one or the other nation.

In the year 1802 or '3, I introduced a resolution into the House of Representatives on the principles of the act of 1815. The members from Philadelphia, and from the cities to the Eastward, concurred with me; but the merchants and ship mechanics of those cities opposed the measure unanimously. When, from Baltimore Southward, it was as *generally* approved. I mention this fact to show how the two interests clashed on that occasion. The treaty of Amiens opened the eyes of the ship owners to their true interest; their ships could not get a bale of cotton, on freight, at Charleston; whilst the British ships were filled immediately.

In 1815, I proposed the subject again, and an act passed with little opposition. Upon that act was bottomed the Convention of London, by which, you know, that all duties, tonnage, and charges, on trade between the British possessions in Europe and the United States, are made the same, whether in the ships of the one or the other nation: a rational trade with the East Indies was accorded, whilst the trade with the West Indies was left, as it had been, restricted. In 1817, Great Britain offered their free port acts of 1805 and 1808; they were insidious and were declined.

In June, 1822, an act was passed by Parliament, opening the trade of their colonies in America and their West India Islands to the United States, on terms more liberal than any heretofore offered, yet reserving material advantages.

In anticipation of that act, Congress passed a law on the 6th May, 1822, "that, on the President's receiving satisfactory evidence that the ports in the Islands or colonies of Great Britain have been opened to the vessels of the United States, the President may declare the ports of the United States opened to British vessels trading to and from the colonies, subject to such reciprocal rules and restrictions, as he may make and publish; any thing in other acts to the contrary," &c. &c. The President issued his proclamation accordingly, dated 24th August, 1822, as a consequence of the act of Parliament referred to, by which the ports of the United States were opened to British vessels trading between those colonies and the United States, and a circular unfortunately issued from the Treasury, dated 24th September, following, directing that the alien duties on tonnage, and light money of 94 cents, and the ten per cent. additional to the duties imposed by law, should be levied on British vessels arriving from the colonies aforesaid. The British Government retaliated, and charged in their colonies a tonnage duty of 94 cents, and 10 per cent. in addition to the duties; charges never made before. Both our and their alien duties operate solely as revenue; under which we pay ten where they pay one. The proclamation did not direct the alien duties to be charged; and the Collector of Eastport did not charge them, (being advised by counsel that he could not,) until he received the Treasury circular. The Treasury charged his account therewith; and Congress relieved him at the last session.

On the 1st March, 1823, Congress passed an act, reciprocating the act of Parliament, "on the condition that no higher or greater duties of imposts or tonnage were imposed on vessels of the United States, than on vessels of their own or their cargoes; and no other charges of any kind on the one, than on the other; giving full authority to the President to issue a proclamation conformably thereto." No proclamation, however, has been issued, nor any step taken, except in a circular from the Treasury to the Collectors, dated 25th August, 1823, which simply confirms the payment of the alien duties on British vessels entering from any of the colonies aforesaid! An open trade has continued ever since; and British vessels from these colonies are admitted into the ports of the United States under the proclamation of August, 1822, notwithstanding that the vessels of the United States are subjected to higher duties of imposts and tonnage, than are payable by British vessels.

Permit me to take a view of the act of Parliament, to see whether its operation is such as to ensure to British ships an undue proportion of the carrying trade between the United States and the colonies alluded to in the act.

That act opens to the vessels of the United States certain ports, in which certain specified duties are charged on articles of the United States, "whether the same be imported *direct* from the United States in British or American vessels; or *circuitously* in British vessels, from the European possessions of Great Britain." But no duty whatever is imposed on similar articles, the produce, &c. &c. of Great Britain or Ireland, or of the North American colonies. Thus the flour of Canada, Great Britain, and Ireland, and the lumber of the colonies, may be imported free of duty. The duty on a barrel of flour in Jamaica, is $1 05, which is equal to the freight and insurance from any port in the United States. It is probable, however, that the freight from Montreal and Quebec may cost more. In addition to this difference, our vessels pay the alien tonnage duty of 94 cents; a charge of about 10 cents per barrel, which, with the ten per cent. additional duty, makes a charge of 15½ cents per barrel on flour, when imported in an American vessel, more than would be payable, if imported in a British vessel from the United States. If we had not charged the alien duties, they would not have imposed their retaliation; and the only thing we could have complained of, as to that article, would have been, that the flour of Great Britain and of Canada is admitted duty free, whilst ours paid $1 05 per barrel. Great Britain, it is known, exports little of her own flour to the West Indies, but actually supplies them with our flour, which is imported into Liverpool, and warehoused for exportation. The Canadas can only export during six months in the year; they actually export none to Jamaica. The Islands are generally supplied from the United States, either direct, or with our

flour from Nova Scotia or Great Britain, *all paying the same duties.* If, then, we were relieved from the alien duties of impost and tonnage, there can be little doubt that our flour would go direct; and that 2-3ds at least, perhaps 3-4ths thereof, would be carried in American vessels. Even under all these disadvantages, it is certain that more than ten barrels of flour are exported to the colonies, in American vessels, for one in British.

Lumber is charged with duties when from the United States, and pays no duty when imported into the British West Indies from her American Colonies; this gives an advantage to the Colonial vessels over those of the United States in particular kinds of lumber. But it is a mistake to suppose that the disadvantage falls on the Eastern States only, "and particularly on Maine:" for the fact is, that lumber is exported in great quantities, from all the Southern States to the British West Indies, but particularly from North Carolina, Georgia, Alabama, and Norfolk. White pine boards and plank, it is true, are exported, and in great quantities, from the Eastern States; but pitch pine, in planks and boards, shingles and staves, are exported chiefly from North Carolina, Georgia, Alabama, and Norfolk. Large quantities of staves were formerly exported from Maryland, and other States, and many are still exported. The duty (Mr. ADAMS says) is 10 per cent. on the cost. I cannot think that so small a duty would operate very powerfully: we could not be worse off: for we have now *not only* to pay that duty, but 10 per cent. thereon; and what is more onerous, the 94 cents of tonnage duty.

Flour and lumber are, I believe, the articles on which we bottom our complaints; Indian corn may be another; it is free of duty from Nova Scotia; none, however, has ever been imported from thence into Jamaica; indeed, I am informed that the corn of the United States is imported into that Colony for its own consumption. Our corn pays the heavy duty of twelve and a half cents per bushel, being twenty-five per cent. on its average cost, and may have been imposed to induce the Planters to continue its cultivation.

There are several valuable articles necessary to the West Indies, which can only be drawn from the United States: the retaliation duties on which fall heavily on the merchants and cultivator. I am surprised that they are not carried by British ships alone. If, however, they are carried (as I am told they are, principally,) in our vessels, they are subjected to the heavy charge of alien duties, which might have been avoided. The articles are Rice, Indian Corn, Corn Meal, (kiln-dried) Tar, Pitch, Turpentine, Tobacco, Peas, Ship Bread, Pilot Bread, Crackers, Live stock, and Pitch Pine Boards, Plank, and Timber; those articles are, with few exceptions, from the South and Middle States.

Mr. Adams, in his letter to Mr. Rush, of 23d June, 1823, mentions an export duty in the West Indies, payable on articles permitted to be exported to the United States, of four to five per cent. not imposed on the same when imported to the North American Colonies. He justly considered it as an additional injury to a fair intercourse. But is such duty really charged? It certainly is not on the exports from Jamaica. I have before me an invoice of coffee, dated 28th of November, 1823, for account of Mr. McKim, and one of coffee, sugar, and other articles, for Mr. Patterson, of December, 1823, in which no such charge has been made; nor is any such duty in Jamaica known to any of our merchants. I have conversed with two agents from commercial houses in Jamaica, and they say they know of no export duty except on cocoa and ginger, which is paid by all parties. One of them supposes that the idea of such a duty may have arisen from the following fact:

In the year ——, Parliament passed an act, imposing a tax on the planters of four per cent. on all the exports from their estates. The tax was resisted by the Islands as being in violation of their charters: after much controversy, Jamaica offered, in lieu thereof, that the colony would pay the white troops employed for its defence: the offer was accepted. The other Islands being unable to adopt the compromise, have paid the four per cent. If on export, it must have been paid by the North American Colonies and Great Britain; *for*, the ships of no foreign nation were admitted.

The port charges, and pilotage of vessels from the United States, are the same in Jamaica, whether they be British or American, (except on the retaliatory duties.) British vessels from the North American Provinces pay precisely the same port charges and pilotage as those from the United States.

It is idle for us to complain that British ships only are permitted to carry from one Colony to another; that is, to all intents, the same as our coasting trade.

Again: if Canada, Great Britain, and Ireland, were able to supply the West Indies with their own flour, on which no duty would be payable, whilst ours paid a duty, then our trade with the Islands would be less useful, but we would have no just cause of complaint; the same principle exists now: for the grain and flour of Canada are admitted into Great Britain, when the average price in the market is less than that at which the same may be imported from the United States; still we should have the supplying of the Islands with many articles, as already stated, which *cannot* be supplied from Great Britain, or any of her possessions. I cannot perceive any cause we have to fear a competition in the article of flour; or in any other article which we are permitted to import into the Colonies on the terms proposed by the act of Parliament. Let the alien duties be repealed on both sides, and our enterprize, our proximity, and our articles, essential to the Islands, will do the rest. The profit to the merchant in the West India trade is trifling; in general it scarcely pays a moderate freight; but the trade gives employ to our vessels and seamen, and demands much of our produce. Jamaica alone consumes more than 60,000 barrels of flour annually; and about as much is consumed in all the other British Islands. Canada (if ever able to supply) can only do it, as I have already said, for six months in the year; and there is little danger of Great Britain and Ireland furnishing the quantity necessary for the other six months with their own flour. Vessels from Canada cannot make more than one voyage in the year to Jamaica, when ours can make four or five. I can, Mr. President, see no danger from the repealing our alien duties to British vessels engaged in the Colonial trade, and hope that the Committee of Commerce will be directed to report a bill for their repeal.

Notes on the Act of Parliament, of 5th July, 1825.

Take the first and fourth sections together, and they close the ports to the vessels of the United States, unless British ships shall be admitted into its ports upon the footing of the most favored nation.

That act imposes no discriminating duty on imposts, and no duty on tonnage.

It prohibits from importation into the Colonies, certain articles from any foreign country.

It admits rum, cocoa, sugar, molasses, and coffee, from every country, into Canada and Nova Scotia, on payment of very light duties, and admits all articles into their Colonies on payment of light duties.

It admits many articles [duty free] into all her colonies.

It admits [duty free] all goods from India and China.

Sec. 11 enacts That the duties imposed prior to the 18th year George III. shall continue, as well as all Colonial duties, to be applied to the uses for which they were imposed; but shall not [taken together] exceed the duties imposed by this act.

It admits all articles, not specifically prohibited, to be

imported into the Colonies from all nations, being the produce of the nation to which the ship belongs; and

It permits the export from those Colonies, in foreign ships, all their produce, and such articles as may legally be imported therein, to any part of the world. See sec. 4, of act July 5, 1825.

It confines these permissions to those nations possessing Colonies, who will reciprocate, and to those having none, who will place the commerce and navigation of the British possessions abroad, on the footing of the most favored nation.

It permits all goods, the produce and manufacture of the country to which the ship belongs, to be imported and deposited in the public warehouses, the duty to be paid only when drawn out for consumption. The packages to be opened and sold in any port that may be required.

SCHEDULE OF DUTIES.

A Schedule of Duties payable upon Goods, Wares, and Merchandise, not being of the growth, production, or manufacture, of the United Kingdom, or of any of the British possessions in America, or the West Indies, or within the limits of the East India Company's charter, imported into any of the British Possessions in America or the West Indies.

Barrel of Wheat Flour, not weighing more than 196 lbs. nett weight, - - -	$1	11	
For every hundred weight of Biscuit or Bread,		33	1-3
For every barrel of Flour or meal, not weighing more than 196 lbs. not made from Wheat, - - - - - -		55	3-5
For every bushel of Wheat, - - -		22	1-4
For every bushel of Peas, Beans, Rye, Calavances, Oats, Barley, or Indian Corn, -		13	
Rice, for every hundred lb. nett weight, -		55	3-5
For every one thousand shingles, not more than twelve inches in length, - - -	1	55	3-5
For every one thousand Shingles, being more than twelve inches in length, - -	3	11	
For every one thousand Red Oak Staves, -	3	33	1-3
For every one thousand White Oak Staves or Headings, - - - - - -	2	73	
For every one thousand feet of White, Yellow, or Pitch Pine Lumber, of one inch thick, -	4	66	2-3
Other kinds of Wood and Lumber, per one thousand feet, - - - - -	6	22	1-4
For every one thousand Wood Hoops, -	1	16	2-3
Horses, Mules, Asses, Neat Cattle, and all other live stock, for every one hundred pounds of the value, - - - -	44	44	4-9
Spirits, viz: Brandy, Geneva, or Cordials, for every gallon, - - - - -		22	1-4
And further, the amount of any duty payable for the time being on Spirits, the manufacture of the United Kingdom,			
Wine, imported in bottles, the tun containing 252 gallons, - - - - -	32	66	2-3
And further, for every £100, or $444 44 4-9 of the true and real value thereof, - -	33	33	1-3
And for every dozen of foreign quart bottles, in which such Wines may be imported, -		22	1-4
Wine, not in bottles, for every £100, or $444 44 4-9 of the true and real value thereof, -	33	33	1-3
Coffee, Cocoa, Sugar, Molasses, and Rum, imported into any of the British Possessions in North America, viz:			
Coffee, for every cwt. - -	1	11	
Cocoa, for every cwt. - -	1	11	
Sugar, for every cwt. - -	1	11	
Molasses, for every cwt. -		66	2-3
Rum, for every gallon, -		11	

And, further, the amount of any duty payable for the time being on Coffee, Cocoa, Sugar, Molasses, and Rum, respectively, being the produce of any of the British Possessions in South America or the West Indies.

Mr. TAZEWELL spoke at considerable length in favor of the object of the memorialists, and against the reasoning of the report, as to the mode recommended by the committee for attaining it, arguing in favor of effecting the object promptly by legislation instead of awaiting dilatory and uncertain negotiation. Mr. T. took occasion to intimate that, as the Committee on Commerce were averse to this mode of proceeding, he should, if that committee were discharged from the subject, move to refer it to some other committee, in hopes of procuring a different decision.

Mr. LLOYD, of Massachusetts, said he had some reason to complain of the gentleman from Maryland, who had so fully and ably stated his opinions: for that gentleman had very recently, he believed only yesterday morning, remarked to him that the subject of the regulation of the British Colonial trade would be brought before the House of Representatives; that it would be best to wait, and see what was likely to be done there; and expressed his wish that the report, in relation to it, of the committee of the Senate, which he had not had time fully to consider, might lie on the table, and not be acted on at present; to this he (Mr. L.) had readily assented, and so expected, but it was now unexpectedly called up, and without any notice being given him. He was, therefore, not prepared in detail, to enter into the discussion, if he should at any time, or, perhaps, to sustain the report as well as he might otherwise do; he was, however, willing to let it respond for itself: for, at this advanced period of the session, he would ask neither delay nor indulgence.

He was not the advocate either of high duties or a restricted trade, but he was the advocate of a fair and equal trade for our own country, or one that was nearly so. The single consideration submitted to the committee by the Baltimore memorial was, not on what terms it might be expedient to regulate the intercourse between the British Colonies and the United States, but to inquire into the propriety of abolishing, at once, and altogether, the discriminating duties on British Colonial vessels and their cargoes, and of admitting them into the ports of the United States, from whencesoever they may come, and with whatsoever loaded, on the same terms as vessels of the most favored nations, and this without condition; while our intercourse with them was, by their acts of Parliament, to be confined to articles of the growth, produce, or manufacture, of the United States, and exported directly to the Colonies; and this at so heavy rates of duty above those imposed on the same articles when received from the British Provinces of the Canadas, Nova Scotia, and New Brunswick, as to amount to more than a full freight in many, if not in all instances, and thus giving it, if assented to, a most decisive advantage to the British trade, and the employment in it of British shipping.

The question was not as to the utility of the free port or warehousing system, which the gentleman from Maryland has introduced; but, as to the former, he would remark, in time of peace he did not perceive any very great advantage that was to ensue to the commerce or the merchants of the United States, from transporting their produce or merchandise to Nova Scotia, or New Brunswick, or to Antigua, or to any other Island in the West Indies, there to store it at a heavy expense, in a bad and hot climate, where most of the articles shipped from the United States would soon deteriorate, if not get wholly spoiled, for the privilege, with a double freight, and the expenses of warehouse rent, landing, reloading, and various port charges, of reshipping it to another market, to which we could send the same articles much better in the first instance, direct from the United States, and at half the cost. In time of war, Great Britain being neutral, and the United States belligerent, we could make

something out of these free ports by a communication with them; but this was a state of things not very likely soon to occur.

As to the supplies, or assortment for the South American markets, which, the gentleman contends, will be more profitably procured at these free ports, he had no belief in it. The encouragement of the South American trade was, at this time, brought forward in favor of numerous projects of almost every kind, but he knew not why, as good assortments, or, indeed, very much better, could not be procured from the principal cities of the United States, where ten times, or a hundred times, the quantity of goods could be met with, as in Nova Scotia or the West Indies; and, for articles of any considerable importance, with the benefit of drawback; the duty retained from which would, in most cases, be two or three times doubled, by the expense of carrying the goods, in the first instance, to the British free ports, and the cost of keeping them there until wanted.

In reference to the warehousing system, under proper regulations, he had no doubt it might be advantageously introduced into the United States; and, as one material consideration connected with it, would be its effect on the revenue, it of course should go to the Committee on Finance; and, if the chairman of that committee would digest and present to the Senate a suitable system, it should have all the little aid and support he could give it. But this was not the question now before the Senate: that was on the report of the Committee of Commerce, which, he would contend, was correct in all its positions. They were principally taken from the able and full communications of the Executive to the Senate, the last session of Congress, to which he could not refer, as they were confidential.

The cash payment for duties in British ports; the difficulties that had sometimes been interposed on United States vessels in going from a bad market to a better; the onerous port charges; the export duty; and the heavy discriminating duties on articles from the United States over those of the same description from other British Colonies, were all adduced as proofs of the want of an actual reciprocity; but were admitted, to a certain extent, to be more the objects of municipal than international regulation; still they served to show the disposition of the two countries towards each other.

The export duty complained of did exist, and is believed now to exist, in most of the Islands in the West Indies, if not in all of them. This we could not counteract; it has been the subject of much complaint and discussion between the Ministers of the United States and Great Britain, as the diplomatic correspondence before referred to will show.

The gentleman from Maryland says, Mr. Huskisson has done away all the onerous port charges, and that United States vessels now pay none of them. Mr. Huskisson has no power to do this. By an act of Parliament to regulate the customs, passed in July last, which the gentleman probably has not seen—for it has not been printed for the use of the Senate, and was not among those laid by him upon the table—the Lords of the Treasury were authorized to regulate these charges. The Committee of Commerce were not negligent of their duty; they sought to obtain information on this head from the most authentic source, not from the Executive or Departments, to which they could have access, but, either the information was not possessed, or it would not be imparted. He believed the former: for he doubted if any one in the United States knew what had been done under that act of Parliament, or what the present rate of charges was. The charges in a single port, while so many local and colonial regulations existed in others, was no evidence of a general system: but he did know what they had been, for he held in his hand a statement, showing, that on a small lumber-loaded vessel, from Edenton to St. Kitts, the charges, before she got out of port, were much more than double the original cost of the entire cargo. And the principal objection to the whole project was, that, if now removed, it might again, at any time, be renewed by the repeal of an act of Parliament, or a change of local regulations, in which we had no voice.

It is said that, in the trade to Jamaica, we have 190 out of the 200 vessels engaged in it, and that we were paying heavy tonnage duties, 50 or 60,000 dollars a year, which we might save, and which the British were willing to give up. He did not think there was much strength in this argument. What did it show? Why, that our vessels could prosecute the trade, and pay the duties, and that the British cannot; and if the quantity of produce wanted is now supplied, the agriculturists get all they can have; and if, in addition to this, 190 parts of it out of 200 finds employment for, and is carried by, our own navigation, two great interests were essentially benefited, instead of one. He did not believe a better state of things would soon exist. The duties being off, and British vessels admitted as freely as our own, the reverse of it, or an approach to it, might, and, probably, would, be experienced.

The gentleman from Maryland has also told us, when he wanted information, he was in the habit of going to head-quarters. Mr. L. said he was not in the habit of frequenting the Departments, the Heads of which were incessantly occupied, as his own time also was; but in this instance he also had thought proper to do it; and, as he understood the gentleman from Maryland to say, that there was no difference of opinion on the subject, and that the President and Secretary of State accorded in the propriety of now opening the trade, by an act at once abolishing the remaining discriminating duties, he would distinctly state, that such was not his impression nor belief. He did not understand, so far from it, that both the President and Secretary were decidedly of opinion, that, after ten years unavailing efforts by legislation, and when the subject was now under diplomatic discussion between the Governments, with the hope, if not expectation, it would come to issue before the next meeting of Congress, it would be wiser and better to leave the attempt to be made to adjust it upon fair and equal principles, by convention, than to surrender at once the whole game; give to the British a carte blanche; take away all the offsets we have to offer, and admit them into our ports precisely on the same terms as our own vessels, or those of the most favored nation are admitted, while they placed the admission of our produce into their ports, on terms so disadvantageous as to give a full freight, and beyond it, to the like articles, when imported into the West Indies from elsewhere; that is, from Canada, Nova Scotia, and New Brunswick; and have excluded altogether some of the principal staples of some of the States—the salted provisions, the fish, and other minor articles.

The Colonies, the gentleman from Maryland says, are to be considered as integral parts of the same country, and the British doing this cannot be objected to. This, he admitted, might be strong ground; and, if they were actually so considered for purposes of trade, it might be difficult to draw the line of distinction; but the British refused so to consider them, and would not include them in the Convention of 1818. The duties are not the same in Great Britain and the Colonies, and the latter impose them without an act of Parliament. It was, therefore, the opinion of the Executive, and in which he fully concurred, that it was better to leave the adjustment of the intercourse to a Convention, than at once to abolish the duties without condition; and thus disadvantageously leave the intercourse to be dependent upon acts of Congress, orders in Council, or acts of Parliament, revocable at any time, and at the pleasure of either party.

Mr. L. said he had not contemplated to go into the subject at length, nor did he know that it would be important to do it; he was willing the report should speak for itself, and he would not repeat it. He was as strenuous as any one for an open and equal trade. He was willing, if Congress pleased, fully to give the power to the President to regulate the intercourse with the British Colonies on fair terms, at any moment when it could be done; and to leave him to act on his responsibility, if we could not wait seven or eight months. If the merchants heretofore had been quiet, and left the Government to pursue its own course, he had reason to believe this would have been effected long since; their uneasiness and anxiety led the other party to hold out, with the hope to make a better bargain; and the only point to be determined now is, whether you will abandon the fair ground on which you stand, take away all inducements to Great Britain to place you on better and more equal terms, when you have nothing more to yield, and, also, to give to other nations the right to claim similar accommodations from you; for what you give to her you must give to them, if they require it. He believed not; but the Senate, in its better judgment, would decide. As to the renewed reference to the committee, they would cheerfully attend to any duty assigned them; but, as they were unanimous in their opinion in the report they made, it would probably be better to give the subject, for further consideration, to those who had not prejudged it.

The question being taken on discharging the Committee of Commerce from the subject, it was carried; and then,

On motion of Mr. TAZEWELL, the subject was referred to the Committee on Finance, to consider and report thereon.

EXECUTIVE POWERS.

The Senate, then, agreeably to the order of the day, resumed the consideration of the resolution, declaring "That the President of the United States does not constitutionally possess either the right or the power to appoint ambassadors or other public Ministers, but with the advice and consent of the Senate, except when vacancies may happen in the recess."

Mr. MILLS, of Massachusetts, rose and delivered an argument of about two hours' duration, in opposition to the resolution, denying both the constitutional propriety, and the expediency of the Senate's passing such a declaration of censure against a co-ordinate branch of the Government.

Mr. RANDOLPH followed Mr. MILLS, taking the converse of his arguments, and maintaining, in a speech of about two hours and a half, the right, the propriety, and the expediency of the Senate's adopting the resolution. Mr. R. concluded his remarks a little before six o'clock, when, without taking the question,

The Senate adjourned.

WEDNESDAY, APRIL 19.

BRITISH COLONIAL DUTIES.

Mr. SMITH, from the Committee on Finance, to which the subject was yesterday referred, reported the following bill:

"*Be it enacted, &c.* That no other or higher duties of impost or tonnage, and no other or higher duty or charge of any kind upon any goods, wares, or merchandise, imported from the following free ports of the British colonies, viz:

[Here the ports are named.]

In British vessels, shall be levied or exacted in any of the ports of the United States, (excepting the ports in Florida) than upon the vessels of the United States and upon the like goods and, merchandise, imported into the ports of the United States in the same, any thing in the third section of the act to which this is supplementary, dated the first of March, one thousand eight hundred and twenty-three, to the contrary notwithstanding.

SEC. 2. *And be it further enacted*, That this act shall be in force from and after the 30th day of June next: *Provided*, nevertheless, That, upon satisfactory evidence being given to the President of the United States, that any discriminating duties of tonnage, or impost, are imposed or levied, in either of the ports aforesaid, upon vessels wholly belonging to citizens of the United States, or upon merchandise, the produce or manufacture thereof, imported in the same, the President is hereby authorized to issue his proclamation, declaring the fact; whereupon this act shall thereafter be suspended and discontinued so far as it respects the ports or places in which such discriminating duties are imposed or levied."

The bill was read and passed to a second reading.

The Senate proceeded, as in Committee of the Whole, to consider the bill to authorize the claimants of certain lands in the Territory of Florida, known as "Forbes' purchase," to institute suits against the United States, to try the validity of their title.

[This claim embraces about 1,200,000 acres of land, situated between the Apalachicola and St. Mary's rivers.]

Mr. BERRIEN explained, at length, the circumstances under which the claim had originated, and urged the propriety of putting it in process to be decided by the competent judiciary tribunals. Mr. B. also handed to the Chair certain documents, in favor of the claim, from the Florida Land Commissioners, and the Secretary of the Territory of Florida; which were read.

The bill and claim were warmly opposed by Messrs. RANDOLPH, EATON, and BENTON, on the ground, amongst others, that Forbes & Co. had been the fomenters of the war with the Seminole Indians, &c. and the cause of much American blood being shed.

The bill was further supported by Mr. BERRIEN, who answered the objections urged against it.

Messrs. WHITE and VAN BUREN were in favor of settling these claims by some mode, without delay, as the interest of the United States would suffer injury if the lands were offered for sale with the claims hanging over them.

The bill was finally, on motion of Mr. BENTON, laid on the table.

The Senate proceeded as in committee of the whole, to consider the bill to exempt the Professors, Tutors, Stewards, and Students, of the Columbian College, from militia duty.

Mr. EATON proposed to amend the bill so as to make it applicable to any other literary institution in the District. After a short discussion between Messrs. EATON, JOHNSON, of Kentucky, CHANDLER, FINDLAY, and NOBLE, the bill was laid on the table.

THURSDAY, APRIL 20.

The Senate, on motion of Mr. JOHNSON, of Kentucky, resumed the consideration of the bill to exempt the Professors, Tutors, Stewards, and Students, of the Columbian College from militia duty.

Some further discussion took place between Messrs. JOHNSON, of Ken. LLOYD, CHANDLER, EATON, HOLMES, FINDLAY, BENTON, and EDWARDS; and the amendment proposed yesterday by Mr. EATON, was rejected.

Mr. KANE then moved to amend the bill, so as to extend the privilege to the College in Georgetown; which was carried, ayes 16, noes 14; and the bill was then ordered to be engrossed for a third reading.

The Senate then proceeded to consider, as in committee of the whole, the bill to grant a certain quantity of land to the State of Indiana, for the purpose of aiding said State in opening a canal to connect the waters of the Wabash river with those of Lake Erie.

[This bill grants for this purpose a quantity of land, equal to six sections in width, embracing the land on both sides of, and most contiguous to, the canal, from one end to the other, subject to the disposal of the State Legislature.]

A short debate took place on this bill. It was opposed by Messrs. CHANDLER, HOLMES, COBB, and FINDLAY, as a wild project in attempting to carry a canal through such a wilderness, nor was the length of the canal specified, and all the land which would be improved or rendered valuable by it, would be reserved to the State. Mr. FINDLAY expressed his willingness to assist it by subscribing for stock as they had done for other canals.

The bill was supported and defended by Messrs. HENDRICKS, HARRISON, and JOHNSON, of Kentucky, who urged the practicability and importance of the canal, and the incapacity of the State of Indiana to effect it without the aid of Congress.

The following observations of one of the latter gentlemen, will serve to explain the grounds on which the bill was advocated:

Mr. HENDRICKS, of Indiana, said, it would be unpardonable in him, at this late period of the session, to detain the Senate by a speech of any considerable length. On this subject, however, it is perhaps unnecessary for me, said Mr. HENDRICKS, to give any assurances, for it has not been my practice to obtrude myself upon the attention of this body in frequent or long debates. On the bill now before you, it was my intention, had it met the consideration of the Senate at an earlier day, to have said much more than I now shall. I feel myself indebted to the comity of the Senate, for resuming its consideration at this late hour of the session, and of the day, and will endeavor to repay that comity, by closing the discussion on my part in a very short time.

Sir, a moment at a time like this, when the members are starting and preparing to go, may be all-important to a measure. The Illinois Canal bill, which, about three hours ago, was defeated by an equal division of the Senate, would, in all probability, if on its passage at this moment, obtain a different result. One member from Maryland is gone home, one from Delaware is sick, and another, from Kentucky, leaves us in the morning. These, with one or two others believed to be friendly to the cause of internal improvements, being absent, diminish our prospects in the present case.

A report of the Committee on Roads and Canals accompanied this bill. It has been printed and laid on the tables of members almost three months. It has been read, and contains all the information which is most obviously connected with the subject. But, as inquiries have been made, and objections started, I will endeavor to answer them. It is said that the country is yet a wilderness, inhabited by Indians, and that it is idle to talk of improvements of this kind, which belong to advanced periods of the improvement of a country. Gentlemen talk of twenty years to come, of another generation, as time enough for such improvements as these. Suggestions of this kind are serious, inasmuch as they create difficulties in the minds of those who know nothing about our country, and operate unfavorably to the present question. In all other views, they would only show us from the West, how little gentlemen from the East and South know about our country, and could only excite a smile. On this subject I refer gentlemen to the history of our country. In 1800, the Northwestern Territory, now the States of Ohio, Indiana, and Illinois, contained only a few thousand inhabitants, confined to the Connecticut Reserve, Vincennes, Kaskaskia, and Detroit, and a few settlements on the Ohio. That Territory now sustains a population of perhaps one million and a half; sends twenty members and one delegate to the other House; and, if an apportionment could be based on the present population, it would be entitled to six or eight more. Let me tell the gentleman from Maine, who has made this objection, that the fertile regions of the Western country, as the Indian title becomes extinguished, change instantaneously, as if by magic, from a dense forest to a highly cultivated country; and let me further tell the gentleman, that his own citizens and constituents, from the Penobscot and Kennebec, aid in producing this state of things. Sir, of all regions of the West which have been settled within the last four-and-twenty years, none has progressed with more rapidity than will this Wabash country. The canals of New York, the navigation of Lake Erie and of the Miami, to Fort Wayne, afford facilities, in arriving at this country, which never, until very recently, had any existence. Heretofore the approaches to that country from the East, were by land, in many instances a distance of a thousand miles; or else by water, from some navigable point on the Ohio, or its tributary streams. The exposures and fatigues of families in this removal well prepared the Northern constitution for the diseases of the country, and inflicted, in many instances, innumerable calamities on the unfortunate emigrant. The reputation of the country for health was injured, and emigration discouraged. All this is now removed. The Western country of the Wabash is also better adapted to the Northern emigrant than any district heretofore settled West of the State of Ohio. The situation of this district, then, in all respects, justifies the belief, that it will settle with a rapidity heretofore unknown.

Sir, the very fact that the country is unsettled, is the strongest reason for passing this bill. Why? the land is now your own. You have it yet to give, but the moment you put it into market, that ceases to be the case. You sell the best lands for one dollar and twenty-five cents per acre, and not only put it out of your power to aid the State in this way, but you produce this state of things. If ever the State should be able to make this canal, she will have to operate in a highly cultivated country, and have to pay five, ten, and twenty dollars per acre for the land through which it must pass. In this way, by not passing the bill before the lands are put in market, you not only refuse to do the State a positive good, but really inflict a positive injury.

It has also been objected that there has been no survey of the route; no estimates; that there may be various routes for this canal, and on this subject we have no information. Sir, the report just read, gives you, I believe, reasons which ought to be satisfactory on these points. Two years ago, you passed a law authorizing the State of Indiana to survey this route through your public lands, and gave the very liberal donation of land for the bed of the canal, and ninety feet on each side thereof; and you reserved, also, from sale, the sections through which this route might pass. The subject of this survey has been before the Legislature of the State. They refused to appropriate money to make the survey. They were, perhaps, correct in this. For, being destitute of the means of making the canal, it was deemed bad policy to expend money in its location. The location of the canal would only have attracted attention to the public land in that quarter; would have given a nominal and fictitious value to it, which for many years cannot be realized, without the aid of the General Government in constructing the canal. It would have insured the sale of the lands contiguous, and have created new difficulties for the State whensoever she might determine to engage in the work. The State of Indiana will not authorize the survey at her own expense, unless she has your aid in this, or some other form, to enable her to progress with the work.

There can be but one route for this canal. It must follow the stream from the Western termination of the Portage. It must keep the valley of the Wabash. This Portage connects the river St. Mary's three miles above

its junction with the St. Joseph's, with the waters of the Wabash. It is less than seven miles between the points, and so low is the summit level, that small water craft has frequently, in times of high water, passed from the one to the other. It is believed that a feeder of a few miles in length from the St. Joseph's will supply this summit with any quantity of water, or that the St. Mary's may be used for this purpose, by damming it in the vicinity of Fort Wayne. The fact, however, that the waters of the East and the West mingle at that point, proves the summit level to be very inconsiderable. As to the length of this canal, opinions are somewhat different. Some opinions say that a cut across this summit level will be sufficient; others, that the cut must be extended to the Little Wabash, a distance of twenty-five miles; and others, that it must be extended still further. The lowest point named is the mouth of Tippecanoe river. This is believed to be distant from Fort Wayne about one hundred miles. My own opinion is, that the canal should terminate below the mouth of the Mississinaway, and this would require a cut of perhaps fifty miles. Its length, however, is not so great a consideration. It is a matter of principle. Will you give lands for this purpose? If you will, its magnitude, though it should go to the Tippecanoe, ought not to deter you. You cannot doubt of the expediency of the measure, whether you look at the importance of the country contiguous, or the vast and fertile regions with which, and between which, it will open a communication. If the canal be a long one, it will be the more expensive, and the more will we require your aid. If it be a short one, the bill will give us less. As the bill is drawn, the appropriation will be in proportion to the length of the canal.

Much strength of argument is gained from the character, position, and extent of this river. Steamboats have already ascended this stream to Terre Haute, a distance of at least three hundred miles from its mouth. This is the highest point to which the settlement and business of the country has as yet invited them. The country is, however, settled as high up as the mouth of Tippecanoe, one hundred and fifty miles further, and although the fact has not been proved by actual experiment, yet I have no hesitation in giving it as my opinion, from the character of the river, that steam navigation may be employed much higher up than even that point—I will say to the mouth of the Mississinaway. *

Sir, this stream, not only in character, but in extent and position, demands your attention. It is, save the Ohio, the largest river of the West, until you come to the Mississippi. It rises in the State of Ohio. It waters a greater portion of territory than any other in the States of Ohio, Indiana, or Illinois. The richness and fertility of its lands are, even in our country, proverbial. It may fairly be called the great artery of the Northwest. It is certainly such to the State of Indiana. In reference to its position connected with that of the Miami of the Lake, little need be said. No one can, for a moment, examine the maps of the States of Ohio and Indiana, without being struck with the great designs of nature. She has almost perfected the union of the waters of the East and West. She has left but little for us to do.

I have spoken of the summit, and have only to add on this subject, that, from the character of the Wabash, this canal must be easy of construction. It will require little expense in lockage. For the character of the Miami of the Lake, I refer gentlemen to the history of the late war, and to the gentleman (General Harrison,) who commanded the Northwestern Army during that war.

The idea that this grant will be repaid to the Treasury, in the increased value of the contiguous lands, is scouted by some gentlemen opposed to the bill. This is mere matter of opinion, and can only be proved from arguing from what has been, to what probably will be again. In this way it can be proved by facts drawn from the Western country.

In 1816, you gave the State of Indiana four sections for the seat of government. They were selected, and the town of Indianopolis laid off, before the public lands in that region were exposed to sale. What was the result? That the contiguous lands, and the lands of the surrounding country, for a considerable distance, sold much higher than land in all other respects equal, in other parts of the State. By that donation, you made, perhaps, fifty thousand dollars. This is the history of all donations for important public purposes. And this has been the policy, too, of the Government, in reference to the new States. Why did you give a section in every township for the use of schools? Was it not to make the country more valuable? To sell the lands? If it had been a mere donation to literature to the citizens, and not to the value of the public lands, you would have made that donation to the old States, as well as to the new—and in preference to the new—for they could have devoted it more profitably to literature than the new States could.

This donation could not have been with a view of sending the citizens of the old States into the forest to receive education, but with a view of increasing the value of your lands. This is proved by another incident of your policy, at the commencement of the land system—that of selling the four sections in each township, which were most contiguous to the school section, at double price. And yet, in enumerating the many great things which the General Government has done for the new States, these donations have always a prominent place in the list. They are not donations; they are speculations.

Sir, gentlemen tell us that the bill goes too far: It asks too much: That all we ought to expect at this time, is a reservation from sale, and a keeping of the case in our own hands, to await the good pleasure of Congress at a future day. And can gentlemen, who seem to know our true interests so much better than we do ourselves, tell us what advantage to the country would result from such a bill as that would be? Or, will they permit me to tell them, that, to reserve from sale six miles wide, down the valley of the Wabash, would make a desert of the very country, the settlement of which is our first object? Better give up the idea of doing any thing to aid us in this business, and bring the land into market. It is the settlement and prosperity of the country that we desire, and not that the lands may belong to you, or us, or another proprietor. For this purpose we want the canal. We care not so much about its tolls and revenues, as we do about its existence, for the good of the country. Do you stickle about a participation of its proceeds; regulate that matter as you please, only give us the canal, or aid us in this way to make it.

Sir, it has frequently been said here, that before Congress engage in works of this kind, they should be well advised of the importance of the undertakings they would encourage, in a national point of view; and we have been asked by some, to show that this canal will be advantageous to the country in a military point of view. Sir, I have heretofore, on this point, referred gentlemen to the history of the late war. That history will give you facts showing the great value of the navigation of the St. Mary's and the Miami of the Lake, to the operations of the war in the

* Since, the Vincennes paper informs that a steam boat has actually ascended to the battle ground on Tippecanoe, found the navigation easy and safe, and had taken in, at a point near that place, $85,000 in specie, from the Land Office at Crawfordsville, to be conveyed to the United States' Branch Bank at Louisville.

Northwest. It will also show you that much of our disaster in that quarter, if not all, was occasioned by the great difficulties of transportation of military supplies, and of the movement of your troops. Suppose you might find it necessary to transfer military supplies from Detroit to the Mississippi, or from Upper Canada to New Orleans. Of how much importance would this means of transportation be. Sir, a single fact: The 4th regiment, after it had fought at Tippecanoe, was called to Detroit. This was the first service to which it was called after that event.—What was the direction of its march? It was, when on the battle-ground, about one hundred miles distant from Fort Wayne, a point by which, or near to which, it had to pass on its way to Detroit. It returned by Vincennes, passed the Ohio at Louisville, passed through Frankfort, Kentucky, crossing the Ohio again at Cincinnati, and thence to its point of destination. It approached the country of Fort Wayne by a fatiguing circuitous march of six hundred miles, gaining in real distance about one hundred. This is a case, indeed, in which I place no great reliance. The country was then a wilderness, in possession of hostile tribes. I do not say that roads or canals could have been used, if they had then been in existence. The statement, however, will show the great improvement of which the country is susceptible, and its peculiar adaptation to military purposes. It is probable that that country, interior as it is, will never again be in the hands of an enemy. The country of the Lakes of Michigan, and the Northern parts of Ohio, may. You may require a rapid movement of troops from the Mississippi to Upper Canada, or from Upper Canada to some point of the South or West. In such emergencies, I need not tell the Senate, that this canal would be immensely valuable.

But, sir, the vast extent of country to which this would afford commercial facilities, and direct intercourse, cannot be overlooked. This must be the principle, as it is the direct inland line of communication between the upper countries of the St. Lawrence and the Mississippi, between the Eastern and Western States. Does the commerce of those regions, whose rivers fall into Lake Erie, wish to find a Southern market? What channel so natural, so easy, so direct as this? or does the commerce of the South wish to approach the Northern parts of Ohio, Indiana, Michigan, or Upper Canada? By what other way can they approach so readily as by this Canal.

Sir, the Senate, I hope, will indulge me a few moments more, and I have done. The gentleman from Pennsylvania has said, let Indiana construct her own roads and canals, as Pennsylvania has made hers—that Pennsylvania has not asked the aid of this Government in her works of this description. I will not ask that gentleman to tell the Senate how the State of Pennsylvania, how several States which have recently executed important works of internal improvement, have been enabled to expend millions on such objects? What have been their sources of revenue? What has enabled Pennsylvania to make her magnificent turnpikes? What her resources for the splendid canals in which she has recently engaged? I can answer this question for the gentleman, if he is disinclined to the reply. Her public lands are, and always have been, one of her great sources of revenue. The proceeds of these she has recently pledged for the future. These proceeds have sustained her in the past. Very different, sir, is it with the new States. The old States, not content with their own lands, have laid the strong arm of power upon ours; and it is somewhat curious to observe, with what pertinacity members from the old States adhere to the public domain, and at the very moment they are preaching to us our equality with them, they own the public lands within their own limits, and those within the limits of the new States, and endeavor to console us with the opinion, that we are on an equal footing with the original States.

The solicitudes of the Western States on the subject of internal improvement is often spoken of on this floor as matter of deep regret. This solicitude must, nevertheless, continue. It cannot be otherwise. While the public lands belong to the Federal Government, the new States must always be importunate for aids of this kind. Do you say, that we require too much legislation on the subject of the public lands; and that, on the subject of roads and canals, we are undermining the Constitution? We reply—give us the soil of our country, and we will be as other States. Your arguments will then be more likely to prevail with us on the subject of internal improvements. In what State, or nation, does not the public domain require much regulation? This subject is regulated by the old States at home: The new States have to come here to get that matter regulated. Is it wonderful, then, that more legislation is necessary for the new States than for the old States?

Sir, let me put a case to gentlemen; for our great object in questions of this kind is, that members from the old States should for a moment make our case their own. In that event, there would be no difference of opinion between them and us. Suppose then that the General Government should assume the power to dispose of, and make all needful rules and regulations respecting, the unappropriated lands in the old States; should create land offices, order surveys, &c. Would gentlemen repose very quietly in that state of things? and yet, this being our situation, they tell us almost as often as we ask the passage of a land bill, no matter what its object, though it be to quiet the title of an industrious citizen who is rearing a numerous family on a few acres, that we are restive, we are troublesome. We are told, on the present occasion, that it is unconstitutional; that you cannot give; that, by the articles of cession, the public lands stand pledged for the payment of the public debt. Grant it. What debt are they pledged for the payment of? It will not be contended that it was for any other than the debt created by the war of the Revolution. And what is the state of that debt? It is all paid but $13,000,000 of the three per cents. and this $13,000,000 you will never pay until all the last war debt, bearing a heavier interest, shall be paid. Sir, you have paid in principal and interest more than $100,000,000 of the debts of the last war, of debts not embraced by the terms of the articles of cession, nor did the cession contemplate the payment of any other than the Revolutionary war debt. It is sheer power which applies the proceeds of the public lands in the new States to any other purpose of this Government. The new States are flattered with the appellations of sovereign, independent, and with the idea of being on an equal footing with the original States. Sir, whatever portion of sovereignty and independence they may enjoy, they are not on an equal footing with the original States. Sovereignty and the right of soil are terms synonymous, or nearly so. This is admitted by the old States, in their uniform stipulations that the new States shall not tax the public lands. The compact not to tax implies the right of taxing unrestricted by the compact; and the right to tax without limit, is the right of soil. The new States ought not to have entered indefinitely into this compact. It was selling their liberties without a consideration. The State of Ohio commenced, the others followed suit.

Sir, a habit has grown up amongst us, of talking of this General Government as a great political hydra, destined finally to ingulph and destroy our liberties, whose tendency is to destroy the power of the States. Sir, if I feared the General Government as much as some do, I would raise my voice for the dissolution of the Union. But I have no such fears. There is danger in either extreme, I admit. Danger of making this Government too weak, as well as danger of making it too strong. And whose doctrine, sir, tends most strongly to increase its power? Theirs or ours? Wealth and patronage is power.

In this instance we ask, that, for considerations valuable to the Union, as well as to several States, you should give us a small portion of your wealth. You who fear that this Government has too much power, and who say it threatens the destruction of the States, say you cannot give; you have not the power to give. Then being already too powerful, you have not the power to diminish your power, by parting with this small pittance of your wealth. There does appear to be sometning ludicrous in objections of this sort. Sir, I might go on and consider the amount of this grant, and show you that it is inconsiderable in all respects, compared with the magnitude and importance of the work it would effect. I might speak of the character of the country from Fort Wayne, West; that much of the lands on that high dividing country are not of the best quality for agricultural purposes; that the greater portion on the route of this canal is of this description, at least for the country between Fort Wayne and the mouth of the Little Wabash. But I will not pursue the subject further. We have cheerfully voted with you large appropriations for your Navy, your fortifications, your expenditures for purposes almost innumerable on the seaboard. We have aided you in the equipment of 74's, frigates, and sloops of war, for the protection of foreign commerce on every ocean and sea; and shall we be considered unreasonable or extravagant, in asking this small portion of the soil of our own country, in aid of the domestic commerce of this extensive region? I trust not.

The hour assigned for taking up the special orders of the day having arrived,

On motion of Mr. NOBLE, the bill was laid on the table.

EXECUTIVE POWERS.

The Senate then resumed the consideration of the motion submitted by Mr. BRANCH, relative to the extent of the power of the Executive in appointing Foreign Ministers.

And the question being on the indefinite postponement of the resolution,

Mr. HARPER, of South Carolina, spoke for an hour in support of the resolution.

He was followed by Mr. LLOYD, in opposition to the resolution.

Mr. TAZEWELL said the question for the consideration of the Senate is, whether the Constitution of the United States confers upon the President that power, which, in his message, of the 26th of December last, to this body, he asserts to be within his exclusive "constitutional competency."

I concur entirely, said Mr. T. with the Senator from Maryland, (Mr. CHAMBERS,) in the opinion which he has expressed, that it is necessary to understand, distinctly, in the first instance, what is the true nature and precise extent of the power the President has so asserted, before we can properly decide whether this power be within his "constitutional competency" or not. But I differ very widely from that Senator as to the correctness of the rule to which he refers, for the purpose of learning what the true nature and precise extent of this power is.

According to all received opinions upon the subject of interpretation, which have ever come under my observation, the meaning of language is to be sought for, first, in the obvious signification of the words used.—If this be certain, the intention of him who used them is fixed and determined; but, if doubt still remains, this doubt must be removed, by a reference to their context. And if certainty is not there found, then resort must be had to other words, used cotemporaneously by the same author, in reference to the same, or even similar subjects. It is by these rules the President must judge of the meaning of our language, used in bills sent to him for his approbation; and by the same rules, therefore, we must judge of the meaning of his language, used in messages sent by him to this body.

Tried by any of these well-approved standards, the true nature and precise extent of the power asserted by the President, upon this occasion, is clear and confessed. The "measure" which he deems to be within his constitutional competency, he expressly declares to be that mentioned by him in his message to both Houses of Congress, at the commencement of the present session. In that message this "measure" is pronounced to be, "*the commissioning of Ministers on the part of the United States, to attend at the deliberations of the Congress of Panama, and to take part in them.*" So that the obvious signification of the words used to denote the true nature and precise extent of the power asserted by the President, upon this occasion, is, that the authority to appoint and commission such ministers, is within his exclusive constitutional competency: and this, without any limitation or qualification whatever.

If, however, any doubt could yet remain, as to the nature and extent of the power thus claimed, without stint or limit, that doubt must yield to the explanation of the words used by the President, given by himself, in their context. His language is, that "although this measure was deemed to be within the constitutional competency of the Executive, I have not thought proper to take any step in it, before ascertaining that my opinion of its expediency will concur with that of both branches of the Legislature." Hence, it plainly appears, that the power asserted by the President, was a power not then (viz. December 26,) executed, but remaining yet to be executed—a power which, although deemed to be within his constitutional competency, was one, in the execution of which he had not then (December 26,) thought proper to take any step. A power, in the execution of which he needed no aid from the concurring act of the Senate, whom he had consulted, not as to the power, but *as to the expediency* of exerting it in the particular case. So that, if this assertion be correct, the Senate are indebted for the privilege of giving any opinion in relation to the "measure," not to the Constitution, but to the gracious good will of the President alone, within whose exclusive "constitutional competency" the power of creating and of consummating this new political relation is deemed by him to reside.

And if a single cloud of doubt yet remains, it must be dissipated at once, by referring to the cotemporaneous language of the same author, used in his previous message, of the 5th of December, to both Houses of Congress, in relation to this same subject. In that message, he asserts to this body, and to the world, that these ministers to Panama "*will be commissioned.*" Words which can only be regarded as communicating a prophetic prediction, unless they are considered as intended to convey the imperative annunciation of the President's purpose. And as none suspects the President of possessing the gift of prophecy, unless when, like some other modern prophets, he enjoys the means of verifying his own prediction, he must be considered as intending by these words to describe the true nature and precise extent of that power which he then (December 5th) deemed to be within his "constitutional competency."

The obvious signification of the words used, confirmed by that of those found in their context and by reference to other words used by the same personage, upon a previous and recent occasion, in relation to this identical subject, must then, I should think, constrain every one who reads them, to conclude, that the power which the President asserts in his message of the 26th of December last, to be within his "constitutional competency," is the broad unqualified power of sending Ministers to this Congress of States, to be assembled at Panama, at any time, and for

any purpose he thought proper: and this, without consulting the Senate, even as to the expediency of the measure. Such a power, the Senator from Maryland declares to be destitute of any the slightest warrant derived from the Constitution—to be a power never before asserted by any other President—and a power so enormous and dangerous in itself, that the People of this Union ought to revolt at its use. I use the very language of that Senator, and am happy to add my entire concurrence in the opinions it expresses.

I cannot concur, however, with this gentleman in the inference he deduced from those premises. He argues, that because such a power is destitute of warrant or authority in the Constitution, that therefore we ought not to believe the President meant to assert it. And resting upon this assumption, he proceeds to tax his ingenuity to find out some other meaning for the President's words, than that which their obvious signification, their clear context, and their cotemporaneous explanation by the author himself, communicate. Do they who argue thus, perceive the unkind effect of their argument? Do they see, that to save the President from the charge of asserting an authority, not given to him by the Constitution, they seek to convict him of the grossest ignorance of his vernacular tongue? To fix upon him, as an author, such a want of acquaintance with the structure and signification of the language in which he writes, as ought not to be imputed lightly to the veriest dunce of a pedagogue who ever pretended to teach the rules of rhetoric in the most obscure country village? For my part, sir, I will much sooner believe that a well educated man, enjoying much power already, would assert an unsanctioned claim for more, in terms *purposely* made broad and general, than that he was so miserably ignorant of the force and signification of the words he employed to assert this claim. I can much sooner believe that *any* President would claim power not belonging to him of right, than that *this* President had less of knowledge of his mother tongue, than of inclination to keep the commandments of the Constitution.

But, sir, some meaning must be annexed to the President's words, and what is the rule of interpretation by which the Senator from Maryland contends we ought to try them, for the purpose of ascertaining their true signification? He admits that the power is asserted in terms general and unqualified; but tells us, that an intended limitation and restriction of the terms used may be found elsewhere, if we will but search for it. And where, sir, does he search for this intended limitation? In the context? No. In the cotemporaneous exposition given by the President himself? No. But he says, we must take these general and unqualified terms, in connection with other language, to be found in other documents, which came to us covered by the same envelope that enclosed this message, and to which other documents we are referred by the message itself. That is to say, sir, to learn the true meaning of plain words used by the President upon one occasion, in a confidential message to this body, and in relation to one subject, we must resort to other words, used by the Secretary of State upon another occasion, in letters to foreign Ministers, relating to a different subject! If this rule of interpretation be correct, the Senator from Maryland, so far as I know, is certainly entitled to all the merit of an invention so novel, and, as it seems to me, so singular also.

I do not think, however, that even this newly invented rule of construction will stand the Senator from Maryland in much stead, at least upon this occasion. For, if you refer to these letters of the Secretary of State, which it is proposed to connect with this message, in order to understand the true meaning of the words used in the latter, you will discover that Mr. Clay, in referring to the consent of the Senate, as a preliminary to the appointment of Ministers to Panama, does not intend to inform the foreign Ministers to whom he was writing, what was the nature and extent of the power which the President *claimed* to be his, but merely to state to them as a fact, the mode in which that power would be *employed*, in this particular case. Whereas, in this message, the President refers, not to the power he meant to employ, but to that which he deemed to be within his "constitutional competency," although he did not mean to exert it upon that occasion. The President claims a right, avowing in his claim itself, that he did not intend to exert it at that time, although it was his; while the Secretary refers to the manner in which a supposed existing power would be then employed.

Every one must see immediately, that it would have been as great an assumption on the part of the Secretary, if he had undertaken to communicate to any foreign Minister, the extent of what he deemed to be the rights, of the mere abstract authority of the President, which it was not intended to exert, as it is admitted to be on the part of the President, to assert such an authority without limitation or restriction. It is inconceivable by me, then, in what way the statement of Mr. Clay, made to a foreign Minister, as to the manner in which the power of the President would be employed by him, in a particular case, can assist us in discovering what is the true nature and precise extent of a general and unlimited authority, claimed by the President, but which is expressly declared by him not to be intended to be used on that occasion. And yet, this is the sole source from whence the Senator from Maryland has derived his opinion, that the President, by the broad and unqualified terms he has employed in this message, meant to assert nothing more than the right of appointing Ministers to Panama, *during the recess of the Senate.*

And here, Mr. President, I cannot avoid again noticing the unkindness to the President, of those who wish to interpolate in his message these words, "during the recess of the Senate," which are not to be found even in the documents accompanying it. To defend him from the charge of claiming an authority, which it is conceded on all sides that the Constitution never conferred upon him, they would not only convict him of the grossest ignorance of his mother tongue, but now seek to fix upon him the imputation of the miserable, puerile, childish vanity, of asserting unnecessarily, and "ex cathedra," to the Senate in session, what would have been his power if they had not been in session! If, sir, I could once bring myself to the belief that such was his real purpose, I would advise my friend from North Carolina (Mr. BRANCH,) to withdraw his resolution, and in its stead propose to the Senate, to return as an answer to this message, the only proper reply it would I think merit, by sending him the contemptuous Spartan IF, engrossed in capital letters, upon the largest skin of parchment which could be found.

But, sir, I stand not here to prosecute philological inquiries, or to adjust with the President the terms which courtesy and good manners prescribe as proper to be attended to, in his intercourse with the co-ordinate departments of this Government. I have risen to defend the privileges of the Senate, and the rights of the Sovereign State whose representative I am, both of which I deem to have been assailed, by the covert assertion of a dangerous power, the exertion of which is insidiously waived, in the very claim wherein the authority is declared to exist. And, therefore, as it has been distinctly conceded on all hands, that the power which I have contended to be asserted, and which I still believe to have been intentionally asserted, by the President, in this message of December 26th, does not belong to him, I will now proceed to examine that, which the Senator from Maryland, and he

from Massachusetts, (Mr. MILLS,) admit to be claimed by the President, and which they both strenuously contend, does of right belong to him.

What is that power? It is the very same in kind, although not in degree, with that which they have admitted not to be within the Constitutional competency of the Executive. Limiting its exercise to the recess of the Senate, they contend, that, during such a recess, the President has the uncontrolled power to send any Ministers, to any nation, or to any People under the sun, at his mere will and pleasure. Yes, sir, that he has authority, the moment we adjourn, to send a Minister to Greece, or to Hayti, if he shall choose so to do. Not only may he do this, but that, during the recess of the Senate, he may send any Minister he thinks proper, to any Congress of any nations or of any People, (whether assembled at Panama, or at Verona, or Vienna,) with which he in his unrestrained discretion may see fit to connect us; and that he may clothe these his Ministers, when so sent, with any powers, functions, or authorities, he may choose, even to contract alliances offensive and defensive, or to pledge the faith of the United States, for any other purpose whatever.

Such, sir, is the position these Senators take. And how have they supported the assertion of this enormous prerogative, which they claim to appertain to the President as of right? Have they sought support for it in the written precepts of the Constitution? No. Do they deduce it from any principle derived from the general theory of our Government, or the genius and spirit of our Institutions? No. But they support this extravagant pretension, horribly portentous as it is to the best interests and dearest rights of this People, by a few PRECEDENTS, which their industry has enabled them to pick up, in the obscurity where they lay hid, sparsely scattered here and there in the secret history of our diplomatic intercourse, "*ab urbe condita.*" Yes, sir, they find in our archives examples such as our sacred history records of angel visits, "but few and far between," and because they have discovered a *few cases*, in which a power supposed to be somewhat analogous to that for which they contend, has been exercised by *some* Presidents, under circumstances altogether *new* and *very peculiar*, they think they argue fairly and logically from such premises, when they conclude, that, because some former Presidents have exerted some such power, under some special circumstances, that therefore the present and all future Presidents may exert, as of right, a similar power, in all cases whatsoever They contend, that, because, during the recess of the Senate, a Consul has been appointed by one President, to supervise the interests of our sailors, in the port of some nation with which we had long carried on commerce, *ergo*, during a like recess, all Presidents may of right appoint Ministers to any other nation, with which we have never had connexion of any kind, even China, Japan, or the Grand Turk. They contend, that because, during the recess of the Senate, one President, in time of flagrant war, has appointed a Minister to negotiate a peace with a Barbarian tribe, *ergo*, during the like recess, all Presidents, in time of peace, may of right appoint Envoys Extraordinary, to recognize the independence of any People, struggling to free themselves from the domination of their former Sovereign, our approved friend. And they contend, that because, during the recess of the Senate, one President, in a time of universal peace, has appointed a Minister to an ancient and acknowledged Sovereign, merely to maintain with him the customary relations of courtesy, amity, and commerce, *ergo*, during the like recess, all Presidents may appoint so many Deputies as they think proper, to a Congress, to be composed of they know not whom, or for what purpose assembled.

Such, sir, is the nature and effect of the sole argumen which has been urged upon this subject. An argument, the error of which is stamped so strongly and plainly upon its very face, that I would not trespass upon the time of the Senate in answering it, was it not for the awfully important consequences to which it unavoidably leads. As these consequences, however, involve the very existence of this Government, and the liberties of the People, I hope I shall be excused, if I detain you longer than perhaps I ought, while I examine in detail the various *cases* to which we have been referred, and upon which alone this argument is made to rest.

Before I do this, Mr. President, I must be permitted to premise some general remarks, in which (if they be correct) the Senate will find a satisfactory answer to all these precedents, were they even more numerous, and more strictly applicable, than those to which we have been referred.

And first, sir, I utterly deny the correctness of this doctrine, which seeks to create a new, substantive, and fruitful source of power, in existing or future Presidents, from the past practices of their predecessors. And I deny more strongly, if I may do so, the authority to enlarge the volume of power, issuing from this newly discovered fountain, by the process of induction and reasoning by analogy. Let it be once granted, that the practice of one President gives a legitimate authority to his successor, and that this authority may be enlarged by analogies, and it must be obvious to all, that the power granted by the People to the Executive, although made by the Constitution but a schoolboy's snow-ball, in a few turns would become a monstrous avalanche, that must one day crush themselves. Under a Government founded upon a written Constitution, by which none other than limited power is granted, and in which all powers not granted are expressly reserved; in the nature of things, there can be no other legitimate source of authority, than the written Constitution itself. Any department of such a government, therefore, which exerts a power that cannot be deduced *directly* from this Constitution, is guilty of usurpation.

It is true, that, where the language of the Constitution in its grants of power is doubtful, the constant practice under it, regularly and invariably pursued, whenever a case has arisen within the scope of the doubtful grant, and in which practice all have acquiesced, and for a long time, is entitled to very high respect; and perhaps I might even go further, and say, ought to be considered as conclusive, to show that such a practice was of right. And why is this? It is because, in a doubtful case, such constant and regular practices, so uniformly and invariably acquiesced in, amount to the highest evidence, to prove the correctness of the original construction of the grant, from which grant the power is *directly* deduced. But where the Constitution is not doubtful, or where cases are found of mere occasional departure from the principles on which the Constitution itself is founded, although the parchment rolls should reach high as Pelion piled on Ossa, and Olympus upon Pelion, the precedents they may furnish ought not to weigh even as "the dust in the balance."

If this be so, it follows, necessarily, that before any case furnished by our archives can be considered as entitled to the slightest respect as a precedent of rightful power, it must be clearly shown to be in accordance with the principles of our institutions, not contrarient to the expressed precepts of the Constitution, and to have been adopted as a rule regularly and invariably observed in all other cases of the same kind, which preceded or followed it. I say regularly and invariably observed: for liberty can have none but negative precedents in its favor. It exists only in the exemption from the oppression and usurpation of power. And as even the successful resistance of attempted usurpation merely dams up the stream, leaving no trace of its intended course, but in the dry and vacant

channel, which, if unobstructed, it might perhaps have occupied—so the want of precedent, in cases where precedents of power might be found, if it had been supposed to exist, is the highest authority to show, that it has never been granted, even where the words of the grant are doubtful, and the power claimed is in accordance with the principles of our institutions.

Again, sir, let it not be forgotten, that it is not the practice of the Government, but the long and quiet acquiescence of the People, under that practice, which gives a tacit assent to the power exerted, in a doubtful case. It is their tacit assent, to be inferred from such acquiescence, that sanctifies the claims, and approves the construction of the doubtful grant, from which the power asserted is *directly* deduced. Therefore, before any case furnished can be considered as entitled to the slightest respect as a precedent of rightful power, it must be shown to be one of sufficient importance to have attracted general observation, and of sufficient publicity to have been generally known and understood: for none can be supposed to approve that which they never observed, or observing, did not understand.

And this, sir, cuts up the argument of analogy at once, by the roots; for, as nothing can be approved, but that which is observed and understood, to contend that, because the fact of power exerted, has been understood, and acquiesced in, that therefore all the inductions which even fair analogy may deduce from this fact, are also approved, would be as absurd as to contend that all had approved of the Newtonian theory, who had ever seen a pear fall. All men were capable of noticing and understanding this fact, and most men would see the first and obvious consequences resulting from it; yet, none but a Newton could have traced their analogies, and by the aid of induction have inferred from thence the law of the Universe. So, too, when a fact of power exerted is shown to have occurred, under circumstances inviting general observation, and permitting general knowledge of its existence, if it has been acquiesced in quietly, it may be fair to argue that the power exerted in that particular case, has been tacitly approved; and so to conclude that the same power may be properly again exerted in the same mode, and under the same circumstances. But the inference must go no further; because nothing beyond this can be then known, is then generally understood, or can be fairly supposed to be approved.

Whosoever, then, seeks to derive power from, or to sustain it by, precedent merely, must show a precedent agreeing not in some, but in all essentials, with the case before him. There must be no abstractions in the argument. Principles must not be inferred from one case, by the process of induction, and enlarged and extended by the process of analogy to other cases of a like kind, from whence again new principles are to be deduced, and these again enlarged by new analogies. This may be permitted in physics, because there experiment may be perpetually resorted to, in order to test the truth of the reasoning. But it must not be endured in the politics of a free country, where a written Constitution exists, the sole object of which is to prevent such experiments from being made.

I deny, then, the fairness of that reasoning, which seeks to derive from the fact of the appointment of a consul the right to appoint a Minister; from the fact of appointing a Minister to an ancient nation, the right of appointing one to a new and unrecognized Sovereignty, or more than one to a Congress of unknown powers; and from the fact of appointing a Minister in time of flagrant war, to negotiate a peace, the right to appoint Envoys in peace to negotiate about any thing. If we must be governed by precedents, let the precedents be directly in point; and if such cannot be produced, the want of precedents, in cases which must frequently have occurred, is the strongest argument to show that there was no power to make them; and if such a case has never before existed, then no precedent can of course directly apply.

Having thus shown, Mr. President, that no precedents ought to receive the slightest respect, which are opposed by the principles of our Government, or the precepts of its Constitution; and that, even in cases of a doubtful grant of power, none are entitled to consideration, but such as are directly in point; before I proceed to examine the various examples to which we have been referred, let me first show, what are the principles of our Government, and the positive precepts of its Constitution, which I regard as being opposed to the doctrine now advanced.

This, sir, is a Republican Government, the form of which was dictated by suspicion, and guarded by jealousy, especially of Executive power. To such a Government, it is obvious, no more power would be granted, than what was believed to be necessary to attain the objects which its authors, the People, had in view; and that the powers necessary to this end would be checked and balanced, by distributing them between the different departments, each independent of the other, and placed as a sentinel over its acts. That concurrence of opinion between different departments would be requisite in all matters involving great interests; and that the high destinies of the People would never be committed to the unrestrained discretion of any single man. These principles are dictated by the spirit of all our institutions, and exhibited in every part of our Constitution itself. Such principles, however, cannot be reconciled with this enormous prerogative claimed for the President, although its exercise be limited only to the period of the recess of the Senate. For it must not escape notice, that, according to this new doctrine, the President is not *compelled to act* while the Senate is in session, but may forbear to do so until the recess, without the least disparagement of his asserted power. The office of a foreign Minister, according to this argument, is one created by the public law; is recognized merely, by the Constitution, as an office of potential existence, to be filled only when an exigency arises requiring it to be called into action, and of the occurrence of such an exigency the President is supposed to be the sole judge. So that, if the Executive will but suspend the declaration of its judgment until Congress adjourns, immediately thereupon he may pronounce a vacancy to have happened in any office appertaining to our foreign intercourse, and proceed to fill up the vacancy so produced, as one occurring during the recess of the Senate. All *original* appointments belonging to our foreign relations are thus placed within the absolute power of the President, by this argument; and as no one has or can deny to him the right of filling up vacancies, actually happening in such offices, during the recess of the Senate, after they have been once filled, the whole power over the foreign relations of the United States is thus virtually transferred to the Executive, without check or limitation. A prerogative so vast and magnificent, which would endow the Chief Magistrate of a free People with plenary regal power, is not in accordance with the jealous spirit of our Republican Institutions.

It is, moreover, sir, directly contrary to the written and expressed precepts of the Constitution. To secure the liberties of the People, the Constitution created three coordinate departments of Government—the Legislative, Executive, and Judiciary, each independent of the other; and it distributed between them all the powers it meant to convey. Beginning with the Legislative department, it provides, in the first section of the first article, that all the Legislative power therein granted should be vested in a Congress, to consist of two bodies, the House of Representatives and Senate. Pursuing this division, it proceeds, in the three first paragraphs of the second section of this article, to prescribe the manner in which the House of

Representatives shall be chosen. And, having thus provided a full and complete House, it then proceeds, in the fourth paragraph, to declare the mode in which *vacancies happening* therein shall be filled, viz: "when vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies."

Here the term "vacancy" first occurs in the Constitution; and here it is most manifest that it must refer o an office once filled, but afterwards becoming vacant, by some occurrence "happening" to the incumbent, during the term for which he had been chosen. And that the only authority here given to the State Executive is, to employ the prescribed means "to fill" this appointment, which, having been once supplied, had so become empty. This construction, called for by the plain signification of the words of the Constitution, has received the sanction of this whole People, from the beginning of the Government to this hour; and no example exists, in which the Executive of a State has ever ventured to issue a writ of election, except to supply vacancies in the House of Representatives, produced by some event, "happening" after an original election had been made, and during the term for which such election was made. The meaning of the words, as used in this part of the instrument, is therefore fixed and determined.

The same signification is again given to the same words where they are next found. Having directed the manner of creating the House of Representatives, and preserving it complete, throughout its Constitutional term of two years, in the second section of the first article; the Constitution, in the third section of the same article, takes up the other branch of the Legislature, the Senate. In the first paragraph of the third section, it provides how, and by whom, the members of this body shall be at first chosen; and having so provided a full and complete Senate, it proceeds, in the second paragraph, to declare the mode in which future "vacancies" in that body also shall be filled. Its language is, "if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies."

Now here it is more clear, if possible, than in the former case, that the "vacancy" which the State Executive is authorized to supply, by a temporary appointment, is not an original vacancy, (if I may so speak,) but a "vacancy" occurring in the Senate, after the appointment of a Senator has been once made by the Legislature; and which vacancy has "happened" by resignation or otherwise, not only during the term for which the first Senator was appointed, but during the recess of the Legislature of any State. And if any confirmation of the correctness of this construction could be required, it would readily be found in the decision of this Senate itself, in the case of Mr. Lanman, the Senator from Connecticut, made in March, 1825. The circumstances of that case are of so recent date, and the decision itself being made by the members now here present, it cannot be necessary to state it more particularly. The meaning of the terms used in the Constitution being thus fixed and determined, in the two instances where they first occur, we ought not to doubt that they were employed in the same sense where we shall next find them.

Having disposed of the Legislative department in its first article, the Constitution proceeds, in the second, to provide for the Executive, to prescribe the mode of its appointment, and to endow it with its appropriate powers. In describing these powers, the subject of appointment to offices constututes the matter of the second paragraph of the second section of this article; and this power is therein delineated by these words: "He shall nominate, and, by and with the advice and consent of the Senate, shall appoint, Ambassadors, other public Ministers, and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law."

Had the Constitution stopped here, none could doubt that the power of appointment, even of the lowest officer under the Government, could not have been rightfully exercised by the President alone, at any time whatever, unless in pursuance of some law providing that this might be done. In all other cases, this power is expressly granted to him in conjunction with the Senate, without whose advice and consent it could not be rightfully exercised. But the Constitution does not stop here. Having, as in the former cases, prescribed the general mode in which all *original* appointments were to be made, it proceeds, in the next paragraph of the same section, to provide for "vacancies." Its language is, "the President shall have power to *fill up* all vacancies that may *happen* during the recess of the Senate, by granting commissions, which shall expire at the end of their next session."—And it is under this clause, that gentlemen derive the prerogative, which they claim for the President, of calling into existence, during the recess of the Senate, new offices, never before filled, and of filling them at his pleasure.

According to their theory, the office, like original sin, has existed throughout all time. Aware, however, of the difficulties to which this proposition would lead, when it should be replied, that, if the office did so exist, it must always have been vacant; and of course that the vacancy did not "happen during the recess of the Senate," they have resorted to the distinction between potential and actual existence, making vacancy apply only to the latter state—of the occurrence of which the President is, in their opinion, the sole judge. To this subtle argument I answer, first, that the same words here used have been shown to be employed in two preceding clauses of the Constitution, in reference to the same subject of vacancies. That their signification has been there fixed beyond all doubt; and has been shown to refer not to potential but to actual office, in which, being once filled, a vacancy has happened, by reason of some occurrence to the former incumbent. And that the same interpretation must therefore be given to the same words, when they occur here for the third time in the same instrument.

Again, if there be any thing in this distinction between potential and actual offices, it applies, "a fortiori," to the case of a Judge of the Supreme Court, which is an office created potentially by the Constitution itself; and which office, therefore, if the argument be right, the President might have filled up at any time he thought proper, even before the Judiciary law was passed. But the idea that the President had the power of appointing Judges of the Supreme Court when he pleased, because the Constitution had said there shall be such a court, is one that never entered into the brain of any rational being, at any time whatever. Every one has conceded, that, until a law was enacted, fixing the number of these Judges, their compensation, jurisdiction, and mode of proceeding, the power of the President to appoint, was, like the office itself, "*in posse*," and not *in esse*; and as the law which would call this potential office into actual existence must be passed during the session of the Senate, that the original vacancy in the office could not happen during the recess of this body, and could not, therefore, be filled up by the President, without their advice and consent. The Judges of the Supreme Court, however, are placed by the Constitution upon precisely the same footing, in this respect, with Ambassadors and other Public Ministers. Whoever concedes, then, that the President has no legitimate au-

thority to make an original appointment of the one, must not contend that he has such authority as to the other.

The same remark will apply, with equal force, to all other officers of the United States, whose appointments are not otherwise provided for by law. If the President alone cannot appoint any one of these, whose office is created by statute, until this office has once been filled by and with the advice and consent of the Senate, no more can he alone make an original appointment of any public Minister; for they are placed by the Constitution upon the same footing. In relation to statutory offices of every kind, however, it has never been pretended by any one, at any time, that the President might make an original appointment to them. They have always been filled, for the first time, by and with the advice and consent of the Senate; and the only power of appointment which any President has ever claimed, as to such offices, was, the right to fill them up, when vacancies happened in them during the recess of the Senate, after they had been once filled.

My opinion has ever been, Mr. President, that, as the Constitution has expressly declared "the Executive Power shall be vested in a President," this power of appointment to office would have necessarily belonged to him, as an incident of the general Executive authority with which he was thus clothed, but for the other provision, to which I have already referred, by which the advice and consent of the Senate is made necessary to give effect to this power. Thinking thus, I have ever regarded this clause, which authorizes the President to nominate, and, by and with the advice and consent of the Senate, to appoint to office, not as a donation, but as a limitation of the power of the Executive. But for this clause, the whole power would have been his; and this as well during the session as during the recess of the Senate. That jealousy and dread of Executive power, however, which is manifested in so many other parts of this Instrument, induced the framers of the Constitution to check and limit it, by requiring the concurrence of the Senate in its exercise, *in all cases.* Foreseeing, then, that even after the appointments had been originally made, in the mode prescribed, that vacancies might nevertheless occur in the offices which had been so supplied, and that the vacancies might happen during the recess of the Senate, the framers of the Constitution made an exception to the general rule they had so previously declared; and by the clause, before referred to, gave to the President the power to fill up all *such* vacancies. In doing this, they merely gave to him a power similar to that which they had before given to the Executive of each of the States, in relation to the like vacancies occurring in this body, and no more. The construction now contended for, however, would make the exception even larger than the rule itself; and not only so, but, by the force of the proviso, would render nugatory the rule, to which it is an exception merely, and which rule was intended to limit and restrain a power of the President, that without it would be unqualified.

If, sir, I have been successful in the attempts I have thus made to show that the power claimed for the President upon this occasion is opposed to the principles of our institutions, and forbidden by the precepts and limitations of the Constitution, it would not be necessary, probably, to notice the *cases*, in which such unauthorized power is supposed to have been exerted. But, sir, the name and fame of the wise and good men, under whose administration these supposed acts of lawless usurpation are said to have occurred, is dear to this People. Their well-earned reputation is public property of great and inestimable value, and of no one particle of which am I willing to be deprived, until the right to commit the waste is clearly made out. I ask your indulgence, and that of the Senate, a while longer, therefore, while I shall endeavor to prove, that neither Washington, or Jefferson, or Madison, have ever claimed or used any such power, as that which the existing President asserts to be within his "constitutional competency," and which the *cases* referred to are supposed to sanction.

The first of these cases is that of John Paul Jones, who, according to the document read by the Senator from Massachusetts, was appointed by President Washington, in May, 1792, during the recess of the Senate, as a Minister to Algiers, to negotiate a treaty of peace and of commerce with that Power.

This is the first case which industry has been enabled to discover, of any supposed original appointment, made by the President, without the advice of the Senate. And as it seems in some of its features to bear resemblance to other cases which afterwards appear, I shall examine it with more minuteness than I think it is entitled to, in order to relieve myself from the necessity of again touching the same topic.

The first remark I shall make upon it is, that it occurred in May, 1792, more than three years after this Constitution had been in full operation. Now, if the ideas which Senators have announced during this debate be correct, the moment this Constitution went into operation, on the 4th of March, 1789, it called into potential existence every office which is therein recognized. The very creation of this new Government, terminated the official existence of every foreign diplomatic functionary of the United States, and so produced the necessity of re-establishing all the foreign relations which it had been desirable to create. The whole field of vacant offices was thus thrown open to President Washington; and a policy, which, in many instances must have been dictated by almost necessity, required of him to fill up these potential vacancies. But yet this great and good man, although placed in such circumstances, never ventured to make a single original appointment, of any kind, without the advice and consent of the Senate. Here then is not one, but a body of precedents, occurring continuously throughout more than three years of time, during almost every hour of which, occasion not only existed, but invited to exercise the power which is now asserted, and in no one instance was it claimed or used. This, sir, is not only strong proof that both Washington and the wise counsellors by whom he was then surrounded, believed that the power now claimed had not been granted; but ought to have induced those who rely upon this case of Commodore Jones to have examined it more attentively, before they brought it here as evidence to show the change in such an opinion.

The next remark I shall make upon it is, that even according to the representation given of it, it was the case of an agent sent to a Barbarian People, who were not then, and have never since been recognized, as forming any component part of the family of civilized nations. Let me not be told, that the constitutional power of the President is the same, whether exerted in reference to a savage or a civilized nation. We all know that this is not so. No appointment of a Minister, who has ever been employed to negotiate for peace, or for any thing else, with any Indian tribe, whether dwelling within or without our territory, whether Osage, or Seminole, has ever been laid before the Senate for their consent. They are all considered as agents of the President, and not public Ministers of the People; and all our intercourse with Barbarians must, of necessity, present anomalies, from which no principles can be inferred. I will not go into reasoning to show why this must and ought to be so, although it would be easy to show it. I merely state the fact, which is conclusive to prove that the case of a mission to Algiers or to the Choctaws can never be a precedent to justify a mission to Panama.

The next remark I shall make upon this case is, that when it occurred, flagrant war existed between Algiers and the United States; and war, all know, justifies, by the very necessities it creates, the exertion of powers that

ought not to be endured in peace. He who would infer the principles of peace from the precedents of war, reasons falsely. He might as well deduce precepts of morality from the practices of vice, or seek to learn from the atheist the doctrines of Christianity.

And here, Mr. President, let me develop more fully an idea I suggested upon a former occasion, and upon which the Senator from Maryland has made some remarks. I then said, and I repeat it, that, war existing, the President of the United States is authorized by the Constitution to send a Minister to negotiate for peace, not under his general power of appointment, but under his special authority to direct the operations of the existing war. I prove it thus: Peace is the sole legitimate object of all war. To attain this desirable end, the moment war exists, every man, woman, and child, of the one belligerent, is made the enemy of every man, woman, and child, of the other; each at liberty to do the other all the harm in its power, in order to constrain it to sue for peace. The President of the United States is, by the Constitution, made the Commander in Chief of their army and navy; and in that character is authorized, nay bound, to direct the military force of the country in time of war, so as to accomplish the great object of war, which is peace, in the most speedy and effectual manner his discretion may suggest. And that which he may do in person, if not forbidden by law, he may do by his Minister or agent. Now, sir, can I be wrong when I conclude from such premises, that he who may negotiate for peace by the roar of artillery, by the conflagration of cities, by the desolation of a country, by the wailings of widows, the shrieks of orphans, and the groans of dying men—that he who may negotiate for a peace by blood and carnage, may do so with pen, ink, and paper, also?

The Senator from Maryland tells us, however, and refers to Vattel as his authority, that the commander of an army cannot conclude a peace; that the power of concluding peace is a high attribute of sovereignty, which can be exercised by none other than those to whom this sovereign right belongs. No one doubts this. I have never contended that the commander of an army could, *as such*, even negotiate for a peace. But I have contended that the Chief Executive Magistrate of the United States, created by the Constitution the commander and director of all their military and naval force, may depute either his commanding General, or Admiral, or any body else, to negotiate for a peace. Mark, sir, I say to negotiate for a peace, and do not say to conclude a peace. Should the President depute his General to do this, the negotiation will be conducted by such commander, not in virtue of the powers incident to him as a commander, but in pursuance of the authority delegated to him as a Minister or agent. Should such negotiation eventuate in a treaty, the treaty will not be obligatory until it has received the consent of those to whom this portion of the sovereign authority belongs. Nor will the peace be concluded by it until the ratifications of the treaty, so approved, have been interchanged by the high contracting sovereignties who are parties to it.

Then, as the United States and Algiers were at war, when this appointment of John Paul Jones as Minister to the latter, to treat of peace, took place, President Washington had the clear right, under the Constitution, to make such appointment. But the Senator from Massachusetts here remarks that this appointment constituted Commodore Jones a Minister to treat not only of peace but of commerce also. And, as commerce has nothing to do with war, he asks how this can be justified; except by referring it to the power of appointment, to be exercised by the President, during the recess of the Senate? This reminds me of a question which used to be mooted in the schools, whether, according to the theory of the British law, which does not acknowledge a moment of interregnum, Charles the First was beheaded in his own reign, or in that of his successor. When this question was once discussed, a gentleman present remarked that, as this event must have occurred either during the one epoch or the other, if it ever did occur, and as great doubts seemed to exist whether either proposition was true, a preliminary question ought to be settled, viz. was King Charles the First ever beheaded? So too, here, before we inquire as to the functions with which the Minister might properly be charged, we had better previously settle the right of the President to send him: for, in deciding the one question, we must necessarily determine the other.

If the Senator from Massachusetts will concede (and his inquiries seem to do so) that the existence of war justifies the President, during the recess of the Senate, to despatch a Minister to treat of peace; then, as peace must be concluded before any negotiation concerning commerce could commence—and as, before peace could be concluded, a treaty must have been ratified, by and with the advice and consent of the Senate, which advice and consent necessarily presupposes their approbation of the appointment of the Minister who negotiated the treaty—the conclusion cannot be avoided, that the appointment of the Minister, as a Minister to treat of commerce, was not made without, but must have been made with, the approbation of the Senate. If gentlemen will deal in abstractions, and seek to puzzle us by such subtleties of distinction, I beg of them to recollect, that, although the authority to treat of commerce may have been inscribed on the same parchment whereon was written the authority to treat of peace; yet, in the nature of things, the former appointment must have been (to use their own phrase) a mere potential appointment, having neither salary nor duty attached to it, until it was approved by the Senate, in their consent to the latter, given by their approbation of a treaty of peace; that, until this assent was had, and peace actually concluded, the authority to treat of commerce was a mere contingent instruction, and created no office; and that, before it could become an office, the nomination which would make it such, must have received the advice and consent of the Senate; without which, no original appointment, except to treat of peace, ever has been made, or ever can constitutionally be made.

If I be right, Mr. President, in the view which I have thus taken of this case, it results, that President Washington would have had the clear right to make the appointment of John Paul Jones, at the time, and under the circumstances existing, when he is supposed to have done so; and that case therefore constitutes no precedent to support the high prerogative claimed by President Adams now. But, sir, understanding the character of President Washington, as I think I do, foreseeing the probable consequences (which must have been seen by him also) that may result from ever sending a Minister to any barbarian people, who scorn to acknowledge themselves bound by the wise provisions of the public law; and finding the strongest evidence of his opinion, as to his constitutional authority in relation to original appointments, in his absolute abstinence from making any such, during the recess of the Senate, throughout the whole of his administration, except in this single instance—when this case of John Paul Jones was first exhibited, I was induced by these considerations, to suspect very strongly, that there was some mistake about it; and therefore have looked into its facts with more solicitude than I should otherwise have felt. The result of this research has confirmed my suspicions. *Joh Paul Jones never was appointed a Minister to Algiers for any purpose.* Nor did President Washington take a single step, in reference to the new relation which he wished to establish with that Power, that was not *previously advised and approved by the Senate.*

The history of the transaction, [the appointment of John Paul Jones,] as it stands recorded on the secret journals of the Senate, since made public, and now to be found in the 10th Volume of Wait's State Papers, pages 254, et seq. is this: It was the custom of President Washington, (would to God, sir, it was the custom of the present President also!) whenever any new case of importance arose, in which it was necessary for him to act, to consult with the Senate, as his sworn constitutional advisers, and to ask their advice as to the course which he ought to adopt. In pursuance of this custom, when he saw that war existed with Algiers; that many of our citizens had been made captives, and were then held in bondage by that Power; and that our then defenceless commerce was daily exposed to injury while this war continued; President Washington sent a message to the Senate, stating to them these facts, informing them that a prospect then appeared of making a peace, and communicating the terms upon which he believed this desirable object might be accomplished. In this message he asked the advice of the Senate, whether he should enter into negotiation with Algiers for this object or not; and, if so, what ought to be the terms upon which the peace ought to be made. In reply to this message, the Senate, on the 8th of May, 1792, advised him to enter into the proposed negotiation, and to conclude the peace if he could, upon the terms proposed. And, to enable the accomplishment of this object, an act was passed by Congress on the same day, appropriating fifty thousand dollars; and the celebrated Paul Jones (who was then in Europe,) was selected by the President, as the agent most proper to carry these views into effect, and commissioned in June of the same year.

At the time this transaction occurred, some reasons existed to apprehend, that, if the plan of the United States was known, some European Power would endeavor to embarrass its execution, and defeat its object. It was therefore kept a profound secret. Mr. Jefferson, the then Secretary of State, in the instructions intended for Commodore Jones, uses this remarkable language:—"Supposing that there exists a disposition to thwart our negotiations with the Algerines, and that this would be very practicable, we have thought it advisable that the knowledge of this appointment should rest with the President, Mr. Pinckney, and myself; for which reason you will perceive that the commissions are all *in my own handwriting*: for the same reason, entire *secrecy* is recommended to you; and that you so cover from the public your departure and destination, as that they may not be conjectured or noticed." Now the idea of a *secret Minister* was one much too absurd ever to have entered such a head as that of either Washington or Jefferson. Jones was never, therefore, appointed a "Public Minister," but a mere secret agent of the President; and is expressly styled in the instructions intended for him a "Commissioner." He never acted under this appointment, however, but died soon after it was made. Upon his death, Mr. Barclay was appointed to the same situation, and with the same instructions. He too died "re infecta;" and then Mr. Humphreys, our Minister Plenipotentiary resident at Madrid, was directed to perform this duty, which he accordingly accomplished.

Such, sir, is the history of the case of John Paul Jones, who was *secretly* deputed by the President to execute a measure previously *advised by the Senate*, and who never accepted or acted under this appointment, as a secret Agent to a Barbarian tribe, the object of which was to terminate a dreadful war, then raging. If such a case can be made to support the enormous prerogative now asserted by, and claimed for the Executive, my faculties are much too obtuse to enable me to discern the mode in which this can be done.

The next case to which we have been referred is that of Messrs. Monroe and Pinkney, in 1806. And here let it be remarked by the Senate, that no other case of any original appointment of a Minister to any foreign State, made during the recess of the Senate, except that of John Paul Jones, has been referred to as occurring throughout the whole administration of President Washington; that no case of any such appointment, made throughout the whole administration of his successor, President Adams, has been produced; and that no such case has been supposed to exist during the first five years of the administration of his successor, President Jefferson: seventeen successive years from the creation of this Government had then passed by, during each of which, frequent occasions must have existed for the exercise of the power now asserted by the President; and yet no single case can be found of any claim being preferred to, or any exertions of such a power; such forbearance makes a body of evidence to show that no such power was believed to exist, too strong I think, to be resisted. But let us see if even this case be an anomaly, or the commencement of a new practice.

The Senator from Maryland produces extracts from two Commissions bearing even date in May, 1806, during the recess of the Senate; and states that he has been informed at the State Department, that these appointments were then made. One of these Commissions constituted Mr. Pinkney our Minister resident at the Court of St. James; and the other appoints that gentleman and Mr. Monroe Envoys Extraordinary, to negotiate a treaty with that Court. Now, sir, as to the first of these Commissions, it shows upon its face that it constituted Mr. Pinkney the successor of Mr. Monroe. This Minister having asked his recall, and his wish being granted by the President, a vacancy so happened in this office then actually pre-existing, and once supplied with an incumbent. And this vacancy occurring during the recess of the Senate, no one can doubt that the President had then the clear right, under the Constitution, to fill up such a vacancy as he did.

As to the other Commission, the Senator from Maryland has been misinformed at the Department of State; and the mistake in that Department has most probably been produced, in this and in many other cases, by confounding the date of the appointment with the date of the Commission. A reference to the Journals of the Senate will show, that the nomination of Messrs. Monroe and Pinkney, as Envoys Extraordinary, to negotiate a treaty with Great Britain, was regularly made by President Jefferson to the Senate, on the 19th day of April, 1806, and their appointment regularly advised and consented to by that body on the 21st day of the same month. So that this case, too, is nothing more than an example of the regular exercise by the President, of a clear right, placed within his competency by the Constitution itself.

The next case to which we have been referred is that of Mr. Short, who was appointed by President Jefferson, Minister to St. Petersburg, during the recess of the Senate, in 1808, nineteen years after this Government had been in operation, during all which time no such power had ever been before claimed or exercised.

The facts of this case are as follow: Under the old Confederation, Mr. Dana had been appointed by the old Congress a Minister to this Court, in 1780, but was never received or accredited there. In 1808, "the Emperor of Russia having on several occasions indicated sentiments particularly friendly to the United States, and having expressed a wish, through different channels, that a diplomatic intercourse should be established between the two countries," President Jefferson believing, "in the then *extraordinary* state of the world, and under the constant possibility of *sudden* negotiations for peace, that the friendly dispositions of such a Power might be advantageously cherished by a mission which should manifest our willingness to meet his good will," appointed

Mr. Short, during the recess of the Senate, as Minister to Russia. Such is the account given of this appointment by the President himself, in his message of the 24th February, 1809, to the Senate. Notwithstanding the extraordinary emergency which was then said to exist, however, and which alone, as has been stated, was relied upon by President Jefferson, to excuse for the exertion of this then unprecedented exercise of power, the Senate, on the 27th of February, *rejected the nomination by an unanimous vote.*

The Senator from Massachusetts was aware of this, and seeks to obviate the conclusion to which it necessarily and directly leads, by the suggestion, that the rejection proceeded from the opinion entertained by the Senate, as to the mere *inexpediency* of the mission. The facts, however, do not support such a suggestion: for, although a resolution had been previously offered by one of the Senators, expressive of such an opinion, this resolution was withdrawn by the mover, and the vote of the Senate was upon the naked nomination contained in the message to which I have just referred. While, therefore, the case may show the opinion of Mr. Jefferson, that, in an extraordinary emergency, the President may make an appointment of a Minister, during the recess of the Senate, to an ancient Sovereign, to whom the United States had previously sent one Minister, it shows nothing more. And in showing this as the opinion of President Jefferson, it also shows the positive and unanimous decision of the Senate, that no such power was within the constitutional competency of the Executive, even in the case supposed. What bearing, then, this case can have upon the present question, I own I cannot conceive.

This decision of the Senate seems to have settled the question, for a long time at least: for to no other case of Ministers appointed during the recess of the Senate have we been referred, until that of Messieurs Adams, Gallatin, and Bayard, in 1813, twenty-four years after the commencement of this Government. These Ministers were then appointed by President Madison, to negotiate treaties of peace and of commerce with Great Britain, and a treaty of commerce with Russia also. Now, sir, so far as this appointment relates to Great Britain, I believe I have already shown, while examining the case of John Paul Jones, that the President was authorized to make it; because flagrant war then existed between that Power and the United States, the object of which war it was the duty of the President to attain as speedily and effectually as possible, by negotiating for a peace, to be subject, when made, to the consent and approbation of the Senate. And so far as this appointment related to Russia, it must be recollected by the Senate, that Mr. Adams, one of the three Ministers then appointed, had been previously and regularly commissioned, by and with the advice and consent of the Senate, as Minister Plenipotentiary to that Power; and it was, therefore, within the clear constitutional competency of the President, to have instructed this Minister to negotiate a treaty of commerce with Russia, if he had thought proper so to do, without consulting any other department of this Government upon that subject; so that the whole case resolves itself at last into this question: Was it within the power of the President to appoint two Ministers, whom he had the authority to send to Russia for one purpose, to co-operate, while they were at St. Petersburg, with a third, already previously and properly there, for the attainment of another object, the attainment of which object was within the clear constitutional competency of the President? Gentlemen must be more astute than I believe man can be, if they can make more of this case than what I have stated; and, if not, they will find it difficult to bend it to suit their purpose upon this occasion.

But suppose it was a case even stronger than I have shown it to be: it is a solitary case, the like of which had then for the first time occurred, and has never since appeared. It cannot, properly, therefore, be a sufficient foundation for the vast prerogative asserted by the President upon this occasion. And here, Mr. President, it must not escape observation, that when this case was subsequently submitted to the Senate for its approbation, although it was such as I have represented it to be, yet the immediate predecessor of the Senator from Massachusetts, who has now relied upon it as a precedent, submitted a string of resolutions to the Senate, the expressed objects of which were to deny the power of the President to make such an appointment, and to protest against the exercise of such a power, even in such a case. These resolutions, it is true, were postponed from time to time, and do not appear ever to have been acted upon definitively by the Senate; but they remain upon our Journals as a perpetual memorial to disprove the opinion of general acquiescence in a practice well known and long pursued; to support which opinion and its supposed consequences, this case has been referred to.

I have now gone through all the cases of Ministers said to have been appointed by any President during the recess of the Senate, to which we have been referred. In some of these cases I have shown, that the facts had been misconceived; in others, that the power exerted, although, under circumstances very different from what now exist, was met by a decided negation of its constitutional exercise, even in such cases; and that from none can any principle be extracted to justify the assumption of authority now contended to be within the "constitutional competency" of the Executive. The remaining cases I shall speedily despatch.

The first of these presents a group, said to consist of eighteen Consuls, who are supposed to have been appointed, during the recess of the Senate, by different Presidents, at different periods. No names have been stated, and, therefore, I have not been supplied with the necessary information to enable me to trace these cases to their proper sources. I am strongly inclined to think, however, that a similar mistake has very probably been committed as to the appointments of these Consuls, which I have shown to have occurred in the case of Messrs. Monroe and Pinkney. The time of the appointment has been erroneously taken from the date of the Commission merely, and not from that of the Senate's act. But, be this as it may, they are all cases of mere Consuls—officers who draw no single cent from the Treasury, nor are authorized to pledge or commit the United States in any way whatsoever—officers of so little importance, that few, except the special friends of the incumbents, ever know of their actual existence even; and, therefore, too insignificant ever to have attracted general observation.

The same remark will also apply to the last case to which we have been referred, that of Mr. Sumter, who was appointed Secretary of Legation by President Jefferson, in 1801. To this I will also add, that, from the beginning of this Government, and even under the old Confederation, this place of Secretary to a mission had always existed, and been annexed to every mission ever instituted, as an incident as necessary to the legation as its cipher or paper. The officer was not called at first a Secretary of Legation, but merely a Secretary of the Minister, and was usually appointed by the Minister himself, although I know well in one case he was appointed immediately by President Washington. When President Jefferson came into power, regarding this appointment as one of more consequence than it had ever before been considered, he took the power of making it into his own hands, and appointed Mr. Sumter as the private Secretary of the Minister to France, "to act as Secretary of Legation." Having thus made the appointment during the recess of the Senate, he, at the next session of that body, submitted it of course to them for their advice and

consent. And thus it occurs that this mere appendage of the mission, came to be considered as an office at all.

These, sir, are all the cases which are supposed to exist, that have been even said to bear any affinity to that which is now under consideration. In examining them I have already shown that not one justifies the assertion made, that the President, in time of peace, during the recess of the Senate, can of right make any original appointment whatsoever, even of a Minister to an ancient nation, to which no Minister had before been sent. But even if this were so, it surely does not follow, that he might therefore appoint Ministers to a Congress of Nations, such as that assembled at Panama. And here, sir, I differ "toto cœlo," from the Senator from Massachusetts, who has affirmed that there is no difference between sending a Minister to a sovereign, and to a Congress of sovereignties assembled by their Ministers.

Although I have no respect for the authority (Martens) to which that Senator has referred in support of this affirmation; yet, even this author disproves the position taken, and that, too, in the very passage which has been referred to for its support. It is the purpose of Martens, in this passage, to show, not that there is no difference between the case of a Minister to a sovereign and to a Congress of Nations, but to show in what that difference consists. The former he represents as bearing not only credentials, but powers also; while the latter is furnished with powers only. Now, although this difference the Senator from Massachusetts regards as one of form merely, and of no importance, yet it constitutes in truth the strongest possible distinction, and is decisive of the question. The letter of credence is that document alone which gives character to a "public Minister," nay, which constitutes him such; and when received and accredited by the sovereign to whom it is addressed, clothes the party bearing it, with all the rights, privileges, and immunities, which the international law attaches to his station. One who is not furnished with such a testimonial, can never be considered as a "public Minister" at all, but as a mere special agent, without privilege or authority, except in the cases particularly specified in his powers, to which no incident attaches. In one word, sir, he must be either a secret missionary of his sovereign, the existence of whose appointment and powers it is not intended to make public; or a special agent, whose office is called into existence by some particular treaty stipulation, in which his rights and duties are specially prescribed and provided for. And, in the latter case, the previous treaty, which such an agent is sent to carry into execution, constitutes his credentials, and supercedes the necessity of bearing any other. So that the very illustration given by Martens, so far from proving that there exists no difference between the two cases, establishes directly the reverse: and in effect asserts, that Ministers can only be sent to a Congress, under and in pursuance of previous pacts concluded, authorizing and requiring them to be there; while a public Minister, properly so called, derives his character from the public law, acting upon his letter of credence.

Did I wish any other proof of this, I too would refer to the very examples stated by the Senator from Massachusetts to support his position. He tells us that a Congress of nations assembled by their Ministers is no rare occurrence; and refers us to that assembled at Munster, from which proceeded the celebrated treaty of Westphalia, to that assembled at Utrecht, and to that assembled at Antwerp. To these he might have added many others, if he had pleased, even those recently convened at Vienna and Verona. Now, sir, the Senator from Massachusetts must surely recollect that all and each of these assemblies were called for, and required, by previous pacts, entered into by the several sovereignties there represented, and which specially required such a Congress to be then and there held, and this for the special purposes which were there afterwards consummated. The evidence of such previous pacts will be found in most of the cases referred to, in solemn treaties, previously and formally concluded, in the customary mode; and, in others, in the previous engagements entered into by the different sovereigns there represented; which engagements, although not reduced to a formal treaty, were yet as obligatory upon their good faith, as if they had been so authenticated: for it was within the constitutional competency of these sovereigns to conclude such engagements, without consulting any other body.

And here, Mr. President, let me recall the attention of the Senate to an argument which I used upon another occasion, and to which neither the Senator from Maryland, nor he from Massachusetts, have, I think, given any satisfactory reply. I then stated, that before the United States could be authorized to intrude any thing appertaining to them within the territory of a foreign State, whether at Panama or elsewhere, and whether that thing was a bale of cotton or a Minister, the authority to do so must be derived from the previous assent of the foreign Power to which such place belonged. That their municipal authority could not communicate any such right to the United States, because all municipal authority must, of necessity, be territorial; its exercise was limited to the boundaries of the sovereignty from whence it proceeded, and it could not run within the territories of a foreign State, without the consent of such foreign State, previously had. That, although this assent might be inferred, as to all acts customarily practised and done by nations, in their usual intercourse with each other, under the international law, which derived its obligation from the comity and customs of States; yet, that such assent could not be inferred as to any unusual act, unknown to that law; but must be sought for only in special compacts or conventions existing between the parties. That, therefore, the sending a Minister to a Congress of States, assembled for special purposes, such as this at Panama, which was an assemblage unknown to the general, customary law of nations, was an act that could not be justified or sanctioned by this law; and, if permissible at all, the right could only be claimed, under some previous pact, authorizing it to be done: for, that, if the United States had the right to send Ministers to this Congress, and could derive it from the general customary law of nations, as the provisions of that law were not peculiar to the United States, but extended equally to every other civilized nation under the sun, the right of every other such nation was equal to our own; and, therefore, every European sovereign might do the same act. As this, however, was an absurdity, for which, as I then supposed, none would contend, it must be conceded, that our right to send Ministers to this Congress, could only be traced to some previous pact, under which, alone, it might properly be exercised.

Arrived at this conclusion, I then contended, that there was a pact existing in this case, which, when properly ratified and concluded, would give to the United States the right, and impose upon them the duty, of sending Ministers to this Congress; and which, at the same time, would give and impose correlative duties and rights to and upon the States there to be assembled, authorizing them to expect, and binding them to receive, such Ministers. That this pact existed in the written invitations given and accepted upon this occasion, which if duly sanctioned, would be as obligatory upon the faith of the parties giving and accepting, as though this pact was sculptured on marble, engraved on brass, or evidenced by all the wax and engrossed parchment rolls in the world. But, that before this pact could be duly sanctioned, it must, according to the requirements of our Constitution, have been advised and consented to by two-thirds of the Senate; without which assent it could impose no obliga-

tion upon, and, therefore, give no right to us. As illustrative of this, I then referred to the treaties and conventions already concluded between the several Southern American Nations, creating and providing for this Congress at Panama; and I might have referred to all the cases now produced by the Senator from Massachusetts, and to the history of every other assemblage of States, by their Ministers, which ever yet convened, either in the ancient or modern world.

If this be so; if a previous solemn pact be necessary, to authorize any State to send a Minister to meet those of other States, assembled at a Congress, (by which other Ministers, of course, so sent cannot be accredited,) and if such pact cannot be concluded without the advice and consent of two-thirds of the Senate, whence is it, I beg to be informed, that the President can derive the right of sending Ministers to Panama during the recess of this Senate? Gentlemen, surely, must perceive, that, in asserting such a power for the President, they are contending in effect, if not in words, that, during the recess of the Senate, the President may, of right, not only negotiate for, but conclude and execute a treaty, whereby new rights and obligations are created; a power much greater than even that vast prerogative with which they are disposed to clothe the Executive, in the matter of appointment to office; a power which at once authorizes the President to create and to consummate whatever political relations he may think proper to establish—nay, to make a supreme law by his mere "*fiat.*"

And here, Mr. President, is the force of this argument, that has not been answered—been eluded. It is curious to notice the replies which have been made to it, and how diametrically opposed they are to each other. The Senator from Maryland insists that the right to send Ministers to this Congress at Panama, is not derived from any pact or convention to that effect; but is derived from the general, customary international law. While he from Massachusetts abandons this pretension, and strenuously contends that it is not derived from the public law, but from expressed consent. It is not for one like me, sir, "*tantas componere lites;*" but I sincerely regret that such discrepances, existing between Senators who agree so well in all other respects, impose upon me the troublesome duty of replying to each.

And first, sir, as to the argument of the Senator from Maryland. He argues that, under the provisions of the general, customary law of nations, any State, even Spain, has the right to send a Minister to this Congress at Panama, whether invited so to do or not. But, foreseeing what a state of things must necessarily arise under his construction of this public law, he very wisely has provided a Rowland for this Oliver, and has given to the Congress of Panama a right to reject any Minister who might there appear without a card of invitation. This argument I will answer by stating that I can conceive the possibility that human cunning may at one time or other acquire so high a degree of perfection, as to discover some process of reasoning by which the quadrature of a circle may be demonstrated; and that mankind will not always rest upon the mere approximating process of the Greek pelicoid. I can imagine "that human ingenuity may possibly at some time or other invent some means by which the now apparently absurd problem of perpetual motion may be shown not to be imaginary. But my mind cannot compass the truth of that moral lesson which asserts even for the Most High, (I mean no irreverence, sir,) the power of creating two opposing and *contradicting rights.* And if I wished any proof to satisfy me that this must be a paradox, I think I should readily find it in that point of the argument of the Senator from Maryland himself, in which he concedes that for one nation not to receive the Minister whom another has a right to send to it, *is just cause of war.* Now, according to my notions upon the subject, the right to give "just" cause of war, is little else than the right to do wrong. A right of which the Senator from Maryland is at this moment the strenuous advocate, according to my poor judgment, when he claims for the President a right, the exercise of which is forbidden by the Constitution. It is quite an adage, however, that in quest of power we always forget right, or at least confound the two.

The Senator from Massachusetts saw very distinctly the consequences to which the argument of his friend from Maryland necessarily led; and, in avoiding this Scylla, has unhappily fallen upon Charybdis. He argues that, although the right of sending a Minister to Panama, cannot be derived from the public law, but must be claimed from expressed consent alone, yet that this consent may be given in any mode whatever, and needs not the solemnity of a pact to give it obligation. Between this Senator and myself, then, sir, there seems to be no other difference than in words merely. We both agree that the right depends upon expressed consent, and the only question between us is, whether this expressed consent makes a pact or not. Now, according to my humble judgment, every assent which must be expressed to give it obligation, and which when expressed creates rights and correlative duties upon the parties giving and accepting it, makes a pact; provided assent proceeds from those authorized to give or to accept it. And I leave it to the Senator from Massachusetts to decide, whether any such pact, creating rights and obligations, can be finally concluded without the aid and consent of the Senate at least.

I will not detain the Senate by any comments upon the case of Don Onis, the former Minister sent to this country from Spain, but not received here, which case has been referred to. It is enough to say that, in recognizing the right of Spain to send a Minister to the United States, they did not thereby recognize any particular sovereign of Spain at that time. There was then a civil war raging in this ancient kingdom, which left it doubtful with whom the sovereignty of Spain abided, either "*de jure*" or "*de facto;*" and, pending this contest, the United States acknowledging the right to send a Minister, as appertaining to that sovereign, were not bound to decide, and would not decide, who that sovereign was. But, until that question was settled, Don Onis had no right as a Minister from the sovereign of Spain, simply because it was not known who Spain was.

I have here done, sir, with the merits of this question. In discussing it, I have endeavored to establish these three great propositions. First, that the power claimed by the President, according to the natural signification of the terms he has employed to communicate his claim, and according to the explanation given of these terms by himself, not only in their context, but in other cotemporaneous communications made to the Senate, was a broad, strong, and unqualified assertion of power, acknowledged, even by his advocates here, to have been never before made, and against the use of which this People ought to revolt. Secondly, that this claim of power, even if limited and circumscribed, as these advocates would qualify it, still asserts a power denied to the Executive by the principles of all our Republican institutions, by the positive commandments of the Constitution itself, and of the exertion of which no fair example has ever existed throughout the whole history of this Government, from its very creation. And, lastly, that, even if any precedent of the claim or exertion of a similar power could be produced, such precedent could not justify it in this case of Ministers to the Congress of Panama; inasmuch as the agreement to send such Ministers, (without which agreement they could not rightfully be sent,) was a compact, creating rights and obligations; which compact, under the Constitution of the United States, could not be concluded without the previous advice and consent of two-thirds of

the Senate, and that in this case such advice and consent never had been granted, but was positively refused.

Before I resume my seat, Mr. President, I would take some notice of the motion with which the Senator from Massachusetts concluded his remarks; and of the reasons urged to induce its adoption. After an elaborate argument, the object of which was to prove that the power asserted by the President was within "the constitutional competency of the Executive," the Senator from Massachusetts concludes with this motion, that the further consideration of this subject may be indefinitely postponed. A singular conclusion from such premises, and plainly indicating what degree of confidence is reposed in the argument itself. But, sir, I have already exhausted so much of your patience, and of my own strength, that I must leave to others the task of examining into the reasons assigned for such a proprosition; and of showing the probable consequences of adopting the course proposed, especially after the discussion that has now taken place.

When Mr. T. concluded, the Senate adjourned.

FRIDAY, APRIL 21.

LOUISVILLE CANAL.

The Senate then proceeded to consider the bill to authorize a subscription for Stock, on the part of the United States, in the Louisville and Portland Canal Company. [Falls of Ohio.]

[This bill authorizes the purchase of 1000 shares of the Stock in the above company, provided they can be procured for a sum not exceeding one hundred dollars each.]

Messrs. JOHNSON, of Ken. RUGGLES, and ROWAN, each spoke in support of the bill; the latter gentleman argued that it was a proposition for the United States to invest their money with benefit to themselves; they were not bound to keep their money in the Treasury unproductive, when they could lay it out to advantage; and urged that this stock was believed to be the best in the United States.

Mr. CHANDLER was opposed to the bill, on principle, and called for some information, with respect to the charter, and the present state of the canal; which information was given by

Mr. BENTON, who demonstrated, at some length, the advantages which were expected to be derived from this canal, and explained its present situation, &c.

Mr. MACON offered a few remarks in opposition to the bill, being unwilling to increase the power of the General Government, directly or indirectly.

Mr. LLOYD said no doubt this was to be a precedent for other applications; he was willing the United States should go with the other Stockholders, *pari passu*, but no faster; he therefore proposed to amend the bill, so that it should read "to pay for the same, at such times, and in such proportions, as may be required and paid by other Stockholders;" which amendment was agreed to.

After some further discussion between Messrs. WOODBURY, BENTON, and HOLMES, relative to the manner in which the stock was to be purchased,

Mr. VAN BUREN said the aid of this Government could only be afforded to these objects of improvement, in three ways: by making a road or canal, and assuming jurisdiction—by making a road or canal, without assuming jurisdiction, leaving it to the States; or by making an appropriation, without doing either. In his opinion, the Government had no right to do either, and at some future time he should offer his reasons in support of this opinion.

The bill was then ordered to be engrossed for a third reading, ayes 22, noes 15.

SATURDAY, APRIL 22, 1826.

The engrossed bill to authorize a subscription for stock, on the part of the United States, in the Louisville and Portland Canal Company, was read a third time, and passed, by yeas and nays, as follows:

YEAS.—Messrs. Barton, Benton, Bouligny, Chambers, Chase, Edwards, Findlay, Harrison, Hendricks, Holmes, Kane, King, Marks, Mills, Noble, Reed, Robbins, Rowan, Ruggles, Thomas.—20.

NAYS.—Messrs. Bell, Branch, Chandler, Clayton, Cobb, Dickerson, Hayne, Knight, Macon, Sanford, Tazewell, Van Buren, White, Willey, Woodbury.—15.

THE CREEK INDIANS.

Mr. BERRIEN submitted a resolution to instruct the Committee on Indian Affairs to report a bill to make provision for the further relief of the son and other followers of the late Chieftain William M'Intosh, and to provide for their emigration West of the Mississippi.

[The resolution went much into detail, directing what items should be embraced by the bill, how much money, how much of all the articles requisite for the emigrating party, how it should be ascertained who of them were willing to emigrate, &c.]

Mr. BRANCH moved to lay the resolution on the table, as the hour had arrived for the consideration of the special orders of the day; but withdrew his motion at the request of

Mr. BERRIEN, who said, if it was contemplated to act effectually and definitively on this resolution, delay must be avoided: he believed he was not out of order in saying, as the injunction of secrecy had been taken off of the Creek treaty, that this subject had been before the Senate for a considerable time, [referring to a resolution that Mr. B. had some time before submitted on the same subject, in secret session.] The provisions embraced in this resolution, were those, and none other than those, which had been under the consideration of this House at various periods; they had been laid before every member of the Senate, and they had been resisted, merely on account of the form in which they had been presented to the consideration of the House. Mr. B. said he adopted the suggestion made from various quarters in this House, and especially by the Chairman of the Committee on Indian Affairs, in giving it this form, giving precise and specific instructions to the Committee to report a bill. Inasmuch, therefore, as every member of this House had been in possession of the resolution for a considerable length of time, and inasmuch as there could be no hope of passing the bill, to be reported on this resolution, unless it was promptly brought in, he trusted the Senate would not acquiesce in the motion to lay the resolution on the table.

Mr. KING, of Alabama, said, he would suggest to the Senate, that, by a single amendment to the resolution submitted by the gentleman from Georgia, all difficulties would be obviated, and the Committee would have the subject before them, unshackled by particular instructions. He should prefer, that, instead of instructing the Committee to report a bill, specifying the form in which the bill should be reported, that the Committee should have the subject altogether open before them, to inquire into the expediency of making any provision they might think proper. The Committee might be under the impression that it would not be proper to go so far, or they might think it proper to go further, probably. Mr. K. said, he was in favor of the resolution of the gentleman from Georgia, and he hoped that gentleman would modify his resolution in the manner suggested, and the Committee, having the whole subject before them, would report such a bill as they should deem necessary.

Mr. BERRIEN replied, that his object was merely to do justice to a portion of the Creek tribe, who, he believed, had claims on the Government of the United States, which ought not to have been thus long resisted, and to do justice to a portion of the People of this Union, whose claims were coincident with the claims of that por-

tion of whom he spoke. The form was perfectly immaterial to him, and he, therefore, adopted the modification suggested by Mr. KING. He had adopted that which had been given to it, by the express suggestion of the Chairman of the Committee on Indian Affairs, who had desired that these specific instructions should be embraced in the resolution, referring the subject to the committee of which he was the Chairman; and because they had before been presented in this specific form to the consideration of the Senate, and had received substantially the assent of the Senate.

Mr. BRANCH said, he was disposed to accord every claim that individuals had against the Government that was founded in justice. He never had resisted, and he never would resist, any claim sustained by the immutable principles of justice. Did the resolution submitted by the honorable member from Georgia propose an inquiry into the just claims of McIntosh and his party? No: it precluded this investigation; it made it imperative on the committee to report in a specific form, regardless of any development which might take place in the investigation. And would the Senate, in this stage of the proceedings, without looking into the facts, adopt the resolution in its present dress? The treaty with the Creeks, Mr. B. said, had been ratified by the Senate last evening, after a thorough investigation, and had made what might be considered an adequate provision for the McIntosh party, and their adherents. Would the Senate, then, run counter to what had been done, without understanding what they were about? Did it comport with the respect which was due to the Executive department of the Government—with that respect which was due to themselves—to act blindly, when it was in their power to procure all the information which was requisite on the subject? Mr. B. then renewed the motion to lay the resolution on the table.

Mr. BERRIEN again rose, and said he was not prepared for opposition on this resolution, after the various intimations which had been made in the course of the discussion before the Senate. He had been desirous of introducing a resolution instructing the Committee on Indian Affairs to inquire generally into the expediency of making certain provisions, and the form which he had given it had been adopted at the express suggestion of the Chairman of the Committee on Indian Affairs. In looking back to the discussions which had taken place on the subject; rights, such as he conceived to exist, had been so much affected by the form in which they were presented to the Senate, that, abandoning all considerations of his particular view of the subject, he proposed to adopt the form in which it was now presented to the Senate; with the modification of the gentleman from Alabama, which had now become a part of the resolution, it was impossible that there could exist for a moment any objection to its adoption. The claims of McIntosh, and his services, it had been said, had not been disclosed to the House. Mr. B. said he did believe, that those who had taken pains to become conversant with the history and public operations of this country, would have known the claims and services of McIntosh, without the necessity of their being detailed by him in this discussion. There was no individual, who was conversant with the operations in the Creek Nation, in the war between the United States and Great Britain, who did not know what his services were. Mr. BERRIEN said if he felt them more strongly than another, it was because he came from a State, whose frontier was defended from Indian ravage by that Chief; if he expressed them stronger than another, it was because he knew that there were many mothers and children in the State of Georgia who owed their existence to the protection which his gallantry afforded them. That a call, therefore, should be made in this House, to give evidence to the Government of the Union of the services rendered by that Chieftain, Mr. B. said, surprised him, when those services had been recognized, so far as to the evidence of the fact, by the empty compensation of military rank, limited as regarded the benefit of that Chieftain, but decisive as regarded the acknowledgment of the Government of the Union of the services rendered by him. Mr. B. said, when he was called on to point out the claims of the friends and followers of that man, he felt an equal degree of surprise. He gave up his life a victim to our policy and wishes. Mr. B. said he should not enter into the question by whom the death of McIntosh was instigated; it might, if gentlemen pleased, for the purposes of this argument, be placed on the footing that he fell by a law of his nation. Why was that law brought to operate on him? Because he yielded to our wishes, declared by our regular organized Agent; he yielded to the wishes of his Great Father the President of the United States, in entering into the treaty at the Indian Springs. If he had rendered himself obnoxious, he had done it in obedience to the will of the President of the United States, as he was instructed to believe that will existed, through the regularly constituted Agents of the United States; and was this a time to be called on to go into evidence of his services, or of the claims which he had established, by his death, for his friends and followers, on the justice of the People of this country? Mr. B. said this was not the only point of view in which he presented the resolution to the consideration of the Senate. It was not only an act of justice to the friends and followers of McIntosh, founded on his services, but it was for the effectuation of a great principle of policy, which was necessary to the welfare of the four States contiguous to the country inhabited by this tribe—the principle of peace, which it was the object of this Government to advance, and which it was the object of the treaty entered into between the Creek tribe and this Government, to carry into execution.

Mr. BRANCH said he had declared before that he was not opposed to the investigation of these claims; but he wished the subject referred to the Committee on Indian Affairs untrammelled, and leave it entirely with that committee to investigate it. He wished it to be referred to them without any indication on the part of the Senate as to their opinion: because it would be premature for the Senate to express an opinion before they were informed. The claims of McIntosh had been presented, in the most imposing attitude, by the gentleman from Louisiana. Mr. B. said he wished to tread lightly on the ashes of the dead; but when those claims were based on the merits of the deceased, it became his duty to look to the merits of those claims. If McIntosh had fallen in consequence of yielding to the wishes of the President of the United States, the claims set up would be just; but if it should appear that he had fallen in yielding to his mercenary desires; if he had fallen in yielding to any undue influence, exercised over him by the nominal Agents of the United States, but the real Agents of the State of Georgia; if he had fallen by any influence exerted over him by the authorities of Georgia, direct or indirect, in violation of the will of the nation, and the wishes of the President of the United States; let him look to the quarter for whom he had made the sacrifice. Mr. B. said he should not consent that the money of his People should be taken to relieve him from the sacrifices he had made in behalf of any other State. Mr. B. said he was willing to do him ample justice; to investigate his claims on the broad principle of substantial justice; but he wished not to prejudge this question, by directly or indirectly expressing an opinion in regard to it. If the gentleman would qualify his motion, he would consent to it; if he would not, at least he hoped the Senate would be allowed time for consideration. He pledged himself to present the facts of the case to the House, and sustain what he had here advanced in relation to the conduct and motives of McIntosh.

Mr. LLOYD moved so to modify the resolution, as simply to leave it to the Committee on Indian Affairs to consider of the expediency of making some further provision for the friends and followers of McIntosh. If the resolution should pass in this general form, the Committee would consider themselves as untrammelled, as not being in possession of any indication of the wishes of the Senate regarding it; but if it were referred to the Committee to inquire into the expediency of doing certain specific acts, it was an indication of the Senate that those acts ought to be done.

Mr. BERRIEN said, if gentlemen would only agree among themselves as to the form which should be adopted to give effect to the principle, he should be content; but he thought that something more than what was proposed by the gentleman from Massachusetts would be necessary, not only to provide for the friends and followers of McIntosh, but also to facilitate their emigration beyond the Mississippi.

The resolution was finally passed, in the following modified form:

Resolved, That the Committee on Indian Affairs be instructed to inquire into the expediency of reporting a bill authorizing the President of the United States to make such further provision as may be deemed equitable, for the friends and followers of the late General William McIntosh, an Indian Chieftian of the Creek tribe; and also to facilitate their emigration West of the Mississippi.

EXECUTIVE POWERS.

The Senate then resumed the consideration of the motion submitted by Mr. BRANCH, relative to the power of the Executive to appoint public Ministers.

Mr. CHAMBERS said it might be a matter of surprise that he should trouble the Senate with any remarks on the subject, having so lately taken his seat on the floor, and having been absent during a great portion of the discussion. He had only heard the remarks of the gentleman from Virginia, (Mr. TAZEWELL,) and a part of those of the gentleman from South Carolina, (Mr. HARPER.)

On a former occasion he was called on to act on a question, then before the Senate, which had connexion with this subject, and, according to this view, the vote he then gave could not be sustained, if the Senate affirmed the proposition contained in this resolution. He, therefore, felt imperatively called on to submit the reasons which influenced him to vote against the resolution now before the Senate.

The first important consideration, said Mr. C. is to ascertain exactly what we are called on by this resolution to affirm.

It was unnecessary, Mr. C. said, for the purpose of his remarks, to go into a philological argument to prove what it is the President has intended to claim as within the constitutional competency of the Executive: a plain statement of the facts will place the the question clearly before the Senate. The letters of the Secretary of State to the Ministers of Mexico, Colombia, and Central America, distinctly refer to the advice and consent of the Senate, as the condition on which alone they could expect this Government to be represented at the Congress of Panama. These letters are the official declaration of the President's views, made through the only organ by which they could be communicated, and are anterior to the date of the message to Congress. The message to Congress, alluding to the Congress of Panama, says "the Re "publics of Colombia, Mexico, and Central America, "have invited the United States to be also represented "there. The invitation has been accepted, and Ministers "on the part of the United States will be commissioned, "&c." Is any thing more rational than to ask gentlemen who wish to know how, and by what authority, these invitations are accepted, and the appointment of Ministers proposed, than to direct their attention to the precise words of the acceptance and proposition for appointment? By reference to the language of the acceptance and proposition to appoint, you find it expressly placed upon the condition of the Senate's concurrence. It is true, as the recital to the resolution adds, the nominations to the Senate were not submitted with the "opening message to Congress," and, Mr. C. said, he believed it was equally true, that no instance had occurred in which a nomination has been submitted with an opening message.

Subsequently the President has sent in the nominations to the Senate, and in his communication on that occasion he has referred to his notice, in the message to Congress, of the invitation received by this Government to be represented at Panama, and adds, "Although this measure "was deemed to be within the constitutional competency "of the Executive, I have not thought proper to take "any step in it before ascertaining that my opinion of its "expediency will concur with that of both branches of "the Legislature: first, by the decision of the Senate "upon the nominations to be laid before them; and, se-"condly, by the sanction of both Houses to the appropri-"ations, without which it cannot be carried into effect."

It is this paragraph which is said, in the recital of the resolution, to "maintain the right previously announced in his "opening message, that he possesses an authority to make "such appointments, and to commission them, without "the advice and consent of the Senate."

If by this language it is intended to assert that the President has claimed the constitutional right to grant commissions, in the recess of Congress, to Ministers deputed to represent the United States at the proposed Congress of Panama, which commissions shall continue in force until the close of the succeeding session of Congress; the assertion is admitted to be strictly according to the fact, and the only question presented is, whether the assertion of such a power is such an act of the President as calls for a protest on the part of the Senate: if, on the contrary, the language used is intended to import that the President has claimed a right to commission such Ministers, and to clothe them with authority beyond the session of Congress next succeeding their appointment, without submitting their nomination to the Senate; it is denied that such a right has been "avowed" or "maintained" by the President; and it is believed that a reference to the language of the documents themselves, and to the concluding part of the very paragraph and sentence which is referred to as "maintaining" the right, will fully demonstrate that the President, so far from excluding the Senate from their undeniable right to advise and consent to, or to reject, the appointments, has distinctly affirmed it, and in express words has recognized two contingencies: first, "the decision of the Senate upon the nominations;" and, secondly, "the sanction of both Houses to the appropriations," "*without which the measure proposed could not be carried into effect.*

The gentleman from Virginia (Mr. TAZEWELL) has said the President has claimed the authority to make a *compact* in virtue of which he could oblige this Government to send Ministers to Panama. The gentleman's argument is, that, by the law of nations, no Power can of right send Ministers to a Congress of Ministers; it can only be effected by previous compact between the several Powers; that there being no right in other Powers to send, there was, *ex consequenti*, no correlative duty on the part of the Spanish American States to receive such Ministers; that a compact of this kind was accompanied with all the obligation of a treaty; and that the President's power to commission Ministers to the Congress at Panama, necessarily included a power to create and consummate the previous *pact*, which pact is a *treaty*, which treaty is the *supreme law of th land*.

Mr. C. considered this to be the substance of the gentleman's doctrine. He believed it had never before been urged that the various subjects of arrangement between the Secretaries of our own Government and the Ministers

of other Governments resident here, or those of our Ministers abroad with the Secretaries or Officers of the respective Governments to which they were accredited, in reference to the time, place, or objects, of negotiation, constituted treaties or compacts of so formal a character, as to require the confirmation of the Senate before they could be acted on. He contended that the principles of national law authorized any Government, which had acknowledged the independence of the Spanish American States, to send Ministers to that country to treat with all or any of them. It required no previous pact. It was a subject very proper for the consideration of the State or States to which the Minister was sent, whether he should be indulged with a hearing at the precise time and place at which the Congress should be assembled. The Minister at the court of a particular sovereign cannot select the time, and place, and company for the discussion of his measures. Take the case of the Court of St. Petersburgh. The Ministers of several Powers, say France, Spain, and Austria, propose to confer with the Russian Government on a subject of great and common interest, and in the discussion of which, they do not desire to have the Ministers of the United States, Great Britain, and other Powers, to participate; can it be doubted that they have the right to execute such a purpose? Could it ever be made a subject of complaint that the Ministers of the Powers who have united in the Holy Alliance should hold sessions to which they did not invite Ministers of other nations, who look upon it as a most wicked conspiracy against the rights of man—not only did not invite them, but would not receive them if they would wish to be present? While, therefore, he admitted the right of other Powers to be represented at all, or any of the Spanish American Governments, he asserted also the right of these Governments to select such as they pleased to meet at Panama, on a particular occasion, to negotiate on particular subjects, and to decline receiving all others at that particular time and place.

The President had made no reference to such a *pact* as would impose obligations on the Government; on the contrary, his correspondence (for such he termed the letters of the Secretary of State) with the Spanish American Ministers, had constantly, distinctly, and emphatically kept in view the controlling powers of the Senate; insomuch that, if their means of information as to the qualified nature and extent of the Presidential power had been limited to their official communications with him, they would be at no loss to discover that he alone had not power to consummate the objects proposed by their invitation. A careful examination of the messages and accompanying documents had not enabled him, Mr. C. said, to find any such claim alleged, or the existence of such a right any where assumed; on the contrary, he considered the plain and obvious import of the whole, that the President claimed the right to have commissioned Ministers to Panama in the recess of Congress, whose authority would expire at the termination of the session, unless the Senate should have advised and consented to their appointment; but that he did not think it proper to exercise the right from the novel and peculiar circumstances of the case. In the claim of power to the extent thus defined, Mr. C. thought the President justified as well by the principles of the constitution and the law as by uniform precedent, and in endeavoring to sustain this position, should consider himself as meeting the resolution which he should receive as a proposition to protest against the claim of such a power. He had narrowed the question to the commissioning of Ministers to Panama, because it was evidently in reference to that measure alone that the President had used the language referred to, and because he thought it the only question properly before the Senate; but he should not be unwilling to meet the abstract proposition which should involve the doctrine whether the President of the United States had authority, in the recess of the Senate, to commission Ministers to any foreign nation. With his present convictions he should say, on that abstract proposition, that the Constitution of the United States had given the power, and that the President is responsible for the judicious exercise of it to the People of the Union, whose officer and servant he is, and to the Congress of the United States, before whom he may be impeached in the cases enumerated in the fourth section of the second article.

The Constitution regards the President as an independent and co-ordinate branch of the Government; not independent as to the responsibility which every officer of the Government assumes, but independent in reference to the necessity of any previous assent of any other branch of the Government to render certain acts lawful and obligatory. There are high and important duties to be performed by the President, especially directed by the Constitution, for the faithful and judicious performance of which the country has, and can have, no other security than the responsibility under which he acts, but which cannot be controlled by the previous interposition of any other department of the Government; and, in the exercise of these duties, he is as much an independent branch of the Government as the Judicial department is in its sphere, or the Congress in its sphere.

This general proposition, he was assured, would not be disputed; but the immediate matter of inquiry was, whether the case, now the subject of consideration, the "appointment of Ministers in the recess," was amongst the duties, and within the authority, of the President, by the terms of the Constitution.

The gentlemen opposed to us say that he has no such authority, except where the commission is directed to the successor of an individual, who had previously filled the same station, and whose death, resignation, or removal, had occurred since the last session of Congress. For the converse of this opinion, the second article of the Constitution is relied on, and is believed to embrace the case. It is thereby provided "that the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, appoint, Ambassadors, other public Ministers, and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not otherwise provided for, and which shall be established by law."

To ascertain the views of those who formed this Constitution, let us reflect what was the object in organizing this department of the Government, and what peculiar duties it had assigned to it. It is assumed that every Government must have appropriate departments for the necessary duties incident to its well-being, and amongst the most obvious of these must be ranked its exterior and foreign relations These considerations could not, did not, fail to present themselves to the great men who were the agents in preparing and adopting the Constitution.

The treaty making power was vested, in part, in the President, because, from the organization of the several branches of the Government, the Executive was the only one, the duties of which would be, at all times, in official being. The Congress, or the Senate, were neither designed, or expected, to be always in session, and the Executive alone could, therefore, conduct the necessary relations of this country with others. The treaty-making power is not in the class of Executive authorities, and was not so considered by those who were active in advocating the Constitution, as appeared from one of the numbers of the Federalist, (75,) he held in his hands. The provision for its exercise, in the mode prescribed by the Constitution, necessarily gave the President the supervision and direction of the incipient and preliminary stages of foreign negotiations. The Constitution has vested in him the appointment of Ambassadors, and other public Ministers,

subject to the revision of the Senate, as in the case of all other officers, whose appointment is not otherwise specially provided for. In the appointment of Ambassadors, as in the cases of all other officers authorized to be appointed by the Constitution and the laws, it was intended to make ample provision for their existence at any moment when the demand of the State required: First, by their nomination to, and confirmation by, the Senate, if in session, and, if in the recess of the Senate, by a commission, ad interim, from the President. The provision by law for an officer, is a declaration that he may be necessary for the service of the Government, and there are many, without whose existence, the interest of the nation would suffer great detriment. In many instances the suspension of official functions, for any considerable period of time, would be accompanied with great embarrassments. The Constitution, therefore, wisely made provision for the existence of all such officers as were authorized by its own enactments, or such as future legislation should call into being, as the growing population and demands of the country might require. The doctrine of the advocates of this resolution would, however, render abortive, in very many cases, the salutary precaution of the Constitution. The *vacancy*, say they, cannot occur, unless an officer, of precisely the same description, shall have existed; and, by the same literal exposition, the first officer must have ceased to exist during the recess. If, therefore, the officer, who, of all others, it is important to have in being, shall die, or resign, on the first of March, at a distance from the Government, which will not allow notice of his death to reach the Capital before the adjournment on the fourth of March, your Courts, your Custom-house, or other department, as the case may be, must be closed, and the operations of your citizens, who are connected with them, completely arrested, until the opening of Congress in December following. This case was put for illustration, and many others might be presented which would result in immease difficulty, if any other construction prevailed than that which he contended for, and in no other instance would it be more likely to experience difficulty and loss than in the case of Ambassadors and public Ministers, if there were not a competent power always, not potentially, but actually, in being, to appoint them, as the exigencies of the nation should require.

This reasoning, Mr. C. said, would have brought him to the conclusion to which he had arrived, if the question was one of the first impression; but he did not so consider it; on the contrary, all the practice of the Government, from the first formation of the Constitution to the present day, seemed to sustain this construction, and to be at variance with any other.

It was not his good fortune, Mr. C. said, to hear the gentleman from Massachusetts, (Mr. MILLS,) who had collected, he understood, a variety of cases, running through all the period of the Government, from the adoption of the Constitution. To these instances he referred, generally, and should particularly mention one or two others. The first was the case of the mission to Great Britain, in 1806. Mr. Monroe was the resident Minister at St. James. The relations between this country and Great Britain required, in the opinion of the President, the agency of an adjunct Minister. Such a proceeding was not provided for by any statute of this country. Mr. Pinkney, however, was sent abroad during the recess of the Senate, and in a time of profound peace, with a commission, dated in May, 1806, which constituted him adjunct Minister Plenipotentiary to the Court of St. James. It is well known that Mr. Monroe and Mr. Pinkney concluded a treaty in virtue of this commission, which was sent home, and which Mr. Jefferson, the then President, did not approve, and did not submit to the Senate. This case, it is believed, is not subject to any of the exceptions which have been applied to the instances enumerated by the gentleman from Massachusetts, (Mr. MILLS.)

The proceeding in this case can only be justified by reference to the power of the President to commission a Minister in the recess of the Senate, if, in his discretion, the exigencies of the country demand it, although no resignation, removal, death, or disqualification of a predecessor in the same office had occurred. If there was such an office existing under the law or Constitution, it was the office of a single Minister to Great Britain. A second or adjunct Minister did not before exist. It was, therefore, a new mission. It was originated in the recess of the Senate. The Minister executed the duty incident to his appointment by concluding a treaty, and yet, in no one Department of the Government, and by no one individual, was it suggested that Mr. Jefferson had transcended his constitutional powers.

Mr. C. also referred the Senate to the case of the appointment of Mr. Gallatin, Mr. Adams, and Mr. Bayard. These gentlemen were commissioned by the President in the recess of the Senate, and sent to Russia, with powers enumerated in their three several Commissions as "Envoys Extraordinary and Ministers Plenipotentiary to negotiate a treaty of peace with Great Britain," "a treaty of commerce with Great Britain," and "a treaty of commerce with Russia."

The circumstances connected with this case are important in the consideration of its influence on the question now in discussion. This nation was involved in war with Great Britain, which it was the interest of the country and the duty of those who conducted its concerns to terminate as soon as the objects for which it was declared could be effected. The friendly mediation of the Emperor of Russia, it was supposed, could be usefully brought to operate in aid of such a result, and these Ministers were sent to Russia, not to Great Britain, with a commission, dated 17th of April, 1813, which contained authority to "agree, treat, consult, and negotiate of and concerning, the general commerce between the United States and Great Britain, and all matters and subjects connected therewith, and to conclude and sign a treaty or treaties touching the premises." It is true they did not treat in virtue of this commission, the treaty subsequently formed having been concluded under a commission to five Ministers, of whom these were three.

Much effort has been made by the gentlemen from Virginia and South Carolina, Mr. TAZEWELL and Mr. HARPER, to lessen the effect of the cases as authority, because the appointment was made during war. The last gentleman, with much ingenuity, has also attempted to make this a case of filling a vacancy. The war, he says, produced the vacancy, and the filling that vacancy was in obedience to the express language of the Constitution. That this doctrine will not meet the case will appear evident, first, because, according to all the authors on the subject, a war not only suspends the commercial or friendly relations of the belligerent Powers, but totally puts an end to and destroys them, and those relations which are the result of negotiations subsequent to the war, are as perfectly independent of those which existed previously as if no intercourse had ever subsisted between them prior to that period. Nations, therefore, between whom amicable relations have subsisted, and who have afterwards become belligerent, assume towards each other the same attitude as if such amicable relation had never subsisted, and the cessation of the war would give to each the same claims upon the other, and in all respects entitle each to the same consideration which could be claimed by any other independent nation with whom no correspondence or interchange by Ministers had been had. The office, therefore, created by the commission to these three gentlemen, was as perfectly a new one as would be that of a Minister to Hayti, if one were now to be commissioned to that Government.

But, if this were not an efficient objection to the gentleman's position, it may be remarked that the case can-

not be brought within the exact letter of the Constitution for a second reason, which is, that *the vacancy did not occur in the recess.* The war, in this case, caused the ministerial office of the predecessor of these gentlemen to cease. The war was declared by Congress, and of course the cessation of ministerial power occurred "*sedente senatu.*" Not only was Congress in session when the *vacancy*, as it is termed, happened, but the whole session of 1812—13 had commenced and terminated, the office still remaining unoccupied. This transaction was at a period of party excitement unparalleled in the history of this country, when every angry feeling was aroused, and when many of the political men of the day were induced, by prejudiced views of the policy, if not of the integrity, of the dominant party, to allege against the measures of the administration every cause of exception which had the semblance of truth, reason, or principle for its foundation. In this state of feeling, with the bitterest party animosities to quicken the inventive power of the sagacious politicians who were straining every nerve to direct popular opinion against the authors of this measure—feelings which led to violent inflammatory resolutions in town meetings, and in several of the State Legislatures, and to all the usual means of bringing odium on the individuals by whom the destinies of the nation are wielded—we find a feeble effort made in this body to pronounce the act of the President unconstitutional—feeble it is intended to say in point of effect: for it does not appear that Mr. Gore's resolution had friends enough to encourage them to an exhibition of their strength by yeas and nays. Indeed, the resolution itself takes exception to one only of the commissions, that which gave authority to make a *treaty of peace*, and says nothing of the other of the same date, which gave authority to conclude a treaty of peace. But assuming it to impeach the principle on which the President had acted, in granting each of the Commissions, it was not sustained in the Senate. The proceeding, with this exception only, was submitted to without complaint, by every Department of the Government. It was submitted to in Congress, and out of Congress; it was submitted to by the People of the country, amongst whom are individuals perfectly competent to form an opinion on the subject, and as sensibly alive to any violation of that charter of their liberties as any man holding a seat on the floor of Congress.

We do not sit here, nor are we engaged in this discussion solely to protect the rights of the Senate from encroachment, but to sustain the purity and integrity of the Constitution, let who will attempt to violate it, and let the unhallowed effort proceed from whatever Department of the Government, or whatever source it may.

[Mr. BRANCH rose to explain: He did not mean to convey this idea to the Senate. He did not mean to fight the battles of every Department of the Government. It was in obedience to the first law of nature, self preservation, that he had submitted his resolution, believing it to be the bounden duty of this body to preserve the form of Government, so far as it came under their cognizance, from innovation. He regretted that the gentleman from Maryland should understand him as going farther than this. He was not disposed to go on a Quixotic expedition to defend the rights of any other body, but he was for staying at home, and defending their rights here.]

Mr. C. resumed: He had assigned, it seemed, one more reason for the resolution than the gentleman had been willing to adopt. He thought it quite a rational idea that the Senate owed it as a duty to their constituents, the States of the Union, and to the People, to protect them, and to protect the Constitution, by protecting as far as we may each Department of the Government, and by confining each as far as we can to the legitimate exercise of its proper and appropriate functions; one cannot remove itself from its proper axis, or deviate from its proper orbit, without danger of convulsion to the whole system. The intelligent part of the community were aware of this danger, and there were always to be found in the great mass of the People, a most respectable portion, sufficiently enlightened to discover, and sufficiently patriotic to denounce, with jealous and anxious solicitude, any unconstitutional exercise of power by any member of any Department of the Government. In the cases named, a profound silence has been the result, and they claim, therefore, as precedents, the respect and authority which is due to the wisdom and intelligence of the Executive and Legislative Departments of the Government, as well as of the community at large, whose silence is approbation.

With regard to the appointment of Mr. Pinkney, in 1806, it did not appear to be affected by any of the arguments urged against the other cases. It was in time of profound peace. To the introduction of the other cases as an authority, the gentleman from Virginia, (Mr. T.) had urged objections which, notwithstanding the eloquence with which he had advocated them, had failed to leave on his mind the impression they had made on the gentleman. He had treated the cases as a class, and has told us that the authority by which the appointments were made, can be resolved into the fair exercise of the powers of the President in his capacity of Commander-in-Chief of the Army and Navy of the United States; and inasmuch as the President, in that character, could rightfully do what was done, it is a sufficient answer to these cases to shew, that the authority is incident to that particular capacity of the President, and cannot be exerted but in time of war. The gentleman has made great effort to sustain the authority of the President, as Commander-in-Chief, to make these appointments: he could have made these treaties, said he, in person, as any other commanding General could, and he could depute another to do the same thing in his place.

Mr. C. denied this doctrine in toto, and affirmed, on the authority of the writers on the laws of nations, that the Commander-in-Chief of the Army and Navy of the United States, or the Commander of any other Army or Navy, had not competent authority to make and conclude a treaty of commerce—no, not even a general truce. A Commander-in-Chief can rightfully exercise all the powers necessary for the prosecution of the war, and the President, who is clothed with all the attributes with which the Constitution has surrounded him, can claim, perhaps, all the powers of Commander-in-Chief, because the Constitution has so created him. He has, by the Constitution, several other offices and duties, some executive, some legislative; but it has never been asserted or intimated that the President has the sovereign power of the United States. The only postulate the argument requires is, that the sovereign power resides elsewhere. Gentlemen may place it, in relation to this particular, in the hands of the President and Senate, who, by the express words of the Constitution, are declared to be the treaty-making power; or in the hands of the People, or States of the Union, and then are bound to admit that this attribute of their general sovereignty has been delegated to the President and Senate by the unequivocal grant of that instrument, the object of which was to define the particular portions of sovereignty parted with, and to whom, and the particular portions retained by the People or the States. The sovereign power alone, or the delegate of the sovereign power of a nation, is competent to make and conclude a treaty. The sovereign of the country may at the same time be the military commander, and such is the fact in despotic governments; but the legitimate exercise of this power can only be referrible to the character or capacity of sovereign.

That the power to conclude treaties is not incident to the capacity of the President, as the chief executive officer of the Government, or as a component part of the Le-

gislative branch of the Government, is distinctly asserted in the Federalist, No. 75, before referred to.

The authorities are equally explicit upon the powers of the military commander and the sovereign, that the first has not, and last alone has, the authority to conclude treaties.

The authority of the work he was about to read (Vattel) was acknowledged. The author (book 2, chap. 12, sec. 154,) tells us, "public treaties can only be executed by superior powers, by sovereigns who contract in the name of the State." "The sovereign who possesses full and absolute authority, has, doubtless, a right to treat in the name of the State he represents: his engagements are binding with respect to the whole nation. But all conductors of States have not the power of making, of themselves, public treaties; some are obliged to take advice of a Senate, or of the Representatives of the nation. In the fundamental laws of each State, we must see what is the power capable of contracting with validity in the name of the State." Again, in book 3, chap. 16, sec. 237, the same author tells us, "A general truce can only be concluded by the sovereign himself, or by him to whom he has delegated such a power. For that a General should be invested with an authority of such extent is not necessary to the success of his operations; it would exceed the limits of his functions, which are to direct the operations of war, wherein he has the command, and not to regulate the concerns of the State. To conclude a general truce is of such importance, that the sovereign is always thought to have reserved it to himself." "Even a particular truce, when for a long time, seems also to exceed the ordinary power of a General, and he cannot conclude it, but under a reserve of the ratification." According to this doctrine, the President of the United States could not conclude a treaty, if at the head of the Army or Navy in person, nor could he depute an agent to do so. He is neither the sovereign power, nor is he, for this purpose, the deputy of the sovereign. It is not only not the power of a war officer, but it is the exertion of the highest attribute of sovereignty.

These remarks, Mr. C. hoped, would leave no doubt with the Senate, that the foundation on which the gentleman from Virginia, (Mr. TAZEWELL,) had placed the cases relied on, and the principles by which alone he had vindicated their perfect conformity to the Constitution, could not be sustained: we must look elsewhere for the authority to embrace those cases, and to justify the well-understood opinions of statesmen and politicians: we shall find it no where but in the spirit and import of the Constitution, as received by those who oppose this resolution, and who see in its genius, and in the obvious necessities of the country, a delegation by the Sovereign Power to the President in the recess, subject to the ratification of the Senate when in session, of all the authority which has heretofore been exercised, and which the President now claims. It was not his intention, Mr. C. said, to go again into the other cases mentioned, as he had learned, by the gentleman from Massachusetts, (Mr. MILLS.) He understood there were, amongst others, no less than eighteen cases of Consuls, whose appointments were *original* appointments, that is, they were appointed to situations, or offices, which had never previously been filled; all which appointments were made in the recess by the President—made without the murmur of exception to his authority—confirmed, subsequently, by the Senate, and the authority for which can only be traced to the precise construction of the second article, now contended for by those who oppose this resolution.

These reasons would have convinced him that the power of the President extended as far as it is claimed by him, even if the question was unaffected by any other consideration which might distinguish it from the general doctrine of Presidential power on the subject of appointments. But it is contended that the peculiar circumstances of this case, make a manifest distinction, and present reasons abundantly strong to justify the position which the President has assumed, and to prevent the Senate from passing a vote and pursuing a course which takes this body beyond the limits of its ordinary duties, and erects it into a tribunal which, without allegation or complaint from abroad, shall first propose to itself a charge of misconduct against the Executive officer of the Government, and then pronounce condemnation against him. The language of the President refers solely to the commissioning of Ministers to meet the Ministers of the Spanish American Republics at Panama. The act of Congress, of February, 1818, makes an appropriation for the purpose of defraying the expenses of such missions as the President might deem it consistent with the interests of the country to institute. If, then, this be a mission to any or all of the Spanish American Republics, it is directly within the authority of the act of Congress. The gentlemen are understood to admit that a law of Congress can vest the President with power. There is nothing in the object or spirit of this act of Congress, which should confine the President to an execution of the authority to one Court or to another of these Republics, which will limit his power to act under the law to this day or the other, or which should attach to the subject the technical doctrine of a fiduciary, who, by the exercise of a delegated power, however inefficient for the object designed, had thereby become functus officis.

The history and character of the policy which dictated that law, which recognized the independence of these States, which hailed their advent upon the theatre of nations, and tendered the first friendly hand to introduce them into the society of sovereign and independent Powers, and which anticipated every other country in the gratulations we felt and expressed at their successful efforts to fulfil the destinies which the rights of man and the just decrees of Heaven proclaim to all the world—such a policy will refuse to be shackled by technical niceties, which would stamp defeat and shame upon its front. The only question which the law of Congress left for discussion, was, whether the commission referred to by the President, if granted, would have constituted the individuals commissioned, Ministers to all or any of the Spanish American Governments.

This brought the Senate to the question which had been agitated fully, and decided on the nomination of these Ministers, and he could justify the vote he then gave, solely on the hypothesis that they were Ministers appointed to meet other Ministers with whom they are to engage in Ministerial offices. It is not necessary that Ministers accredited to a particular Government should reside at the Seat of Government; nor is it necessary they should be sent to meet one Minister only. In this case they are to meet an assemblage of Ministers—a Congress of Ministers. They are nevertheless Ministers Plenipotentiary; they are so described in their commissions, and Vattel informs us, b. 4 ch. 6 sec. 76, the character of the Minister is made known in the credentials which he delivers to the sovereign to whom he is sent. They represent the sovereign power of the United States, and the respect and authority they claim must be determined by reference to the national law, and the credentials which give them official existence, whether accredited to act with one Minister or half a dozen—to act with one Power, or with the Representatives of several, to be assembled at the Court, or in the territory of one.

The practice of all nations has recognized the representative or ministerial character in transactions with more than the Ministers of one Power. Various instances, at various periods, have been mentioned to the Senate. The sanction of the Senate to the nomination of these Ministers, is a direct decision of this matter; it is considered to have become "rem judicatum," at least before this Senate. He did not mean to go at large into the question; it had been more ably sustained by other Senators, whose

opinions he was proud to find concur with his own on that occasion; and the luminous views of the gentleman from Louisiana, (Mr. JOHNSTON,) in his remarks on that subject, have expressed all that he could say in relation to it. The reasons assigned would induce him to vote against the resolution, and he regretted he had not had an opportunity to digest his remarks into a form less fatiguing to the Senate, whose patience and kind indulgence demanded his most sincere acknowledgments.

MONDAY, APRIL 24, 1826.

The Senate having resumed the consideration of Mr. BRANCH'S motion relative to the power of the Executive to appoint Public Ministers,

Mr. MILLS rose, and spoke nearly two hours* in reply to the remarks of Mr. TAZEWELL, on a former day.

Mr. CHANDLER said this was a case altogether unknown to the framers of the Constitution, as coming within the law of nations which provided for the appointment of foreign Ministers and Ambassadors. This was a Congress got up by treaty by several different nations, in which they combine and agree with each other in alliances offensive and defensive; and this Congress, for these purposes, was to meet at Panama. The President said, in his opening message, that we should take part in the deliberations of that Congress, and this was the purpose for which the Commissioners were to be appointed. This was, Mr. C. said, appointing Ministers to a Congress of a number of Governments not known to the Constitution. The President considered it to be within his constitutional competency to have done this. It was not within his constitutional competency to have done it during the recess, because it was not an individual Government, to which alone the Constitution contemplated sending Ambassadors or Ministers. The President having claimed this right, if it had passed unnoticed by the Senate, it would have been brought forward as a precedent hereafter. Mr. C. said he did not think that President Adams would ever attempt to propose another Mission to Panama, under any circumstances, but, at a future time, other men might feel inclined to make use of this as an authority. He therefore should vote against the indefinite postponement of the resolution.

Mr. MACON said that no President had ever before claimed the right that had been claimed in this message. On this question he doubted, as he did on all others. The reason why no mission had been made exactly like this, was, that no claim had ever been made before. He agreed it was never worth while to make new Ministers unless there were new occasions. The occasion was as new as the Minister, and something was necessary to be done. How did this power come from one Department to another, formed as this Government is? It was useless to look back in history, because there was no Government to look at. What, said Mr. M. had been the constant practice in our own Government? Had it not been a constant increase of Executive power? There was hardly a session of Congress passed but what some power, some patronage, was gained by the Executive. We had a very recent and memorable example before us. President Monroe had said that the United States "owed it "to candor, and to the amicable relations existing between "the United States and those Powers, to declare, that we "should consider any attempt on their part to extend their "system to any portion of this hemisphere, as dangerous "to our peace and safety;" and that "we could not view "any interposition for the purpose of oppressing them, or "controlling, in any other manner, their destiny, by any "European Power, in any other light than as the manifestation of an unfriendly disposition towards the United "States. In the war between these new Governments "and Spain we declared our neutrality at the time of "their recognition, and to this we have adhered, and "shall continue to adhere, provided no change shall "occur, which, in the judgment of the competent authorities of this Government, shall make a correspondent change, on the part of the United States, indispensable to their security." It was hardly noticed at the time; and now what had it become? He should like to see the letter addressed to the Mexican Government. Now they were told that this was a *pledge*, and the United States were to take the front of the battle. If every Department of this Government, the Senate, the House of Representatives, and the President, did not watch the power which the Constitution has given them, but let it be taken from them by piece meal, who could tell where it would end. In the reign of George the First the same arguments were used in England, in regard to the Executive power. Mr. M. said he had heard the debates in Congress before he had the opportunity of reading those of the British Parliament, and it appeared impossible they could be so much alike without having seen them. This was not the first mission of the kind. Gore's mission was of the same kind. This mission was deemed within the competency of the Executive. Why did he do it? Not on account of the doubt of the power, but it was put on the expediency of the mission, and not on the power of the Executive. It was expedient for them to wait: hence they waited. Much had been said about the character of the Panama mission, in this discussion. They must be Ministers, Ambassadors, or Consuls, and if the President could appoint them without a law, what was to prevent him from appointing the Judges of the Supreme Court? for they were all in the same article of the Constitution. The gentlemen had said there could be no appropriation without a law; so he would say there could be no Minister without an appropriation. Mr. M. said he suspected, if this appropriation bill was to be lost, there would be no mission to Panama. What would become of the office created? After passing a law there was an obligation. After passing a law to establish a Supreme Court, there was a moral obligation to make Judges and salaries. But in this instance there was no obligation; it had nothing to do with it.

It had often been said that, in this Government, the Departments were to balance each other. How was this balance to be kept up? Not by constantly increasing the power of one Department of this Government; but the House of Representatives should take care of the portion committed to them, the Senate theirs, and the President his. Was this House, when their rights were, as they supposed, infringed, to wait for the interference of the House of Representatives? There was, Mr. M. said, a tendency in every Government to create power. The Constitution had given the Courts power to declare what was unconstitutional, and why so? Because the Government would go beyond the limits. Governments were made on the suspicion that all those who had power would go wrong. He would go further, and suppose it a doubtful question whether the Executive, in his message, had claimed this power or not. Most of the gentlemen who contended that he did not, had contended that he had the right to do so. If the majority of the Senate thought differently, was it not prudent in them to express their opinion? Had they not the same right to express

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* An explanation is here due to themselves by the editors. Wherever a speech is not introduced in its proper place, it is either because the Reporter was absent from sickness, (as in the case of this day,) or from other causes utterly beyond the control of the publishers.

their opinion on their powers, and was it not as much their duty to do so as for the President to declare his? A law had been passed which the Supreme Court declared to be unconstitutional, but it was never enforced.

There was no analogy, Mr. M. said, in the cases cited, between European Governments and this Government. There, even in the most limited monarchy in Europe, the appointment of Ministers was in the crown alone. He meant England. How was it here? Every thing was divided and carved out, this to one, that to another, and that to a third. But, in all those cases in Europe, there was an understanding that those Ministers were to meet, and what they were to do. How was it in the present instance? They were to do any thing or nothing; they were to talk of matters and things in general. Was it ever doubted that the British Executive could not appoint a man to be an Ambassador to do any thing? That is not the case here, and all this reasoning, derived from the practice of European Governments, had no analogy at all with our Government. Balance any thing—get a rail and place it on a fence, and play at *see saw*; give one a little more than the other, and away he would go: So it was with these powers; give one of them only a hair's breadth more than it ought to have, and the balance would be destroyed. First the power was denied absolutely; then a little was done, then a little more, and now, Mr. M. said, it had become a matter of course, and his objections were considered as much out of fashion as his boots, to say the least of them. They had a strong impression, in coming here, that this was to be a meeting of Republics, and that the United States claimed to go as the oldest Republic. They were to settle the public law for America. As well as sisters there were to be brothers there. Brazil, Britain, and probably France, were invited, and all this was to settle the public law for America.

On the subject of our going to *advise*, Mr. M. said they had the right of advising the President, and he had never heard of a nation that wanted the advice of another. He never knew a single individual who wanted the advice of another. If there was one man that did, there were 100,000 that did not; the advice might be given, but the man would go his own way.

Mr. M. said it had been stated, in the course of debate, that there was no stir amongst the People. In the mess in which he boarded, he did not recollect having received one letter, from a man that attended at all to the public business, but what it mentioned this claim of power. Since the publication of the documents, he had received two letters in which it was asked whether they meant to let the resolution sleep? In every State of the Union there were as clever men as any here, who watched this body and commanded them to take care of the Constitution and their rights. If any thing was wrong, it must be put down; but if truth was on the side of the Administration, they never need mind any investigation. Mr. M. said he wished the Administration would so act that he might vote for all their measures. Judging from the letters he received, he should suppose this subject was much agitated in the country. As he said some time ago, it seemed to him, from reading the message, as coming to Congress on the expediency: If it applied to the acceptance it was a little remarkable it had not been put in the same sentence: for, at the next paragraph, it made a new start. It was like going to a new section. He could not discover the connexion.

The Senate adjourned.

TUESDAY, APRIL 25, 1826.

The Senate again resumed the consideration of Mr. BRANCH'S resolution, respecting the powers of the President in the appointment of Foreign Ministers.

Mr. TAZEWELL rose, and addressed the Senate more than two hours, in support of the resolution, and in reply to the gentlemen who had opposed it. Mr. T. spoke until the usual hour of adjournment; when he concluded

Mr. VAN BUREN stated that it had been his wish to express his views on this subject, but, as the Senate seemed desirous to terminate the debate, he believed he should waive his intention.

The Senate then adjourned.

WEDNESDAY, APRIL 26, 1826.

The Senate again resumed the consideration of Mr. BRANCH'S resolution, respecting the power of the President as to the appointment of Foreign Ministers.

Mr. TAZEWELL made a few remarks explanatory of certain positions which had been urged by him yesterday.

Mr. JOHNSON, of Ky. rose, and said, that, whenever there was a contest for power, he believed every human mind had its bias; some towards strong government, and to the accumulation of power in the hands of the various functionaries and departments of the Government, and others towards popular rights, and the rights of self-government, having a more unlimited or a greater confidence in the People, where they can either exercise those rights, or control the exercise of them over any department or functionary of the Government. It is very difficult to explain this universal bias: whether it arises from education or organization, or any other cause, I know not: for in this we are something like a riddle to ourselves. I am free to declare, said Mr. J. that my political bias is, and has been, always democratic, leaning upon the confidence I have in the exercise or control of popular rights by the People; believing that this bias is more congenial with the principles of freedom, and more safe in perpetuating our free institutions; I do not wish to alter, or to change that bias, hoping always to restrain it, if necessary, by reason and reflection. The same feeling, and the same principle, will always induce me to divide the exercise of power, if the Constitution will warrant it: for I hold it as a sound principle, that all bodies of men invested with power, are more or less inclined to extend that power by a construction of the instrument by which it is given; and where such a construction can be fairly given to the Constitution by which a power is divided between two departments of the Government, I would incline to give it that construction, rather than to increase the power of one or the other: for, it follows, from my principles, that there is less danger in this construction than that which would place the power and the patronage in the hands of one. This is my view of political principles, where I am left to give a construction to the Constitution, when doubt shall exist as to the meaning and intention of this Constitution. If the Constitution is not doubtful; if it is not ambiguous, but plain in its letter and in its expressions, we are sworn to support it; and we cannot, as honest men, violate it, because the obligation to obey it is imperative. Let us then endeavor to reduce the question to a plain and single proposition, in this case, in which both parties concur, and when the question is understood by both parties, in the discussion, we can, with more cheerfulness, decide in the affirmative, or the negative, of the proposition contended for on the one side, and denied on the other. It has been contended that the President claims the power to appoint Ministers or Ambassadors to Panama, or elsewhere, and to commission them, while Congress is in session, without the consent of the Senate. It has been contended that the words of the President are positive and unequivocal in the claim of this power; I cannot say whether the President does claim such a power or not, because I have not had any conversation with him on this subject; but I will say that I cannot believe that the President does contend for, and claim this power. I feel no disposition to do the President any injustice, by ascribing to him a position which

I do not believe it possible for him to assume; nor shall I do violence to my conscience in saying that I believe he has contended for such a power when I do not believe it. But both sides have concurred in this, that the President does believe that it is within his constitutional competency, in the recess of the Senate, to appoint a Minister or Ministers to any foreign nation, or assembly of nations, where we never have had any Minister previously. I do not believe that the President possesses such a power; and I would greatly prefer that the proposition before us would, in so many words, assert that principle; we should then vote knowingly, with our eyes open, without ascribing to the President the assertion of a right for which he does not contend. Although I do not believe the President has the power to create any new political or commercial relations between this country and any other, by an original appointment on his sole responsibility, in the recess of the Senate, I am not at all disposed to censure him for his opinion, as wise men and good men may differ upon this subject; and, in this case, so far from the exercise of this power which the President claims, he prefers, out of respect to the other departments of the Government, to submit the measure to our previous approbation: he is not, therefore, responsible for any exercise of power inconsistent with, or in violation of, the Constitution, but for the assertion of a power which, in the opinion of a part of the members of this body, is not vested in him by the Constitution; and while I am free to declare that I place less importance upon the necessity of acting upon the resolutions before us than the mover of them—nor should I ever have introduced this discussion myself—yet I consider it our right to do so, if we think proper; and when brought before us, it becomes our duty to express our sentiments in favor of the power claimed, or against it; and while I do it with perfect respect and kindness to the Executive, I have no hesitation in saying that I do not believe that the Constitution will authorize him, in the recess of the Senate, to make any original appointment of a Minister to any Power, State, or assembly of States: but that this power is divided between the President and the Senate by the Constitution; and that the President can only fill up, and appoint to, a vacancy which may have happened by the death, resignation, or the dismissal of the incumbent, who may have been placed in such office by the joint act of the President and the Senate, in the first place. Now let us, at this point of the argument, turn to the words and expressions of the Constitution, and see if it be possible to doubt as to its meaning, or the intention of its framers. The President shall nominate, and, by and with the advice and consent of the Senate, shall appoint, Ambassadors, Ministers, &c. Here the original and substantive power to fill offices, is given to the President and Senate. It is divided between those two departments; and if the Constitution had been silent as to filling vacancies in the recess, it could not have been done by the President alone.

To remedy this great inconvenience to fill a mere vacancy, where the office had been created and filled by the joint act of all the departments of the Government, and declared thus to be necessary for the welfare of the Republic, the Constitution provides, in the very same clause, where the joint power of appointment is given by these words, "the President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session." This is the only power given to the President alone: to fill a vacancy which happens during the recess of the Senate, and that appointment to be temporary, and expire at the close of the next session of the Senate. How can a vacancy happen in an office, without the office had been filled by some person previously appointed? I cannot conceive of a case where a vacancy can happen without a previous appointment; nor do I believe the ingenuity of any man can conceive of such a case—not even the creative fancy and vivid imagination of the author of the Arabian Nights, if he were alive. If, then, the power of the President, without exception, is confined to filling a vacancy in an office which shall happen during the recess of the Senate, can he make any original appointment, where no vacancy has happened, because no previous appointment had ever been made, without a violation of the positive and unequivocal letter, as well as the spirit, of the Constitution? It is our duty to take a common sense view of the subject, and dismiss technicality, and not evade the Constitution by supposed inconveniences, or by a reference to the practice of the Government under it. For my part, I would be willing to risk the decision of this question upon a very strong case. Let us suppose, for a moment, that every human being, with common sense, and who was well enough acquainted with the English language to understand the common definition of words, could be assembled at one place, and a voice could be found sufficient for the task of proclaiming and reading this part of our Constitution, do you not believe that the opinion would be unanimous, in this vast crowd, that the President and the Senate has the joint right and power to fill offices in the first place, and, in case of a vacancy happening after the office had been thus filled, the President might then, and not till then, fill up the office by filling the vacancy? I think I might risk the decision of this question upon the hazard of an universal and unanimous opinion, as to the plain, common sense meaning of the Constitution; but, as soon as we leave the Constitution and resort to the practice of the Government, and to analogy, and to supposed cases in point—resorting to precedents and losing sight of the Constitution and first principles—the case becomes confusion confounded, and construction construed. I do not contend that the power asserted by the Message of the President, is a very dangerous power; certainly not equal to the power of controlling the liberty of speech and the rights of conscience; yet I consider it of sufficient importance to this nation to contend against such a power; not that I fear the exercise of it by the present Executive; but, if he should exercise it, or any future President, I can see many inconveniences, and some dangers, arising from it. Let us see what they are. In the first place, every Minister is entitled to his outfit of $9,000, and salary of $9,000, per annum, whenever appointed as Ambassador or foreign Minister. Here the President can incur this expense, upon his own responsibility, in every exercise of this power, without knowing whether the Senate will either approve of the mission, or the person who has been selected; or whether the House of Representatives will appropriate the money. This is one inconvenience—this expenditure of the public money, the least of all—and that is sufficient. In the next place, the President, if he can make original appointments, and is not confined to filling vacancies, then he may create commercial and political relations with all the independent nations upon earth, by sending Ministers to the courts of each; which is the exercise of the very highest act of sovereignty—a power as delicate as it is important; and one which, I contend, belongs, in the first place, to the President and Senate, who have the original appointing power in conjunction; and which mission is only consummated by the appropriation of the money by the House of Representatives: and this is the correct view of this matter, if the letter of the Constitution did not decide it; and it is no argument to say that, if the power should ever be abused, the Senate has a check upon such appointments at their next session. It is true that the Senate and House of Representatives would have a check upon the proceeding at their next session, and a very important check; but the exercise of the power might and would produce serious injury and vital inconvenience to the country. Nor can I conceive of a possible case of an original appointment, where the exigency was so great as to justify

an attempt to create new relations between this and other States, in the recess of the Senate, except in case of war; and I can scarcely conceive of a case of war with a nation where we never had any previous political and commercial relations, by treaties, or sending of Ministers, previous to such a war; and whenever we were at war with any nation, where we had, according to the Constitution, established a political relation with such nation, by treaty, or missions, I should not be disposed to give a rigid and technical construction to the Constitution, so as to deprive the President of the power, but give him considerable latitude in the exercise of power which the Constitution had confided to him, viz: the filling up of vacancies—and the same in time of peace; but, as a conscientious man, I could not vote that I did believe that, in any case, the President of the United States had the power, even in the recess of the Senate, to make original appointments of Ministers to foreign nations, where we never had previously sanctioned a mission to such country by the several departments of the Government. I have said that all men, individually or collectively, who are vested with power, have an inclination to extend that power, and this case presents a striking proof. When this Constitution was formed, the advocates of the Constitution contended that the appointing power was not only divided between the Senate and the President, but that no officer of the Government could be dismissed from office without the sanction of the Senate and the President, jointly. This is the doctrine which is advanced by the essays in the Federalist: but what has been the practice of the Government? The President alone has the power of dismissal; the Senate are not consulted. The exclusive power to dismiss from office, and to recall foreign Ministers, is a great power; and no matter what confidence the incumbents may have in the rectitude of the administration, they must generally feel their dependence upon it; and in that proportion will their political independence be impaired, or diminished. In these reflections I mean nothing personal to the present administration. It has been, and will be, equally so with all. The gentleman from Massachusetts, (Mr. MILLS,) much to his credit, has confessed that, if he were to reject the precedents, and the practical construction given to this part of the Constitution, he should decide that the President had no right to make any original appointment of Minister, or other officer, in the recess of the Senate; but that he must be limited to the vacancies which might happen, in the recess of the Senate, in offices already, or previously, filled by the President and the Senate, jointly. This brings me to the list of precedents which has been presented. It is my opinion that no case in point has been produced, except the solitary case of Mr. Short, who was appointed to Russia, where, I believe, we had a Consul by law; and, in that case, the Senate rejected the nomination when presented to them for confirmation. The case of the appointment of the mission to conclude a peace in the late war with Great Britain, I consider no precedent for the power asserted in this case. We had Ministers previously in Great Britain, which intercourse and mission the war suspended, or interrupted, and we had then a resident Minister at St. Petersburg, in Russia. Here no new connexion was formed; that had been long formed, and previously to this mission, to conclude a peace; and, even if the Constitution did not warrant that mission, it was nothing like the dangerous power of assuming the right, in time of peace, to send Ministers where the nation, as such, had never formed, or recognized, any connexion with such nation. I consider that there is a total absence of precedents in point. I should not feel myself bound by them, if they were as numerous as they are pretended to be; on the contrary, I now state, that, in forming conventions with foreign States, in Europe and in South America, no President of the United States has ever undertaken to do it, by an original appointment, in the recess of the Senate; but the connexion has been uniformly established by an original appointment, by the co-operation and sanction of the Senate with the President, and the appropriation of the funds by the House to carry the mission into effect. These steps having been taken, no doubt remains as to the existence of the office, and the appointment of a Minister to fill it, according to the Constitution. It has been contended that the office of foreign Minister, to all civilized nations, is recognized by the Constitution, and its formation attached to our system offices created and existing by the laws of nations. This does not alter the opinion which I entertain as to the appointing power. The office must exist before it can be filled, and no vacancy can happen till an original appointment is made to fill it. When a vacancy happens, the President may fill it during the recess of the Senate; the proposition cannot be made more definite by any circumlocution. It supposes the existence of an office, and a person filling it, and performing its duties: the incumbent dies in the recess, and the vacancy happens by the death of the officer; or he resigns during the recess, and the vacancy happens by resignation; or the officer is dismissed, or recalled, and the vacancy happens by dismissal, or recall. These are acts and things that we can see and feel, and the proposition is tangible, and no obscurity exists; but, if we are compelled to resort to construction, or the known rules of interpretation, we should come to the same result. In case of equivocal words, we must seek for that meaning which will restrain power and make it harmless, no matter in what hands vested. We should resort to no quibble upon words; but they should be taken in their common and known meaning, and acceptation—no resort can be had to mental reservations, and, in fact, when the words are unequivocal, we cannot be justified in resorting to rules of construction at all; but we must take the words as we find them. The construction for which I contend vests the power of appointment in the President and Senate, jointly, where the Constitution has placed it. In concluding, therefore, I deny the single proposition, "that it is within the Constitutional competency of the President to make an original appointment of Minister, or Ministers, to any foreign Power, where no Minister has ever been previously appointed;" but that such appointment is vested in the President and Senate, jointly, and the appropriation of the money is previously necessary to carry the mission into effect, and such has been the practice of the Government; and that the President's power is confined, in the language of the Constitution, to the filling of such vacancies as may happen after such original appointment has been made, as stated. It gives me no pleasure to have the opportunity to differ from the Executive in opinion. In fact, it will always give me pleasure to agree with him when I can do it consistently with my duty. In this case, however, I am constrained to differ from him, without even a doubt upon my mind.

Mr. REED proceeded to an examination of the subject generally, and spoke about two hours in opposition to the resolution, and in favor of the denied power. Having concluded,

Mr. BRANCH succeeded, and commenced a reply to the arguments of those who had opposed the resolution; and, after a few remarks, moved an adjournment; which motion prevailed, and

The Senate adjourned.

THURSDAY, APRIL 27, 1826.

On motion of Mr. CHAMBERS, the Senate took up the joint resolution directing a survey of certain routes between Baltimore and Philadelphia, for a post road; and Mr. CHAMBERS made some remarks to show the inconvenience now suffered from frequent interruptions of the main line of communication between the Eastern and

Southern portions of the Union, by the badness of the present post route between Baltimore and Philadelphia; the utility which would result from an improved route; the propriety of a survey, to ascertain the most eligible route, &c.

Mr. FINDLAY wished to know if it was considered that the vote on this resolution involved an expression of opinion as to the constitutional power of the General Government, in regard to internal improvements—because, if so, he should be compelled to vote against it.

Mr. SMITH made some observations to show that this resolution did not involve the constitutional question referred to, and would compromise no member on that question.

Mr. CHANDLER contended that the resolution did involve the constitutional question; and that its passage would be hereafter adduced as a pledge to follow up the survey with the construction of the road.

Mr. CHAMBERS replied, to show that this resolution was entirely unconnected with the general question—being a simple proposition for a survey, which, it would not be denied, he presumed, that this Government could constitutionally direct its officers to make.

Mr. LLOYD suggested the propriety of extending the proposed survey from Philadelphia to New York, as well as from Philadelphia to Baltimore—these places being among the greatest commercial emporiums in the Union, and the roads between which, it was remarkable, were the two worst in the country.

Mr. CHAMBERS expressed his willingness to unite with the gentleman from Massachusetts, in favor of the survey from Philadelphia to New York, if it was proposed in a separate resolution; but he had rather it should not be attached to the present resolution, for fear of its being thereby embarrassed and possibly defeated.

The question was then put on ordering the resolution to a third reading, and carried by the casting vote of the President; fifteen members having risen in its favor, and fifteen against it.

PANAMA MISSION.

Mr. SMITH, from the Committee of Finance, to which had been referred the bill from the House of Representatives, making appropriations for carrying into effect the appointment of a Mission to the Congress of Panama, reported the same without amendment; and gave notice that he should move to take up the bill on Tuesday next.

Mr. BERRIEN then laid on the table the following, as an amendment to the bill just reported, which, he said, he was instructed by the Committee of Finance to offer, and which he should ask for the consideration of, when the bill itself should be taken up:

"*Provided always, and it is hereby declared*, That nothing herein contained shall be construed to give the sanction of Congress to any departure from the settled policy of this Government, that, in extending our commercial relations with foreign nations, we should have with them as little political connexion as possible, and that we should preserve peace, commerce, and friendship, with all nations, and form entangling alliances with none; nor to authorize the representation of the Government of the United States at the Congress of Panama, except in a diplomatic character; nor the formation of any alliance, offensive or defensive, or negotiation respecting such an alliance, with all or any of the Spanish American Republics; nor the Government of the United States becoming parties with them, or either of them, to any joint declaration, for the purpose of preventing the interference of any of the European Powers with their independence or form of government; nor to any compact for the purpose of preventing colonization upon the Continent of America: but leaving the People of the United States free to act, in any crisis, in such a manner as their feelings of friendship towards these Republics, and as their own honor and policy may, at the time, dictate."

The amendment was read, and ordered to be printed.

EXECUTIVE POWERS.

The Senate then resumed the consideration of the resolution submitted by Mr. BRANCH, in regard to the power of the President in the appointment of Foreign Ministers.

Mr. BRANCH concluded the remarks which he commenced yesterday in support of his motion, and in reply to gentlemen who had opposed it. He spoke about half an hour.

Mr. RANDOLPH followed Mr. BRANCH, in support of the resolution, and addressed the Senate about four hours. He concluded about six o'clock, when

Mr. BELL rose to put an end to this debate, that the Senate might proceed with the other business; he therefore moved to lay the resolution on the table, stating his object to be, that it should not again be taken up. [Mr. RANDOLPH, in an under tone, said he should call it up every day during the session.]

The question being taken on the motion to lay the resolution on the table, it was decided in the affirmative by yeas and nays, as follows:

YEAS—Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Hendricks, Holmes, Johnston, of Lou., Knight, Lloyd, M'Ilvaine, Marks, Noble, Reed, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Willey—23.

NAYS—Messrs. Benton, Berrien, Branch, Chandler, Dickerson, Eaton, Findlay, Harper, Harrison, Hayne, Johnson, of Ken. Kane, King, Macon, Randolph, Rowan, Tazewell, Van Buren, White, Williams, Woodbury—21.

And then the Senate adjourned.

FRIDAY, APRIL 28, 1826.

The Senate took up the bill to amend the several acts for the establishment of the territorial government of Florida. [The main feature of this bill is its providing for the election of the Legislative Council by the People, instead of their being appointed by the Executive, as formerly. It also contains various modifications and restrictions, which experience has shown to be necessary, without increasing the expense of the establishment.]

Mr. HOLMES moved an amendment to the bill, providing that the persons composing the Legislative Council shall have resided there one year preceding their election, and limiting the term of election to one year; which was agreed to.

The last section of the bill disapproves and annuls several acts passed by the Governor and Legislative Council of the Territory, some of which, (relating to the Judicial Department) Mr. HOLMES explained to be of the worst character, and as appearing to him acts made to encourage pettifogging.

Mr. ROWAN moved to strike out of, and except from, this repealing act, those of the territorial laws that related to granting divorces, alleging the inconvenience that would result from repealing these acts, and the effect it would have on those who had taken advantage of them, and had probably formed new connections, and on their children.

Mr. RANDOLPH opposed the motion, at considerable length; declaring his unwillingness, in his private capacity as a citizen, to agree to give to the Legislative, the Judicial, or the Executive authority, or to any combination of those authorities, the power of divorce.

Mr. VAN BUREN remarked, that, by the act organizing the Territorial Government of Florida, it was necessary that all the acts of the Governor and Council should be approved by Congress before they became absolute. This regulation was well known, and, as these acts grant-

ing divorces had been passed in December last, it was not probable that new connections had been formed since that time.

The bill was then, on motion of Mr. RANDOLPH, laid on the table.

The joint resolution directing a survey of certain routes between Baltimore and Philadelphia, for a post road, was read a third time, and PASSED, by yeas and nays, as follows, the President giving the casting vote in the affirmative:

YEAS—Messrs. Barton, Chambers, Chase, Eaton, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnson, of Ken. Kane, Knight, Lloyd, Marks, Noble, Robbins, Ruggles, Seymour, Thomas—19.

NAYS—Messrs. Bell, Benton, Branch, Chandler, Clayton, Dickerson, Harper, Hayne, King, Macon, Randolph, Rowan, Sanford, Tazewell, Van Buren, White, Willey, Williams, Woodbury—19.

BANKRUPT BILL.

The Senate then, agreeably to the special order of the day, took up the bill to establish a uniform system of Bankruptcy throughout the United States.

Mr. BRANCH moved to postpone the bill indefinitely.

Mr. HAYNE said he was willing that the question on the proposition sho ll be taken without debate, provided the Senate would be prepared to cons der it as a test of the principle involved in the bill, and that those who voted in favor of the motion should thus indicate the opinion that it was not expedient to vote for it under any circumstances whatever. Should it be the opinion of the Senate that it ought to be acted on, Mr. H. said he should propose to take up the bill; and if it should be discovered, during its progress, that it was likely to occupy more time than the Senate could afford to bestow on it, he should have no objection to its being laid on the table. He was satisfied, however, that this would not be the case; and that this bill, notwithstanding its length, and the important principles involved in it, would not take more than two or three days for its discussion.

Mr. FINDLAY said he had not yet had time to examine the principles or the detail of the bill; he should not consider himself as pledged to vote in favor of the bill finally, but should vote against the present motion.

Mr. BENTON said he was in favor of the motion; it was the appropriate one at this time. A motion to postpone indefinitely was usually made, to get rid, for the session, of a subject which it was either inexpedient to pass, or unwise to discuss. Mr. B. said he did not think it either useful or expedient to discuss this question at this session. On account of the late period of the session, of the impossibility of getting it through both Houses, even if it should pass the Senate, he thought the motion which had been made was the proper one. When called on, he should vote for the motion, but not on the ground on which the gentleman from South Carolina wished the vote should be placed.

Mr. HOLMES was against the motion, for the opposite reason. It was important it should be known whether the Senate would be willing to pass a bankrupt bill or not.

Mr. CHAMBERS thought the view of the gentleman from South Carolina a fair one—simply to affirm or deny the proposition. It was important to the People of the country to ascertain whether there was a disposition to pass the bill or not.

Mr. KING moved to lay the bill on the table, with a view of calling it up at a future time, if the business of the Senate should permit. He expressed his intention of voting in favor of the bill: but Mr. K. withdrew his motion at the request of

Mr. HAYNE, who said, that the view taken by the gentleman from Missouri was one of such a character that he thought proper to state to the Senate, that he regarded the decision in favor of the motion of indefinite postponement, under these circumstances, as having a most serious effect on the future prospects of the bill. What was the objection to it? It would take time. What time? Mr. H. repeated his firm convictions, that the discussion would not occupy more than three days. The principles were simple, but the details, though complicated, were a matter of mere minute arrangement, to carry the principles into effect. It was but justice to those who felt interested in the bill to proceed in the investigation till the difficulties should be proved to exist; and, in that case, he should be disposed to lay the bill on the table. He hoped, however that this course would not be pursued till an experiment had been made on the subject.

Mr. LLOYD said this was a measure loudly called for from all parts of the commercial community; a petition from Ohio had been presented in its favor; a large committee had bestowed great labor in preparing the present bill; and admitting, for the sake of argument, that there was not sufficient time to get it through both Houses, if there was time to act on it here, that would be a great point gained. Next session would be a very limited one; they would have no time to prepare a bill then, or to go into the discussion of it at length. The Chairman of the committee had devoted a great deal of time to the measure, which was one much wanted by the community; and he hoped he would be allowed to develop his views on the subject. The rule for doing business which had been adopted at the suggestion of the gentleman from Missouri, had been the means of more business being done in one week, than had been done in four months before. Mr. L. believed they would be able to despatch all the business they had before them, and he hoped, therefore, the motion would not obtain, but that the bill would be taken up, and acted on, and passed through this House.

Mr. BENTON said, that, ten or fifteen days ago, he had moved to establish a rule to alter the mode of doing business in the Senate, which rule was now under beneficial operation. There was another one he wished to propose, which, for all practical purposes, would make the three months' session longer than any three years' session heretofore. They knew, for they were all professional men, that some progress had been making for the last three or four hundred years in matters of common sense: for a long time, it was the custom in every court, to suffer suits to die at the death of the King, and then to begin again; but it was found out, after the lapse of centuries, to be just as well that these suits should never die to begin again: so they had found out in the House of Representatives, that it would be just as well their business should not die at the end of the session. The Senate, Mr. B. said, never died, and he thought it would be well to improve on this common sense practice, and to try to get a rule established, that the business of the Senate should not die at the end of each term, but be continued over to the second session, to be taken up as it is now taken up every Monday morning, after the adjournment on Saturday. Mr. B. said he stated this in reply to the gentleman from Massachusetts, who complained of the loss of time which occurred at the commencement of each session for want of something to do, or in preparing bills over again. Mr. B. stated his intention to bring the subject forward, and to leave it to the Senate to decide whether they would lose a month at the commencement of every session, for want of subjects to act upon.

The question was then taken on the indefinite postponement of the bill, and decided in the negative, by yeas and nays, as follows:

YEAS—Messrs. Benton, Branch, Chandler, King, Macon, Marks, Randolph, Ruggles, Tazewell, Willey, Williams—11.

NAYS—Messrs. Barton, Bell, Berrien, Bouligny, Cham-

bers, Chase, Clayton, Dickerson, Eaton, Edwards, Findlay, Harper, Hayne, Hendricks, Holmes, Johnson, of Ken., Johnston, of Lou., Kane, Knight, Lloyd, Robbins, Rowan, Sanford, Seymour, Thomas, Van Buren, White, Woodbury—28.

The bill was then laid on the table, with the understanding that it would be taken up for discussion on Monday.

MONDAY, MAY 1, 1826.

The Senate, having resumed the consideration of the bill "to amend the several acts for the establishment of a territorial government in Florida;" and the question being on Mr. ROWAN'S motion to amend the bill by exempting the act granting divorces from the clause which annuls and repeals various acts passed by the Governor and Council of the Territory—

Mr. JOHNSTON, of Louisiana, inquired the dates of the acts respecting divorces.

Mr. HOLMES replied, that they were all dated November or December, 1825. Mr. H. read the acts, and said, it was probable the individuals were men who had become dissatisfied with their wives, and had run away to Florida and got a divorce there, perhaps without their wives knowing it. Mr. H. alluded to some other acts of the Governor and Council, and said he had the returns of these Legislative Councillors as to their travelling expenses. For a distance of two or three hundred miles, some had charged ten, some twelve, and one thirteen hundred and fifty miles travel. The Governor of the Territory, whose duty it was to have certified the distance, had attached to the certificate of each of their charges of travel, that the person whose account was here certified did attend so many days, and that he lived at such a place, taking care to leave out every fact about the distance actually travelled. Mr. H. said he never had seen such fraud committed on any Government. He did not know that the Governor was to blame; when he was before the Senate he was considered as a respectable man; but he ought to have certified to all the facts. Mr. H. said, if these laws were not repealed, they would, as soon as Congress adjourned, become laws, and go into operation.

Mr. ROWAN said, these acts were laws already, by the charter of the Territory; they were laws the moment the Governor signed them; and they only ceased to be law when they were revoked by Congress; and, he argued, that, by repealing these laws granting divorces, a principle would be established that might affect all the States. The moment that the marriage contract was declared to be within that clause of the Constitution which forbids any State passing laws impairing the obligation of contracts, the great depths of public repose would be broken up, and the judicial power would be increased to an extent almost inconceivable.

Mr. BERRIEN said, he thought there was no ground for the apprehensions of the gentleman from Kentucky, that the annulment of these laws by the Congress of the United States could be construed into the adoption of a principle that that clause which inhibits any State from passing laws impairing the obligation of contracts, would be extended to cases of divorce. This subject had been considered by the Supreme Court, and that tribunal had expressed an opinion that cases of divorce did not fall within the terms of that inhibiting clause of the Constitution of the United States. Mr. B. then proceeded to argue that the Legislative Council had no intrinsic authority to pass such a law, under the grant of powers given by the act establishing the Territorial Government.

After some further discussion between Messrs. BERRIEN and ROWAN, the question on Mr. ROWAN'S motion was decided in the negative, by yeas and nays, as follows:

YEAS—Messrs. Bouligny, Harrison, Hendricks, Johnson, Ky. Johnston, Lou. Kane, King, Noble, Reed, Rowan, Sanford, Smith, Thomas, White—14.

NAYS—Messrs. Barton, Bell, Benton, Berrien, Branch, Chandler, Chase, Clayton, Dickerson, Edwards, Findlay, Harper, Hayne, Holmes, Knight, Lloyd, Macon, Marks, Randolph, Robbins, Ruggles, Seymour, Van Buren, Wiley, Williams, Woodbury—26.

The bill was then ordered to be engrossed for a third reading.

BANKRUPT BILL.

Agreeably to the special order of the day, the Senate then proceeded to consider the bill to establish a uniform system of Bankruptcy.

Mr. HAYNE said, he rose to address the Senate on this subject with peculiar diffidence, and no ordinary anxiety—diffidence, the most unfeigned, of his ability to do it justice—and anxiety for the fate of a measure on which the prosperity of a large portion of the community materially depends. I feel (said Mr. H.) most deeply the disadvantages of my situation, and the difficulties by which I am environed. The lamented illness of the learned Senator from Delaware, (Mr. VAN DYKE) under whose auspices this measure has been twice introduced, and once passed the Senate—and the absence of the gentleman from Massachusetts, (Mr. MILLS) who had promised us his aid on this occasion, are fearful omens. The late period of the session, also, and the numerous important subjects now pressing on our attention, are but too well calculated to excite that impatience of calm and deliberate investigation, which, magnifying difficulties, often leads deliberative assemblies to seek refuge from embarrassment, by postponing the whole subject "to a more convenient season." Sir, I earnestly beseech gentlemen not to adopt such a course on the present occasion. If it is not due to those who have devoted days and weeks to the preparation of this bill, it is surely due to the feelings and wishes of a large and most respectable portion of the community that it should now be acted on, and, if possible, finally disposed of. Thousands of our fellow-citizens, in our commercial cities, have their eyes now turned to this spot, and are waiting, with anxious hopes and fears, our decision on this question. Numerous creditors, condemned to witness the fraudulent conduct of their debtors, without having any power, under existing laws, to check their progress in the road to ruin, are now calling upon us to afford them an efficient remedy for the recovery of their just demands; while, on the other hand, an immense number of unfortunate men, overtaken by unavoidable calamities, and compelled to wear out their lives in the worst of all servitudes—the servitude of debt—are looking up to us, with aching eyes and throbbing hearts, for some relief from their unmerited or unavailing sufferings. I will indulge the hope, therefore, that an honest effort will now be made to dispose of this bill; and, should embarrassments present themselves in our progress, I pledge myself to consent to lay it on the table, the moment it is ascertained that the question cannot be decided during the present session.

I shall now proceed, Mr. President, as briefly as I may, to state the evils for which we propose to provide a remedy, and to give a plain and practical exposition of the principles embodied in this bill. The first question which presents itself for consideration is, *the necessity of a Bankrupt law.* It is asked, "whether the laws of the States on this subject are not adequate to the object?" I answer, decidedly and unequivocally, that there exists the most pressing necessity for now establishing "uniform laws on the subject of bankruptcy throughout the United States;" and that the laws of the States on this subject are inefficient, unjust, and ruinous, in their operation. In the remarks I am about to make on this branch of the subject, I wish to be distinctly understood as confining my observations to the effect of the State insolvent laws, *on persons concerned in trade.* It is from the operation of these laws

on the commerce of the country that those evils flow, which demand a speedy and effectual remedy.

There now exists, Mr. President, in the several States of this Union, upwards of *twenty distinct systems of bankruptcy*, or insolvency, each differing from all the rest in almost every provision intended to give security to the creditor, or relief to the debtor—differing in every thing which touches the rights and remedies of the one, or the duties and liabilities of the other.

By the laws of some of the States, debtors cannot be arrested, either on *mesne* or *final process*; by others, personal property may be held in defiance of creditors; while, by others, real estate cannot be touched. In some instances, executions are suspended; in others, the courts of justice are closed, or, which is the same thing, delays are sanctioned, which amount to a denial of justice. In some States, a few creditors, in the immediate neighborhood, are suffered, by *attachment*, or other legal proceedings, (often the result of collusion with the debtor) to secure to themselves the whole estate of an insolvent debtor. In several States, persons arrested for debt are permitted to "swear out," (as it is called) after a notice of a few days; while, in other States, they are required to lie in jail for three or four months. In some instances, the relief extended is confined to the discharge of the debtor from arrest in the particular suit; in others, from arrest in all suits; and, in some few cases, the attempt has been made to release him from all future liability on *existing contracts*. These various systems, unequal and inconsistent as they must be admitted to be, are rendered still more objectionable by being perpetually *fluctuating*. It was the opinion of one of the ablest Judges that ever sat on the English bench, or any other bench, that it was better for the community "that a rule should be certain than that it should be just;" for the obvious reason, that we can shape our conduct or our contracts in reference to any known and settled rule, so as to avoid its injurious effects; but, when the rule is uncertain, we cannot avoid falling under its operation.

We are told that it was felt as a grievance, by the Roman People, that the tyrant should write his laws "in a small character, and hang them up on high pillars," so that it was difficult to read them; but that grievance would have been rendered still more intolerable if the inscriptions had been varied with the rising and setting of the sun.

Not a year, hardly a month, passes by, which does not witness numerous, and, in many instances, radical changes, in the insolvent systems of the several States. It is found utterly impracticable to conform to them, or to guard against them. It defies the wisdom of the Bench, or the learning of the Bar, to give certainty or consistency to a system of laws upon which twenty-four different Legislatures are constantly acting, and almost daily innovating—a system which changes with a rapidity that deceives the mental vision, and leaves us in the grossest ignorance.

For every essential practical purpose, the most experienced merchant in this country can never be acquainted with the force and effect of the laws which regulate the collection of debts—laws which fix his rights and prescribe his remedies, in relation to all his contracts in other States. He enters into such contracts, therefore, as a man would engage in a game of hazard, who, having ventured his stake, must abide by the cast of the *die*.

But there is another evil arising under the laws of the States on this subject, compared with which those I have noticed shrink into insignificance. I allude to the UNJUST PREFERENCES which debtors are permitted to give; the right they possess under the laws, (I believe of every State in this Union) of making *partial assignments*, providing for one class of creditors in preference to others, and selecting individuals as the special objects of favor, to the total exclusion of all other creditors. Now, when a debtor finds himself "going down," as the merchants would call it, if he cannot provide for himself, he invariably *takes care of his friends*; and, while, by the transfer of property to them, he pays them twenty, nay, sometimes thirty, shillings in the pound, the rest of his creditors are cut off without a farthing. When assignments are executed, the assignees selected are these very favored creditors, (unless, indeed, clerks, just of age, or other persons under the personal influence and control of the debtor, are preferred,) and it is a very common occurrence for such persons to commence their operations by appointing the bankrupt himself *their agent* to conduct the business and wind up his concerns.

The creditor, in the mean time, finding that the law permits preferences, and that it allows the debtor to make trust deeds, and to choose his own assignees, is without a remedy. Even if he suspects *collusion*, he has no redress but by commencing a suit in Chancery—(a proceeding in this country, as in England, more easily begun than ended, and in which the oath of the defendant is received.) The creditor, therefore, though conscious of being cheated, submits quietly to his fate, and leaves to the debtor and his friends the undisturbed division of the spoil.

In the absence of such relief as a bankrupt law ought to afford to debtors, they sometimes practise a curious stratagem to *extort* a discharge by the *consent* of their creditors. The thing is thus managed: a deed of assignment is executed for the benefit of those who shall come in, by a certain day, and release the debtor; the creditor, without any information, and often deceived by false lights, has now to steer his course in the dark, between Scylla and Charybdis; he has to choose between *the chance* of getting something, he knows not what, under the assignment, and *the hope* of obtaining more by holding on to his demand. The thing is so conducted, however, as to induce him to take the wrong course, and he loses every thing. I appeal to gentlemen from the commercial cities whether these are not matters of every day's occurrence. Let me not be misunderstood. I entertain the most unqualified respect for the commercial character of this country—the highest admiration for the enterprise, talent, and liberality, of our commercial men. I believe our standard of honor and honesty to be more elevated than that of any other country on the face of the globe. The proof of it is to be found in the existence of credit at all, under a system which could not be endured in any other country for a single day. But, nevertheless, sir, we, too, have our fraudulent traders—foreigners and natives—and their number has greatly increased, is daily increasing, and will continue—no, sir, I hope not—but surely ought to be diminished.

It may be asked, why these evils are not remedied by the States themselves? It would be sufficient for our purpose to show that they exist—that they have not yet been, and are not likely to be remedied—in order to make out a fair claim for the interposition of our constitutional authority on the subject. But I will go further, and attempt to show that these evils are inseparable from leaving the subject entirely to State Legislation. The States cannot, it is obvious, ESTABLISH UNIFORMITY. As each State must prescribe its own rule, it is natural that they should be anxious not to permit foreign creditors to possess any rights which their own citizens do not possess in other countries. It is quite natural that South Carolina should not permit a citizen of Massachusetts to have any remedies against his Carolinian debtor, which a Carolinian creditor would not have against his debtor in Boston; and, on the same principle, care would be taken to extend relief to our own debtors, at least as far as it is extended to debtors elsewhere. Preferences are permitted in New York, therefore we must admit them in Charleston: for, if not, our merchants would manifestly stand on a most disadvantageous footing. When a New York merchant fails, he would, next to his *friendly endorsers*, naturally

prefer his *New York creditors*; and, therefore, the Charleston merchant must act on the same principle. An honorable effort has lately been made by some of the leading merchants in New York to put down, by a voluntary agreement, this monstrous system of *preferences*. But, sir, it never can succeed. It is one of the vices inherent in the system, that can never be eradicated but by *a uniform bankrupt law*.

It is manifest, Mr. President, that the States are now reduced to the necessity of entering into a competition with each other in restricting the rights of creditors and impairing the liabilities of debtors; and this, too, in a matter in which, as it is impossible to mark the exact line of equality, there must be great danger of their advancing, step by step, until every thing is unsettled. I am persuaded that nothing but the constitutional prohibition on the States, against "impairing the obligation of contracts," and the general, I might almost say the universal, belief, that they have no right to pass an efficient bankrupt law, have hitherto prevented such an interference between debtor and creditor as would have given a fatal blow to commercial credit and enterprize. I will put a case, sir, and make this matter plain: Suppose any State in this Union, South Carolina, for example, convinced of the policy of sacredly preserving the rights and remedies of creditors, and of rigidly enforcing the obligations of debtors, should adopt the provisions of *this bill*—what would be the effect? Why, sir, while creditors from abroad would have the means of arresting the career of such of their Carolina debtors as might be in failing circumstances, and would have a prompt remedy for the recovery of their debts, and be entitled to an equal distribution of the estate and effects of the insolvent, the Carolina creditor would have none of these advantages in the other States. If a Charleston debtor, then, had claims abroad, being compelled to make prompt payment, while he was unable to make collections, his ruin would be inevitable. Not one of the States, therefore, ever will adopt efficient laws on this subject, until other States shall consent to do the same. A system may be wise and just, pervading all the States, which would operate most injuriously in a particular State. Let us take another view of the subject: In Great Britain there is a bankrupt law, under which a British merchant is discharged from all his debts. The American merchant has no such privilege. In the mutual dealings, therefore, between the merchants of the two countries, while the American merchant has his claims on his English debtors cancelled, by operation of law, he himself remains liable for ever. To put our own merchants, therefore, on a footing of equality, in this respect, with those of other countries, it is absolutely necessary to have a bankrupt law. To put the citizens of the different States on the same footing, and to give them equal advantages in their commercial dealings, you must establish a bankrupt system, equal and just in its provisions, and uniform in its operation.

I must here notice a most curious state of things, which has lately grown up at New Orleans, furnishing a forcible illustration of the truth of my remarks, and affording to my mind a moral demonstration of the inefficacy of all State Legislation on this subject. Louisiana has passed a bankrupt law, borrowed chiefly from the French system, and, in its general features, bearing the deep impress of wisdom, justice, and humanity. As I understand that system, there is, perhaps, but one radical error in it, which is, that it extends relief only at *the instance of the debtor*. Now, this law is held to be unconstitutional by the Courts of the United States, while it is enforced by the State Courts. We all know there are only particular classes of persons authorized to sue in the courts of the United States, to wit: citizens of the other States, or of foreign countries, and the Bank of the United States. Creditors at home are bound to go into the State courts. The New Orleans merchant, therefore, finding that he can have relief only in the State court is, of course, tempted to guard against his being carried into the United States courts, where he could obtain no release. This he does by securing the foreign creditors and the Bank of the United States, at the very threshold; and then, when he fails, the domestic creditors alone suffer. The pressure in England, arising from the cotton speculations of last year, re-acted powerfully on New York, Charleston, and New Orleans—the great cotton markets of the United States; and I have recently received information that, in consequence of the state of things I have noticed, the foreign creditors and the Bank of the United States will get the whole estates of those who have failed in New Orleans. One of the Judges of the Supreme Court of that State, in allusion to this subject, writes, "the conflict between the judicial powers of the United States and the individual State courts, in relation to *Bankruptcy*, demands the prompt interference of Congress to pass *a general bankrupt law*."

Under the existing laws on this subject, the banks, generally, and especially the Bank of the United States, have most decided advantages over other creditors—advantages of which I think they ought to be divested, so far at least as to secure to all creditors, whether private individuals or corporations, an equal portion of the estates of insolvents. I am no enemy to banks—I believe that banking, on sound principles, is eminently serviceable to every commercial country—but specie payments must be secured, and over issues prevented. They should be confined to their legitimate uses, the enlargement of the commercial capital of the country, so as to enable the merchant, by anticipating his resources, to go into the market and buy the produce of the farmer, without waiting for slow returns of his adventures. But, as credit, in a great measure, now depends on the banks, it is obvious, that the privilege of *giving preferences* will always be used to secure *them*, (or, what amounts to the same thing, to secure the endorsers on notes discounted in the banks,) in preference to all other creditors. And thus the banks are made the instruments of giving a fictitious credit to insolvent men, and thereby enabling them to ruin those who, deceived by false appearances, lend money, or sell goods, to such men. The preventing preferences would destroy this fictitious credit, and bring back the trade of the country to a sound and wholesome state. Nothing is wanted but a wise and uniform bankrupt law.

There appears to me, Sir, to be two defects, in all our State insolvent systems, which must forever render them worse than nugatory. The first is, that they are not granted at the instance of the creditor, but only on the application of the debtor. The second, that the relief does not, and cannot extend, under the Constitution, to the entire discharge of the particular debt, much less of all existing demands. The creditor is thus left entirely at the mercy of the debtor, until the whole estate is dissipated, and then the debtor remains forever after at the mercy of the creditor. Thus, all mutual confidence is destroyed. The one is tempted to practise fraud and concealment, and the other cruel oppression. There naturally grows up between them a spirit of distrust and hostility, which soon banishes all commmon sympathy. Debtors are thus tempted to become cheats, and creditors Shylocks.

But let us take a closer view of this subject—let us now examine, a little more minutely, the situation of a debtor, under these State insolvent laws. When a merchant finds himself, no matter from what cause, in embarrassed circumstances—when, on casting up his accounts, he makes the unwelcome discovery that his debits exceed his credits—in what situation is he placed? He knows that the laws have put him beyond the reach of his creditors—they cannot levy on his goods—they cannot imprison his person. All they can do is, to commence an action,

which will not be determined in one, perhaps in two or three years. In the mean time, he can carry on his trade as before. Should he, under the influence of "some compunctious visitings of nature," feel disposed to stop short in his career, and deliver up to his creditors the wreck of his estate, he is checked by the consideration that, in so doing, he throws himself entirely *on the mercy of his creditors*, who, if they should not receive their whole demands to the last farthing, may hold him in bondage for the remainder of his days; and, though nine-tenths of the creditors should assent to his discharge, the others, not being bound, may refuse to grant him any indulgence. Having, therefore, nothing to gain, and much to lose, by bringing his business to a close, he is naturally tempted to go on—to engage in dangerous enterprises—to put every thing to the hazard, and to risk his fortune and his future hopes on a single adventure. If he should succeed, he is saved—and, if he fails, he can only perish; which, as ruin already stares him in the face, will not render his condition much worse than it is. Being driven by the force of circumstances to this determination, the means of executing it are at hand. He has friends—the banks are open to them—loans are obtained, by means of the endorsements of men in good credit, under a solemn pledge that, come what may, there shall be no departure from *the modern code of honor*, which makes it the most sacred of duties to secure the friendly endorser, no matter at whose expense, or at what sacrifice of feeling or of principle. With a fictitious credit, thus created, and thus supported, the debtor engages boldly in a species of commercial gambling. The luck is against him, and his doom is sealed.

But, though he must perish, he resolves to fall with honor. He goes into the market, and, on the strength of the credit obtained, by the countenance of his friends, possesses himself of the goods of others—then fails, and assigns his whole estate, including the goods thus obtained, to these very friends, and leaves all others to their fate. Perhaps it is not too severe a punishment for such men, that they should drag out the remnant of their days in poverty and wretchedness—that they should become vagabonds and outcasts on the face of the earth. And yet, it is under a strong temptation that they fall. You have, by your inefficient laws, seduced them to their ruin; and perhaps it is not quite just—not altogether consistent with humanity—certainly not with public policy—to leave them in this wretched condition, without any incentive to industry, or any tie to bind them to society. But the evil stops not here: one failure makes many, and a single such case involves perhaps twenty others, of innocent persons, too, who have fallen victims to the frauds permitted, if not sanctioned by the laws. Sir, this whole country is filled with unfortunate debtors, who owe their failure to such causes. I have no hesitation in declaring it to be my firm belief and settled conviction, founded on some personal knowledge, and information derived from those well acquainted with the subject, and worthy of entire confidence—that, from these causes, there is a mass of talent, industry—ay, Sir, and virtue too—in our country, idle and useless, and that their number is daily and rapidly increasing. Thousands of individuals, who, in the commercial vicissitudes of the last twenty years, have become bankrupt—sometimes from fraud, oftener from imprudence, but most frequently from misfortune, are now struggling out a miserable existence, a burden to their friends and to their country. They live without hope, and will die without regret. And is it no object to a young country like ours, to restore to society the labor which is now paralyzed—the enterprise which slumbers—the talent which is crushed—the virtue which is trampled in the dust? No gentleman who now hears me, will say so. Permit me to add, Mr. President, that there never was a crisis, in the affairs of this country, which more imperiously demandnd a wise and beneficent policy than the present. The last and the present year have been fruitful of the most calamitous events in the commercial world; and we already hear the distant rumblings of that moral earthquake, which may shake this country to its centre. Would to God, Sir, that, looking back on the past, and forward to the future, we could resolve to be prepared for the worst. If coming events ever "cast their shadows before," we cannot mistake the "signs of the times."

The effect of the whole system of State Bankrupt and Insolvent laws, have been such as might have been anticipated. The rights and remedies of creditors varying in every State in the Union, contracts are rendered uncertain—credit is impaired, and frauds practised, to an extent, which under a wise and efficient system of laws, could not possibly exist in such a country as ours—rich in every thing which constitutes the moral and physical wealth of nations. The right to give preferences, in almost every instance, secures the whole estate of a bankrupt to a few preferred creditors. When the debtor, therefore, chooses to apply to the courts for such relief as the laws afford, he has nothing to surrender. His schedule contains "a beggarly account of empty boxes," furnishing no temptation to the creditors even to come into court to prefer a claim; and the consequence is, that the swearing out of the debtor, under the State laws, is a mere form—the completest farce that ever was acted in the face of a court of justice. I will trace this no further, but will content myself with stating a few facts, which speak volumes on the subject, and render argument superfluous. When the Bankrupt Bill was before the other House a few years ago, an old and highly respectable member of the bar, of a neighboring city, (certainly one of the most moral and industrious in the Union,) explained the operation of their insolvent laws, by stating, in his place, that "it was the "practice of the court in that city to appoint only *one or* "*two days* for *one or two hundred cases* of Insolvent debt-"ors—that he had known *one hundred of them sworn off* "*in a morning*—he had seen them sworn off by six or "eight of them taking the book at a time; and added, "that of the *many thousands*, so discharged, he had ne-"ver known one who afterwards paid his debts." Sir, what must be the character of a system which produces such fruits?

And now, *what is the remedy* for all this? I answer, confidently, that the only effectual remedy is to be found in the exercise of our constitutional power of establishing a UNIFORM SYSTEM OF BANKRUPTCY. It was for this purpose that the power was conferred, and the great end is no otherwise attainable. If we look into the proceedings of the Convention, or examine the commentaries on the Constitution by the great men who framed it, we will find abundant reason to believe that the article which gives to Congress power over this subject, was designed to *prevent frauds*. The journals of the Convention show, that, on the 29th August, 1787, it was moved to commit the following proposition, to wit: "To establish uniform laws on the subject of Bankruptcy, and respecting the damages arising from the protest of foreign bills of exchange;" which passed in the affirmative, by a vote of eight States against two: Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, voting in the affirmative, and New Hampshire and Massachusetts in the negative. On the first of September following, Mr. RUTLEDGE, of South Carolina, (from the committee) reported and recommended the insertion of the following words, viz: "To establish uniform laws on the subject of Bankruptcies;" which, on the 3d of September, was agreed to by Yeas and Nays, every State voting in the affirmative except Connecticut. The gentleman who made this report was the celebrated JOHN RUTLEDGE, the Carolina Dictator—the

man who exercised an authority, civil and military, during the most trying scenes of the Revolution, never conferred in that State, on any other man, and with a wisdom, prudence, magnanimity, and fortitude, that would have done honor to the proudest days of Greece and Rome. This was the gentleman of whom Patrick Henry declared, when he was asked "who was the greatest man in the Convention?" that "Washington was entitled to the first rank, and Rutledge to the second;" and that, in eloquence, he was without a competitor. His eloquence, Sir, was as rare as his virtues. It was that of a wise and good man, speaking the plain, unadorned language of soberness and truth. He spoke to his audience as a father speaking to his children—in the language of the softest persuasion, but with an authority that could not be resisted. The Senate will, I trust, excuse this digression. I confess I felt my confidence in the wisdom of this provision of the Constitution strengthened and confirmed, when I discovered that it had been introduced by John Rutledge, and had received the unequivocal sanction of James Madison. In a number of the Federalist, written by that distinguished statesman, speaking of this particular provision of the Constitution, he says, "Uniform laws on the subject of bankruptcy *will prevent so many frauds*, that the expediency of it seems not likely to be called in question." Sir, we are wiser than our ancestors; that which they designed to "prevent frauds," we pronounce to be the most fruitful source of frauds. A proposition which seemed to them so clear that it was "not likely to be called in question," we have for twenty years rejected as unworthy even of a trial. It may be, Mr. President, that I am bigoted in my reverence for the authors of this Constitution, but I am free to confess that I distrust my own judgment when I find it leading me to discard their precepts or to reject their injunctions.

In relation to bankruptcy, it is the Federal Government only that ever *will* enact a wise and judicious system, and no power but Congress *can* establish UNIFORMITY. This is the great *desideratum*. This is the true, the only remedy, for the evils I have pointed out. The wise man now at the head of the Supreme Court of the United States, (whose character has been drawn with a master's hand by the gentleman from Virginia, in a finished picture that I cannot venture to touch, lest I should impair its beauty,) has given us his opinion on this clause of the Constitution, in terms worthy of consideration. "The "peculiar terms of the grant, (says Chief Justice Marshall,) "certainly deserve notice. Congress is not authorized "merely to pass laws, the operation of which shall be "uniform, but to establish uniform laws on the subject "throughout the United States. This *establishment of "uniformity* is, perhaps, incompatible with State legisla- "tion on that part of the subject to which the acts of Con- "gress may extend." Now, let it be remembered that, while on the one hand the power is expressly conferred on the Federal Government, of acting efficiently on this subject, the right has been taken away from the States. This the Supreme Court of the United States have decided in the cases of Sturges and Crowninshield, and McMillan and McNeill, (4 Wheat, 122, 209.) A discharge under the bankrupt or insolvent law of a State, is, in these cases, declared to be invalid, in consequence of the Constitutional prohibition on the States of passing any law "impairing the obligation of contracts." Prior to the adoption of the Constitution, the States possessed this right, and, in some instances, exercised it to the most unlimited extent. It is a right essential to commercial credit and prosperity. It has been taken from the States and vested in us; and, if proper to be exercised at all, can only be exerted by us. I am aware, Sir, that there are cases still pending before the Supreme Court, in which the question is involved, whether a State bankrupt law may not be enforced in such State, on parties residing there, and contracting in reference to that law. This question has remained for several years undecided; but, whatever may be the final decision, it is obvious that it will not restore to the States the power of acting on the subject-matter in the only way at all adequate to the exigencies of the country. The application of the *lex loci contractus* would be but a miserable substitute for a general bankrupt law. And even if it were possible that the case of Sturges and Crowninshield could be reversed, and the power be restored to the States of passing Bankrupt laws, without restriction or limitation, I should consider twenty-four different bankrupt laws as infinitely worse than none.

In answer to all this, it has been most confidently asserted, that we have the DECISIVE EXPERIENCE of the country, under both systems, and that the State insolvent laws are entitled to a just preference over a national Bankrupt law.

I deny both the fact and the inference. This country has had no adequate experience of the effects of a national Bankrupt law. It is true that a Bankrupt law was passed in 1800, and, after being in operation for about three years, was repealed. But, Sir, could the merits of a great system be tested in the short period of three years—a system, too, wholly new to us? Nations, Sir, are of slow growth; and national institutions, however wise the principles on which they are founded, require time and experience to bring them to perfection. Besides, the mere defects of the political machinery by which any great result is to be produced, often defeat the fairest calculations.

Sir, it is as true in politics as in mechanics, that no new machine ever works well. It is no matter how sound the theory, or how correct the principles on which it is constructed, a new invention never succeeds at the first trial. Did the steamboat, or the cotton gin, or the rice machine—those three great inventions of modern times, which have conferred such incalculable benefits on our own country—did they come from the hands of their ingenious inventors in the state of perfection in which we find them now? And even now, after their merits have been fully tested, and the principles of their construction are well understood, I will ask my venerable friend on my right (Mr. MACON) whether, when a new machine is put up, on any plantation in his neighborhood, it does not require time, and some practice too, to adjust its several parts, to arrange the wheels, fix the bands, and regulate the springs, before it can be made to work well? How, then, could it be expected that a bankrupt system—a complicated political machine—new to the country, and left to the management of those who had never seen it in operation, should succeed completely at the very outset? But, Sir, the period for the experiment was also peculiarly unfortunate. The bankrupt bill came into existence, lived, and died, in "high party times." It brought with it into existence the odium attached to a most unpopular administration, and it very naturally, in a period of great political excitement, shared the fate of its projectors.

Besides, it is not to be concealed, that the first operation of every bankrupt system must be, to discharge the accumulated mass of insolvent debtors, from whom nothing can be obtained. Hence, the appalling statements by which the public ear was abused, of "numerous bankruptcies," and "no dividends." The public mind was thus poisoned; creditors became impatient; statesmen alarmed; and the system was abandoned before its benefits could be realized. It is also certain, that there were some radical defects in the old bankrupt law, which contributed to its failure, and which could have been easily remedied. I cannot stop to point them out, but I will mention one. The commissioners, on whose agency the whole system was to depend, instead of being learned, honest, and experienced, were, in general, ignorant,

incompetent, and, in many instances, unworthy men, whose sole object it was to put money into their own pockets, at the expense of the creditors. They received a miserable pittance as a compensation for their services, gave no security, and, as a *new set* were appointed in almost every case, must of necessity have been destitute of experience. Under these circumstances, as few men of talent or character could be found to take the place, it fell into bad hands. Abuse was the consequence. Such were the causes of the premature repeal of the act of 1800; from which, surely, no inference can be justly drawn unfavorable to a bankrupt system.

I know that *the experience of England* has also been appealed to, and the examinations in Parliament, in the years 1817 and 1818, have been quoted, to prove that the bankrupt laws have done no good, even in that country. Frauds are inseparable from commerce. Indeed, all contracts produce them. Nothing human is perfect. The criminal laws of Great Britain have been admired as "a great body of wisdom." And is there no injustice in their operation? The commercial laws are regarded as "the perfection of reason." And do they give rise to no frauds? But it is mere common place to allege that the bankrupt laws have shared the fate of all human institutions; that evils have existed, or frauds been practised under them. The true question is, has the evil counterbalanced the good? What is the fact? The British bankrupt system has existed for nearly three hundred years, and, during all that time, not one practical statesman, not one intelligent merchant, lawyer, or farmer, as far as I know, has ever proposed, in either House of Parliament, *the abolition of the system.* As evils have been developed, remedies have been applied. But the system has survived to this hour. No longer than last year, all the former British bankrupt laws were new-modelled, under the direction of the Lord Chancellor. It would have been much easier, surely, to have repealed these laws entirely. But experience was in their favor, and they were re-enacted, with amendments and improvements. The experience of other commercial countries is in conformity with that of Great Britain on this subject. In France, a bankrupt system has existed since the time of Louis the Fourteenth. In Spain, the system went into operation in 1737. In Italy, Holland, Ireland, Scotland—in short, in every commercial country, it has been successively introduced, and, where once introduced, has never been abolished. The system has every where been coeval with credit—has grown up with commerce, and is essential to its prosperity, if not its existence. Wherever we find trade, there we always find bankrupt laws. If the experience of modern times can prove any thing, I think the policy of a bankrupt system is fully established. This alone has survived all the convulsions and revolutions which have, in modern times, given a new aspect to the affairs of the whole civilized world. Amidst all changes in the internal regulations and foreign policy of States—though political systems have perished, and forms of Government been changed—though new codes of political and municipal laws have been adopted—*the bankrupt system has survived them all.* In Great Britain it lived through the Revolution which brought Charles the First to the scaffold—it survived the Commonwealth, the Restoration, and the Revolution of 1688, which put William of Orange upon the throne of England. In France it passed unhurt through the fiery ordeal of the Revolution, found a place in the code of Napoleon, and still survives under the Bourbons. In short, if the practice of European nations, on a question strictly commercial, can prove any thing, it must establish the truth that a wise and judicious system of bankruptcy is absolutely necessary to the commercial operations of every country, under all forms of Government.

I proceed next to consider some of the GENERAL PRINCIPLES and *particular provisions* of the bill before us. It is of the very essence of every wise and judicious bankrupt law, not only to provide for the fair, equal, and speedy distribution of the estate of the insolvent, but to step in and arrest his downward course to ruin, so as to save for the creditors as much of the estate as possible. This interposition of the law takes place whenever any of those acts occur, technically called *acts of bankruptcy*, which, in a commercial community, furnish unequivocal evidence of failing circumstances. The duty of gathering up the fragments of the estate, and carefully preserving them for those to whom they rightfully belong, is assigned to persons chosen by the creditors themselves, and bound by legal restraints and obligations to fulfil those duties with industry and fidelity. The law thus comes *in aid of the creditor, at his instance*, and the facts being ascertained by an immediate inquiry, prompt measures are taken to afford him complete justice. The acts of the bankrupt himself, from the moment these unequivocal indications of insolvency are given, are absolutely null and void, except so far as may be necessary to protect persons dealing with him in the ordinary course of business, without notice of his insolvency. He has no longer any power to transfer his estate, or by trust deeds, or other conveyances, to dissipate the remnant of his fortunes. All partial assignments are overreached, and all preferences prevented. As a just compensation to the debtor, for subjecting him to the operation of these rigid laws, he is released from all his debts, provided his conduct, throughout, be free from the slightest taint of fraud. His property, to the last farthing, being taken from him, and divided equally among his creditors, he is made a new man. He commences a fresh existence, and goes forth again to seek his fortune—

> The world is all before him
> Where to choose, and Providence his guide.

Such are the *general principles* embraced in this bill.

The mode of proceeding—the agents to be employed—the regulations to prevent fraud on the one part, and oppression on the other—properly belong to the details; and to render them complete and effectual, and free from substantial objections, has been the anxious desire of the committee. It is certain that some radical errors in the regulations on these points contributed to bring odium on the English bankrupt system, and perhaps hastened the destruction of our act of 1800. I flatter myself, however, that, with the lights we have to guide us on this subject, we are now able to avoid some of the rocks on which those who went before us have been shipwrecked. We are not now wandering over a troubled ocean without a compass or a chart. We have as our guides the act of 1800, and the experience of the country in relation to it. We have the bill which was carefully prepared by some of the ablest lawyers in the United States, in 1820, and which passed the Senate in 1821, after having, for several successive sessions, undergone a thorough discussion in both Houses by some of the ablest men our country has produced.

But, above all, we have the new British bankrupt law, prepared under the immediate direction of the Lord Chancellor, (founded on the examination in the House of Commons, in 1817 and 1818, and his own ample experience,) and intended to remedy abuses and remove objections. These, Sir, have furnished "a light to our feet, and a lamp to our path."

I will now proceed to examine the *provisions* of this bill somewhat more in detail—adverting, particularly, to those which are new.

This bill embraces two distinct systems:

The 1st COMPULSORY, and

The 2d VOLUNTARY.

The first is applicable to traders only—the second to

persons not concerned in trade. The former being the old established system, and the latter being new: and for the first time *proposed by a Committee*, though it was once adopted as an *amendment* by a vote of this House.

In respect to the COMPULSORY SYSTEM of bankruptcy, there are three points to which I would call the attention of the Senate, viz:

1st. Who may be a Bankrupt?

2d. The acts which shall constitute Bankruptcy.

3d. The mode of proceeding.

1st. This bill declares, in the very words of the act of 1800, that "any merchant, or other person, residing "within the United States, actually using the trade of "merchandise, by buying and selling in gross, or by re-"tail, or dealing in exchange, or as a broker, banker, fac-"tor, underwriter, or marine insurer, may be made bank-"rupts."

These were the persons chiefly embraced by the former British Bankrupt laws, until, by a series of judicial decisions, these laws received more extended operation, and were made to embrace, under the description of persons "getting their living by buying and selling," farmers, graziers, mechanics, and a host of others.

This extension was at first considered in England, and even by the Judges themselves, as a great evil. When the bill of 1820 and 1821 was therefore introduced into Congress, a *proviso* was attached to it, by which it was declared, that "farmers, graziers, shoemakers, carpen-"ters, ship carpenters, tailors, innkeepers, tanners, and "others, whose living is substantially gotten by mechanical "labor, though with some mixture of buying and selling, "shall not as such be deemed to be within this act."

The learned gentleman who originally introduced this proviso, declared that it was founded on a careful examination of all the British adjudications on the subject, and was so framed as to avoid the extension of the system under our law, to the persons embraced in it in England by construction. In the mean time, however, it appears that public opinion has undergone a material change in Great Britain: for, by the express terms of the new British act, all these persons are embraced. The Committee, however, were of opinion, that it was not prudent for us to extend the system so far, and that all the persons included in our proviso, ought to be left free to embrace the voluntary system of Bankruptcy, with the consent of their creditors; but that they were not, in this country at least, fit subjects for the compulsory system.

By the first section of the bill, the creditors are permitted to act, when any act of Bankruptcy shall be committed by a creditor. "The true mode (says Edin,) of "viewing what the law terms an act of Bankruptcy, is *a "test of insolvency*, as an act from which insolvency may "be considered as indicated—on proof of which the cre-"ditor is entitled to a prompt remedy against the insol-"vent estate."

This principle is obviously applicable to traders only, and it shall never, with my consent, be extended to other classes. A merchant who fails to pay the discount on his note in bank, must, under the modern system of credit, unquestionably be insolvent; but surely such a circumstance would afford a very slight presumption of the insolvency of a farmer. Indeed, the whole system of compulsory Bankruptcy, is, in all respects, applicable, exclusively, to those whose ordinary business, in a great measure, depends upon *credit*, and to these classes it must be confined.

Before creditors are permitted to avail themselves of the benefit of this act, they are required to give bond to answer damages and costs, and even then they are not permitted to proceed, unless their demands shall amount to $1,000. The necessity of these provisions needs no illustration.

I come now to consider—

2d. THE ACTS OF BANKRUPTCY.

These are substantially, or nearly the same, as are found in the British Bankrupt law, and which were introduced into our act of 1800. The differences I will now proceed to point out.

At the suggestion of one of the Judges of the Supreme Court of the United States, the words have been introduced, "or shall, according to the understanding of mer-"cantile men, have generally *stopped payment.*"

These words, which, it is believed, will be very clearly understood by those to whom they are to be applied, may perhaps embrace a class of cases that might not fall within the other descriptions, without allowing a latitude of construction abhorrent to the genius of our institutions.

The next amendment is in the clause which contains these words: "or shall remain in prison, *or under arrest*, "*twenty days*, or more."

Here the words "or under arrest," are introduced by the Committee, to provide for the case of persons not permitted by the laws of some of the States, to be actually confined in prison. The period of "*twenty days*" is here substituted for the *two months* which were required by the act of 1800. The English law, on this point, has undergone several alterations By the statute of 1 James the First, confinement in prison was not considered an act of Bankruptcy, unless continued for *six months*. Twenty years afterwards, (by the statute of 21 James the First,) the period was reduced to *two months*; and, by the late act, it is still further reduced to *twenty-one days*.

In England, a new principle was last year introduced, viz: that a declaration of insolvency, filed in the Bankrupt office, should be considered as an act of bankruptcy.

The Committee are not prepared to say, that any inconvenience would arise from this provision; but, as it is new, they think it will be prudent to wait for the result of the experiment, before it is introduced in this country. Indeed, they have acted, throughout, on the principle, rather to fall short in their provisions, than to overshoot the mark—rather to do too little than too much—rather to leave defects to be supplied than injurious regulations to be repealed.

3d. THE MODE OF PROCEEDING.

The first step to be taken by a creditor wishing to avail himself of the bankrupt law, is to swear to his debt.

He then applies to the Judge, and, having given the necessary bond, a commission is issued to the Commissioner of Bankruptcy, who is immediately invested with power to act on the subject. The bankrupt is immediately summoned and examined, and the truth or falsehood of the allegation is at once ascertained. If it is necessary, witnesses are examined—even a Jury may be empannelled, at the instance of either of the parties—and the case is determined at once. If the debtor is declared to be a bankrupt, his property is immediately vested in assignees, to be chosen by the creditors, whose duty it becomes to collect the same, and make an equal division thereof among the creditors, within four months.

The notices, when, and how to be given, examination of witnesses, proofs of debts, and so forth, belong to the minute details with which I will not trouble the Senate at this time. During the necessary investigations, the bankrupt is supported out of the estate, and privileged from arrest. On the final distribution of the estate, the bankrupt receives an allowance proportioned to the amount paid on his debts. If his creditors receive a dividend of 75 per centum, he is allowed a commission of 10 per centum, provided the whole allowance shall not exceed $800. Should his estate divide 50 per centum, he is allowed a commission of 5 per centum, not exceeding $500; and, should the dividend be under 50 per centum, the allowance cannot exceed $300.

One of the most material provisions in this bill is that which substitutes for the Commissioners, who were the Agents formerly employed in administering the law, ONE GENERAL COMMISSIONER of Bankruptcy. The experience, both of England and America, is conclusive to show that this has been *the weak point of the system.* Edin declares, that, notwithstanding the numerous improvements introduced into the bankrupt system in England, he considers them only as the precursors of a change in the *Agents* by whom the system is executed—"a change, (says he,) "which will be worth all the rest." All who recollect the operation of the act of 1800, concur that the want of character and knowledge in the Commissioners was the most efficient cause of the evils so much complained of under that system. The remedy which we now propose for this, is, to substitute *a single Commissioner* for the whole army of officers provided by the former law. In England, they have been constantly diminishing the number of Commissioners, and still they are too numerous. By adopting this plan, talent, character, and experience, will be secured. By the former law, the Commissioners, of which there were three in each case, received five dollars a day each, making a charge upon the insolvent estate of fifteen dollars. It is now proposed to substitute one Commissioner, and to give him ten dollars a day; thus saving to the estate one-third of the whole expense, with the certainty that all parties will be better served. There is only one difficulty in the plan, and that arises from the impossibility of obtaining the attendance of the General Commissioner at remote parts of the country. This is provided for by giving him power (under the direction of the Court) of substituting a Special Commissioner in peculiar cases. It is believed that nineteen cases out of twenty will arise in the commercial cities, or in places where the General Commissioner will be able to attend, and, therefore, much inconvenience will not arise from this cause. The General Commissioner is made *an officer of the District Court* of the United States, and subject, in all cases, to the control of the Judges of that Court.

Such are the proceedings to be resorted to in support of *the claims of the creditor.* I turn, now, to the *relief* to be extended to *the debtor.* At the conclusion of the whole business, he is to be entitled to his certificate of discharge. This is granted by the Judge, on a certificate, to be signed by two-thirds of the creditors and the Commissioner, that his conduct has been fair and honest. The effect of this discharge is *an entire release from all existing demands.* Two objections, and those directly opposed to each other, have been made to this proceeding. It is objected, by some, that the consent of the creditors ought not to be required at all, and, by others, that the minority of the creditors should not be bound by the act of the majority. To the first objection, I reply, that no practical inconvenience has ever resulted from the rule complained of. Nobody has ever complained of it, either in England, or in this country. No honest debtor has ever yet failed to obtain his release. The second objection demands more notice. The objection here goes to the power as well as the policy and justice of releasing a debt, without the express consent of the creditor. And, first, I would remark, that this objection can only apply, in its full force, to debts existing at the time of the passage of a bankrupt law: for, as to all debts contracted afterwards, they must be considered as made with reference to the existing law, and, therefore, it would be a part of the contract, that, in a certain event, and under certain declared circumstances, the debt might be cancelled by operation of law. The scope of the objection, therefore, embraces, not the bankrupt system, but merely the retrospective operation of that system. But, even in this view of the subject, I should contend, that the whole subject must be within the constitutional power of Congress: because, on them is conferred the power of passing a bankrupt law; and the right of releasing the debtor and binding the minority of the creditors by the act of the majority on this subject, is of the very essence of such a law. This principle is universal.

In France, three-fourths of the creditors bind the rest.

In Spain and Holland, one-half, in amount, two-thirds in number.

In England, four-fifths, and, after six months, three-fifths.

In Scotland, three-fourths.

In Ireland, three-fifths.

With this known and established practice of the whole commercial world on this subject, the insertion in the Constitution, of the power to pass bankrupt laws, accompanied by a limitation on the power of the States on this subject, seems to leave very little doubt of the power of Congress in this matter, at least to the extent here claimed. As to the justice of the principle, I believe, that, in point of fact, its application will be beneficial, and not injurious to creditors. Who ever hears of a creditor receiving any thing from an insolvent debtor?—Of the thousands who have sworn out of jail, says the eminent lawyer before quoted, "I never knew one who after-"wards paid his debts." The only practical effect, then, of leaving a barren claim uncancelled, would be to repress the energies of the debtor, and prevent him from making any efforts to retrieve his affairs. I have no doubt that creditors in general would stand a much better chance of receiving their demands from the honor of a released insolvent debtor, than from any legal chains in which they could bind him, the only effect of which would be to exasperate his temper, and cripple his exertions. It is not in favor of a barren right that society is to lose the services of a large portion of its citizens. Debts are creatures of society, and the rules which govern them can only be prescribed by positive laws. In a state of mature, debts, if they exist at all, must be enforced by the strong arm of power. In civilized countries, they can only be enforced by Courts of Justice, and surely society may prescribe the terms on which their aid shall be afforded. We know, that, on this subject, great changes have taken place in public opinion. Formerly, the debtor was the slave of the creditor. Under the Roman law, he might be sold, and so might his wife and children. In some parts of the East, this practice still prevails. By the law of the Twelve Tables, as it has been expounded, we are told that his body might be cut up, and divided among his creditors. Under the Christian Emperors, these rigid rules were softened by the benign spirit of the Christian religion; and the introduction of commerce was universally followed by the adoption of the principle, that debts were contracts, to be enforced as far as the property of the debtor extended, and the interest of the public permitted. On these principles must this provision be supported, and, on these grounds, I presume, was the constitutionality of the former bankrupt law affirmed by all the Courts in this country.

I come now to consider the penalties imposed by this act. The bankrupt system has been called a "cruel and a bloody system." It is true, sir, that capital punishments have, in several countries, been inflicted on fraudulent debtors. But this did not so much arise from the necessity of the case, as from the habit of resorting to the *last punishment*, as the most efficient penalty for offences. In England there are no less than two hundred capital offences, and among them is fraudulent bankruptcy. But this fact no more proves the necessity of the punishment, than the infliction of death, *for defacing trees*, proves the justice and humanity of that provision. Fortunately, we are not left to conjecture on this subject. The first act of the present Sovereign of Great Britain was, to substitute a milder punishment for that of death, heretofore inflicted on fraudulent bankrupts. That single act, sir, entitles him to the gratitude of his country. It has al-

forded another opportunity of demonstrating that it is not the severity, but the certainty, of punishment, which deters from the commission of crimes. The result has been extremely gratifying. No one in England now believes that capital punishments are necessary under the bankrupt laws. And, in the act passed last year, no attempt has been made to restore the barbarous provision of the former laws. In some countries, badges of disgrace—the *green cap* and the *yellow cap*—have been imposed on fraudulent debtors. But all these things are abhorrent to the feelings and the opinions of the American People. We have, therefore, simply provided, that a fraudulent bankrupt shall be deprived of the benefit of the act, and shall, moreover, suffer imprisonment for a period not less than two years, nor more than ten. We hope, that, by this bill, we will make it the interest of debtors to be honest, and of creditors to be just; and, at all events, we feel assured that the best security will be afforded against fraud, on the one hand, and of oppression, on the other.

Another feature in this bill, which I think it proper now to notice, is the *exclusion of that provision* which was inserted in the act of 1800, (borrowed from the English system, which it still disgraces,) I mean that which made *the wife liable to be examined as a witness against the husband*—thus loosening those sacred ties on which the order and happiness of society depend. That provision finds no place in this bill.

I come, now, to the last point on which I propose, at present, to say any thing—I mean VOLUNTARY BANKRUPTCY. The bill provides, that persons not concerned in trade may be made bankrupt on the application of their creditors, and *with their own consent*. It is supposed that it will be for the benefit of creditors that their debtors should be induced, by the prospect of obtaining a discharge, to submit themselves to the operation of the bankrupt system, and no inconvenience is apprehended from a provision so carefully guarded. The time was, when commercial men were alone exposed to vicissitudes. That time has passed away; farmers, mechanics, professional men, in short all classes of our fellow citizens, have each in their turn experienced the effects of the political and commercial convulsions of the last twenty years, and, from the present condition of our country, and the very structure of our society, it may be doubted, whether they must not continue to be exposed to similar calamities.

It is not my purpose to say any thing as to the policy of this provision. My own wish is to obtain a *commercial law*. But, as some gentlemen feel anxious in behalf of the agricultural interest of this country, to give them the *privilege* of becoming bankrupts, I do not object. The compulsory system never can be extended to them. When the bankrupt bill was before Congress on a former occasion, it was said that it created a privileged order; and, though it was answered, that it must certainly be "the order of misery," still gentlemen were not satisfied, and this provision, extending the privileges of the system, grew out of that feeling. Gentlemen who are well informed on the subject, assure us that this provision will be extremely beneficial in its operation, and it is sufficient for me to believe that it cannot produce mischief. I will candidly acknowledge, likewise, that I feel some interest in it, from the conviction that no bankrupt law can be passed without such a provision.

Leaving the question of *expediency* to others, I will briefly notice the *constitutional point*. I am instructed by the committee merely to present this question of voluntary bankruptcy to the decision of the Senate; but it is perhaps, my duty *to state the arguments* which may be urged in its support. The position assumed against the provision is, that Congress has power only to pass a *bankrupt law*; that this includes *traders only*, and cannot be so extended as to embrace other persons. The terms used in the Constitution are very peculiar, and seem designed to give the most extended operation to the power conferred. Congress is not merely authorized to pass "a bankrupt law," or even to establish "a system of bankruptcy"—"but to establish uniform laws on the subject of bankruptcy," embracing the whole subject-matter—bankruptcies of every kind and description.

Now, it may be asked, where is the authority for confining bankruptcies exclusively to commercial men? Surely no reliance will be placed on the etymology of the term *bankrupt*. It is derived, we are told, from *bankus*, a bench or table, and *ruptus*, broken; because, the tables of the money-dealers at the fairs, were broken up when their owners absconded.

That this is no longer its signification, will be admitted by all. If confined to its original meaning, merchants themselves would hardly be embraced by the term. If we turn to works of the lexicographers, or to the most approved writers, we will find the word bankrupt to be now understood in a much more enlarged sense. Dr. Johnson defines a bankrupt to be, "a person indebted beyond the power of payment;" and this is the sense in which the term is used by the most approved authors. Gentlemen call our attention to the *legal definition* of bankruptcy. But here I must remark that it is not *a common law term*. Bankruptcy in England is a creature of the *statute law*. The writers on the common law give us no *definition*, but merely *describe the persons* who are embraced within the statutes. Now, if it could be clearly shown that the British statutes, from the time of Henry the Eighth down to this day, had uniformly included merchants only, within their provisions, it might be contended with much force that the statute definition of a bankrupt was "an insolvent trader." But this is so far from being the case, that I assert, confidently, that there never has been a period, since the introduction of bankrupt laws into Great Britain, when some persons other than traders were not embraced within their provisions. The statute of Henry the Eighth, the first bankrupt law, "the very corner stone," as it has been styled, of the whole system, was not confined to merchants, but embraced all classes of men. That statute is entitled "A law against such as do make bankrupt," and when we examine its provisions, we find them levelled against all those "who craftily ob-"tained the goods of other men, *or* fled, *or* kept their "houses, not minding to pay their debts." This description would embrace all fraudulent trustees, or agents, all absconding debtors, all persons concealing themselves from their creditors, whether merchants, farmers, mechanics, or others. Here the badges of bankruptcy are fraud and concealment, without regard to the character or employment of the offender. The statute of 13th Elizabeth, c. 7, confined the operation of the bankrupt laws to merchants "or other persons seeking their living by buying and selling," which descriptions the Judges have held not to be exclusively applicable to traders.

The statute of 21 James I. extended it to "scriveners"—a class of men unknown in this country, but who are described in the English laws "as persons receiving other men's moneys or estates into their trust or custody." A "money scrivener," as he is called in England, is not properly a broker, he is not a merchant, nor is he a banker; he has no capital of his own, nor is he employed generally in buying and selling. His sole duty is to receive and invest the funds of those who wish to make investments of any kind, and for this service he receives a fixed compensation. He is properly a trustee, or agent, but certainly no merchant. The statute of 5 George II. embraced *bankers*, *brokers*, and *factors*, &c. Up to this period, therefore, it will be perceived that not one of the British statutes confined the bankrupt laws exclusively to merchants; and, if that limit is once passed, I am at a loss to discover any other, except the sound discretion and enlightened wisdom of the Legislature. But these statutes

actually received from judicial decisions a much more extended operation than the words would, at the first view, seem to import. Under the description of persons "seeking their living by buying and selling," farmers, drovers, mechanics—nay, even noblemen, [and *clergymen*, too, though expresely prohibited by statute from engaging in trade,] were all declared to be within the bankrupt laws. Now, in England, the statutes are what the Judges pronounce them to be; and thus it manifestly appears, that, at the time of the adoption of our Constitution, and at every period before and since, from the first introduction of bankruptcy to this day, the British bankrupt laws were never confined to traders, and that it has been the uniform practice of the Legislature in that country, to enlarge or diminish the classes of persons to be embraced within them, to suit the wants or convenience of the country. The last British act, (the statute of 6 George IV. ch. 16,) embraces, in express terms, in addition to *merchants* and *traders*, "bankers, brokers, scriveners, fire and marine "insurers, warehouse-men, wharfingers, packers, builders, "carpenters, shipwrights, inn-keepers, dyers, printers, "bleachers, fullers, calenderers, cattle and sheep sales-"men," &c.

It has been often attempted, to draw an exact line of distinction between bankrupt and insolvent laws, but always, I think, without success. The two systems run into each other. In some countries the badge of bankruptcy is *fraud*—in others, it is *flight*. But I am inclined to think the most uniform distinction will be found to consist in *the extent of the relief* granted to debtors—those being called insolvent laws which provide merely for the release of the person, and those bankrupt laws which provide for the entire discharge of the debt. I think gentlemen will be embarrassed in the attempt of measuring the power granted to Congress on this subject, by the the ever varying standard of the British statutes. If we must follow them, I presume we can include neither more nor less in our law, than we find written in theirs—and then we will present the strange spectacle to the world of the American Legislature following the steps of the British Parliament. In support of these views, I will quote the opinion delivered by the Chief Justice of the United States, in the case of Sturges and Crowninshield, (4th Wheaton, 195,) "All perceive, says he, that this "line [the line of separation between bankrupt and insol-"vent laws,] must be, in a great degree, arbitrary. Al-"though the two systems have existed apart from each "other, there is such a connection between them as to ren-"der it difficult to say how far they may be blended toge-"gether. The bankrupt law is said to grow out of the exi-"gencies of commerce, and to be applicable solely to tra-"ders, *but it is not easy to say who may be excluded from*, "and may be *included within*, this description. It is like "every other part of the subject, *one on which the Legisla-"ture may exercise an extensive discretion*. The difficulty of "discriminating, with any accuracy, between insolvent and "bankrupt laws, would lead to the opinion, that a bankrupt "law may contain those regulations which are generally "found in insolvent laws, and an insolvent law may contain "those which are common to a bankrupt law. If this be "correct, it is obvious, that Congress may purposely omit "to provide for many cases to which their power extends." And, again, in page 201, the Chief Justice says—"The "insertion of the 61st section (of the old bankrupt law,) "indicates an opinion in Congress that *insolvent laws* might "be considered as *a branch of the bankrupt system*, to be "repealed by an act for establishing that system," &c. No one can mistake the opinion of the Supreme Court on this point—they are of opinion "a bankrupt law may contain those regulations generally found in an insolvent law;" such, for instance, as extending them to persons most usually embraced in the latter, and not in the former; and that this is a subject on which Congress "may exercise an extensive discretion." Sir, I have no doubt that the Supreme Court will sustain the constitutionality of this system of voluntary bankruptcy. In addition to what I have above stated, I will now add, that, after preparing this bill, it was submitted to one of the ablest Judges on that bench, who, after a careful examination, suggested several amendments, but made no objection to this clause. I hold in my hand a printed sketch of a bankrupt bill, prepared a few years since by another able member of that bench, in which he himself proposes a system of voluntary bankruptcy similar to this. Descending from the Bench to the Bar, I find that the learned gentlemen who made such persevering efforts in the other House, a few years since, in favor of a bankrupt law, and who opposed so strenuously this provision, never once ventured to assert that it was *unconstitutional*. Their language was, "Can we go further than to merchants and traders?" "Without undertaking to say we cannot, we are free to "confess we see no necessity for it."

But we have the express authority of this House in favor of the constitutionality of this provision. When the bankrupt bill was before the Senate in 1820, two propositions were made to extend its provisions to persons other than traders, one by the honorable gentleman from Maine, (Mr. HOLMES,) whose amendment the committee have adopted, and the other by the learned gentleman from Delaware, (Mr. VAN DYKE,) still more unlimited its terms. This last proposition, which was predicated on the extension of a system of voluntary bankruptcy *to all classes in the community*, was, after full discussion, twice solemnly sanctioned by the Senate—on the 23d of March, by a vote of 25 to 13, and on the 31st of the same month, by a vote of 25 to 16. We have, therefore, authority, judicial and legislative, on this subject, certainly entitled to great weight. In giving the arguments on this point, I do not intend to express a clear or decided opinion in favor of the constitutionality of this provision—I am certainly inclined to that opinion, but I will listen to the arguments on the other side with candor, and weigh them carefully, keeping my mind open to conviction.

In conclusion, Mr. President, I would say to the Senate, that, in this bill, the committee have framed a system of bankruptcy, which will, in their opinion, greatly contribute to give security to creditors, and relief to debtors, within the sphere of its operation. It is believed that it offers the strongest inducements to debtors for honest dealing; that it holds out a temptation to insolvent traders to make a timely surrender of their effects to their creditors; and that, thus, it will have a powerful tendency to prevent over-trading, and desperate adventures. This bill gives power to creditors to arrest the fraudulent career of their debtors—furnishes a prompt remedy for the recovery of debts, and time and means for thorough investigations; it prevents all unjust preferences, and secures an impartial distribution of insolvent estates; it puts citizens of different States on an equal footing, and gives a certain, a just rule, for commercial contracts; it puts our own citizens on a footing with foreigners; and, *lastly*, it will restore to society, to honor and usefulness, a mass of industry and talent, which, under the present system, is irretrievably lost—thus, "paying a just tribute to the "rights of humanity, by depriving the creditor of the "power he now has over the whole life of his debtor."

TUESDAY, MAY 2, 1826.

The Senate took up the bill "to regulate the salaries of certain officers in the Indian Department," (increasing the salary of the Superintendent at St. Louis, to $2,000, and that of the sub-Agents to $750.)

Mr. BENTON explained the reasons which rendered this increase of salary proper.

Mr. JOHNSTON, of Louisiana, moved an amendment, increasing the salary of the Indian Agent on the Red

River to $1,500, which, after a short discussion between Messrs. KING, BARTON, WHITE, JOHNSTON, of Louisiana, and CHANDLER, was lost.

Mr. BARTON then moved to strike out all after the enacting clause, and insert a clause equalizing the salaries of the Agents and sub-Agents, leaving the salary of the Superintendent at St. Louis as it is.

Mr. BENTON objected to the proposed amendment, arguing that the salary should be regulated according to the responsibility, and the duty which was to be done, and many other circumstances. The Superintendent at St. Louis, General Clark, Mr. B. said, kept open house, and lived in a style of the greatest hospitality, to which, in a great measure, was to be attributed the unbounded influence he had acquired over the Indians, and which hundreds of thousands of dollars could not have purchased. He was known amongst them as a man brave in war, and just and generous in peace; and Mr. B. said it was necessary he should have a sufficient salary to enable him to keep up a suitable establishment.

The question was then taken on the amendment, and decided in the negative; and the bill was ordered to be engrossed for a third reading.

Mr. RANDOLPH then rose, and said: I rose yesterday to give notice which I had not power to do, of a motion that I should submit to the Senate this morning. Some weeks ago I gave notice that, unless some abler member, having more influence, both *de facto* and *de jure*, in this body, should take the thing into consideration and move in the business, that I would bring forward a motion to raise a committee on the accommodation of this body generally. I then went into detail on the different subjects, which I shall not go into now, but content myself with observing that we have here—I will not say what is not to be found any where else in Washington—splendor without comfort, without neatness, without accommodation. I respectfully submit this resolution to the Senate, hoping that it will be acted on now, as I gave notice so long ago, that I would bring it up if nobody else did; and as I attempted to give notice yesterday that I would call it up this morning. I have made it as broad as possible, that the committee may take the whole subject into their consideration and report at large. I wish it to be distinctly understood that the resolution which is made thus broad, does not only relate to the regulation of this chamber, but to the other subjects which I indicated on a former occasion, soon after we came out of Executive business, when there was no one in the gallery; which I was very glad of.

Resolved, That a committee be appointed, to consist of three members, who shall take into consideration the present arrangement of the Senate Chamber, and report such provisions as they shall deem requisite for promoting the accommodation of the Senate, and the convenience and order of its proceedings.

The resolution was agreed to, and Messrs. RANDOLPH, LLOYD, and BENTON, were chosen the committee.

PANAMA MISSION.

On motion of Mr. SMITH, the Senate then proceeded to consider the bill "making appropriations for carrying into effect the appointment of a mission to Panama;" the first question being on agreeing to the following amendment proposed by Mr. BERRIEN, viz:

"*Provided always, and it is hereby declared*, That nothing herein contained, shall be construed to give the sanction of Congress to any departure from the settled policy of this Government, that, in extending our commercial relations with foreign nations, we should have with them as little political connexion as possible; and that we should preserve peace, commerce, and friendship, with all nations, and form entangling alliances with none; nor to authorize the representation of the Government of the United States at the Congress of Panama, except in a Diplomatic character; nor the formation of any alliance, offensive or defensive, or negotiation respecting such an alliance, with all, or any of the Spanish American Republics; nor the Government of the United States becoming parties with them, or either of them, to any joint declaration, for the purpose of preventing the interference of any of the European Powers with their Independence or form of Government; nor to any compact, for the purpose of preventing colonization upon the Continent of America; but, leaving the People of the United States free to act, in any crisis, in such a manner as their feelings of friendship towards these Republics, and as their own honor and policy may, at the time, dictate."

Mr BERRIEN rose and delivered his views in support of the amendment, and in explanation of the reasons which had induced a majority of the Committee of Finance to recommend the amendment.

Mr. BELL then observing that the Senate Chamber was not full, moved an adjournment.

Mr. BRANCH called for the yeas and nays on that motion. The call was not sustained by the requisite number (one-fifth) of the Senate, and the question was then taken on the adjournment, and lost.

Mr. HARRISON said the Senate had been on Executive business, and it was very rare that they took up any thing of importance on opening the doors again. His colleague was absent, who wished to vote on the motion. He therefore, renewed the motion to adjourn; which was again lost.

Mr. RANDOLPH then rose and addressed the Senate in a speech of two hours, against the Mission.

Mr. HOLMES rose and remarked, that it was not his intention to trouble the Senate on the Bankrupt bill at *this* time, nor any other; nor should he detain them on the abuses of the press; that, when the newspapers reviled him, he treated them as he did *other* revilers—let them revile on, and it generally happened that their revilings defiled none but themselves.

But, he would call the attention of the mover of this amendment to one point, which he was not so fortunate as to hear him discuss. It might be one of no importance, but he thought it was entitled to consideration. This amendment to a Legislative act, proposes to the House of Representatives to unite with us in prescribing rules to the President to be observed in *negotiation*. That the Senate, two-thirds concurring, may advise the President, in making a treaty, even before the treaty shall have been negotiated, may, from the Constitution, be fairly inferred. But that, by legislation, in which the House must participate, any advice can be given, admits of strong doubt. If the House has any voice in regard to a treaty, it is after it is ratified, and on the appropriation required to execute it. Legislative instructions, as to the terms of treaty, would be to give to the other branch a power which the Constitution has devolved on us, and might be delegated without the concurrence of two-thirds. If this was but the expression of an opinion as to the limits of the proposed negotiation, still if that opinion were to have any effect, it would unquestionably bear upon any minority in the Senate, who might feel disposed to reject a treaty, had it not been made under a legislative sanction. If there was any weight in this objection, and he was, at first thought, disposed to believe there was, he hoped the member from Georgia, (Mr. BERRIEN,) would be able to remove it. For himself, though disposed on all proper occasions to restrain the chief *Executive* power, he was unwilling to dispense to the popular branch any diplomatic authority, which, by the Constitution, belonged to us; and he doubted much whether the House would be disposed to exercise it, if we did.

The question was taken on Mr. BERRIEN'S amend-

ment, and decided in the negative, by yeas and nays, as follows:

YEAS.—Messrs. Benton, Berrien, Branch, Chandler, Dickerson, Eaton, Findlay, Harper, Hayne, Kane, King, Macon, Randolph, Rowan, Tazewell, Van Buren, White, Williams, Woodbury—19.

NAYS.—Messrs. Barton, Bell, Bouligny, Chase, Clayton, Edwards, Harrison, Hendricks, Holmes, Johnson, of Kentucky, Johnston, of Louisiana, Knight, Lloyd, McIlvaine, Marks, Noble, Reed, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Willey—24.

The question was then taken on ordering the bill to a third reading, and was decided by yeas and nays, as follows:

YEAS.—Messrs. Barton, Bell, Bouligny, Chase, Clayton, Edwards, Harrison, Hendricks, Holmes, Johnson, of Kentucky, Johnston, of Louisiana, Knight, Lloyd, McIlvaine, Marks, Noble, Reed, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Willey—24.

NAYS.—Messrs. Benton, Berrien, Branch, Chandler, Dickerson, Eaton, Findlay, Harper, Hayne, Kane, King, Macon, Randolph, Rowan, Tazewell, Van Buren, White, Williams, Woodbury—19.

And then, at half past five o'clock, the Senate adjourned.

WEDNESDAY, MAY 3, 1826.

The Senate took up the bill further to amend the charter of the town of Alexandria.

Mr. SMITH moved to strike out the first section, which provides for the sale of land for taxes. Mr. S. said he had always held in abhorrence the idea of landed property being sold for taxes. It had been practised in all the States of the Union, and was always considered as unjust treatment of such persons as were not immediately resident within the States.

Mr. ROWAN supported the section, on the ground of its being a principle of necessity for the support of the Government.

The amendment was lost.

Mr. BELL moved to strike out that portion of the second section which authorizes the drawing of lotteries.

Mr. ROWAN said that Georgetown and Washington had this privilege granted to them, and, therefore, there was no reason it should be denied to Alexandria.

Mr. BELL said, if the principle was a bad one, it ought not to be extended; and, if it was wrong, it might be remedied, by repealing those provisions in the other charters.

The amendment was lost—ayes 12, noes 13.

Mr. RANDOLPH moved to lay the bill on the table. The only cure, said Mr. R. for this affair—for this triangular war between Alexandria, Georgetown, and Washington—is to give Alexandria back again to Virginia. We will take her back, even as she is. Let Georgetown go back to Maryland, let Alexandria go back to Virginia, and let us keep this famous City of Washington; and, as we are to have a Washington Monument, let this building be the monument, and let us go into a house fit for men to live in, instead of living in cellars and caverns up stairs.

The bill was then laid on the table.

The following motion was submitted by Mr. BENTON:

Resolved, That the following rule be added to the rules for doing business in the Senate:

"The business depending in the Senate, at the end of each session, which is not the last session of a Congress, shall not abate, but shall stand continued over to the next session; and a docket thereof, properly arranged, under the direction of the Secretary, shall be laid upon the table of the President, and of each Senator, on the first day of such succeeding session."

Mr. RANDOLPH opposed the resolution, as being fraught with mischievous effects. The effect would be to get up a batch of bills one session, to be ready cut and dried, to be shoved through at the next; and it would be converting the Senate into a Court of Requests.

Mr. BENTON supported the resolution—showing the advantages that would be derived from adopting it, in the time that would be saved at the commencement of the session; arguing that there would, from the effect of the rule lately adopted, scarcely be any small bills carried over to the next session, and none but a few subjects of importance, which it would be advantageous for those members, who intended to take part in the discussion, to meditate upon during the recess, and which it would be well to put forth amongst the People.

The resolution was finally laid on the table.

JUDICIARY BILL.

The Senate proceeded to the re-consideration of their amendment to the bill "further to extend the Judicial System of the United States," which had been disagreed to by the House of Representatives.

Mr. VAN BUREN said that he would state, in a few words, the points of difference between the two Houses. One related to the arrangement of the circuits, the other to the provision requiring the Judges to reside within their respective circuits. He had not particularly adverted to the latter when the bill was under consideration, because, at that time, he had entertained the belief that no objection would be urged against it. Its rejection, therefore, by the House of Representatives, was as unexpected as the reasons assigned for it were, in his opinion, untenable.

By the Judiciary Act of 1793, it was left to the Judges of the Supreme Court to allot themselves to the different circuits of the United States, once a year, at their discretion. By the act of 1802, it was thought proper to allot them, by law, to certain circuits, within which they were required to reside. He would not consume the time of the Senate by reading the act. It will readily be perceived, by a reference to it, that this is the effect of the provision, although somewhat ambiguous in its phraseology. The act of 1802 also provided that, in the event of a new appointment, a new allotment might take place; but, whatever might be the allotment, it still required that, in the old circuits, the Courts should be held by a resident Judge. There was but one exception. This was the circuit composed of the States of Pennsylvania and Delaware. It became necessary, either to make the exception, or to drive from his residence, at Mount Vernon, or from the bench, one of the most estimable members of the Court—an act which no former Congress had been willing to commit, and of which, he hoped, no future Congress would be capable. In consequence of this, however, the State of Pennsylvania has been subjected to what her citizens consider a great inconvenience. That reason still exists. The State of Virginia has two Judges of the Supreme Court, and both cannot be assigned to the circuit, of which it forms a part. In 1807, when an additional circuit was established, composed of the States of Ohio and Tennessee, it was expressly enacted, that the Judge should reside within the circuit for which he was to be appointed. The amendment of the Senate, now so strongly opposed, is a mere extension of the same principle—a principle not only sanctioned by authority, but recommended by its manifest utility.

Among the objections urged against this point of the amendment of the Senate, there was one, he said, not merely fallacious, but reprehensible. It had been alleged, elsewhere, that it was the design of the amendment to place the Western States on a footing inferior to that of the old States. This objection was unsupported by facts, and was made, he had charity enough to believe, without due examination. It was, on the contrary, the object of the amendment, to place the Western States on the same

footing with the old States; to secure to them the advantages enjoyed by a residence of the Judges within the Circuits, and protect them from the inconveniences experienced by Pennsylvania and Delaware. Mr. VAN BUREN expressed his belief that there was great injustice in this attempt to excite sectional prejudice, without the least foundation. There was nothing in the facts to warrant the inference; and he could appeal with confidence to the Senators from those States, to sustain him in his position. They had witnessed the untiring zeal with which gentlemen, from different and remote portions of the Union, had supported the just claims of the West; and, from whatever motive misrepresentation might proceed, he had the satisfaction to believe that, in that body, the subject was well understood, and every thing belonging to it justly appreciated. Mr. VAN BUREN thought that the frequency with which appeals had been made to local prejudices, was an evil which deserved the utmost severity of reprehension.

An objection, he said, had been taken to the form of the amendment, which, though plausible, was not solid. The amendment speaks of the three additional Judges, as Judges *appointed for the three new circuits*: and it is supposed that this gives to the offices of the additional Judges, the character of "Circuit Judges only." Mr. VAN BUREN said that he had, in his opening observations, had occasion to remark, that he was prevented, by indisposition, from attending the Committee, the morning when the amendment was first agreed upon and reported. Its phraseology had not, on that account, attracted his particular attention. If it had, he would have preferred a different form, in expressing the object of the amendment. At the same time, the objection, he said, was only technical, and the true sense of the amendment was sufficiently expressed, to leave neither doubt nor difficulty in its execution. The first section of the bill provides that the Judges to be appointed shall, to all intents and purposes, be Judges of the Supreme Court, and the second is only descriptive of the objects for which their appointment was authorized. Even, upon the ground assumed by those, who, instead of looking at the substance, have chosen to criticise the form of the amendment, the description is accurate. The Judges of the Supreme Court are, under the law and Constitution, Circuit Judges, as well as Judges of the Supreme Court. Sitting in the Circuit Court, they have powers and duties distinct from the powers and duties of the Supreme Court, and with which, when sitting on the latter Court, they have nothing to do. But he would not detain the Senate longer on that point. If the House of Representatives were in favor of the principle of the amendment, but thought its form objectionable, why did they not amend it? It would have been in order to have done so. This, however, they have omitted, preferring to rest their opposition upon an objection which it was in their power to have removed. Nothing but his habitual respect for the other branch of the Legislature, restrained the conviction that it was the sole object of the first objection to the amendment, urged, indeed, as it was, with so much seeming earnestness, to cover the real ground of dissatisfaction—the arrangement of the circuits.

The other point of disagreement relates to the separation or connection of Ohio and Kentucky. On that subject he had only to say, that it is a question of a purely local character, in which the Western States, alone, are interested. The object of the bill, itself, is to make provision for nine Western or Northwestern States. They are embraced in the three circuits provided for. Of the eighteen Senators representing these States in this body, fifteen are in favor of the amendment of the Senate. He would venture to say, that, on questions of a character so exclusively local, on which any difference of opinion has existed, there have been few, if any, instances, characterised by such uncommon unanimity. To bring the subject into a narrow compass—in the two circuits which are directly affected by the question, there are *five* States, and of the *ten* Senators by whom they are represented, *seven* are in favor of the amendment of the Senate. This unanimity of sentiment, among those, too, who do not usually concur in opinion on other subjects, had a strong tendency to confirm his previous impression, that the amendment was correct. If, upon subjects of this character, we are not to rely upon the representations and opinions of those who are most familiar with their operation, and most concerned in their results, where, and on whom, let me ask, are we to repose our confidence?

Mr. VAN BUREN said there was one view of the subject which he was anxious to impress upon the minds of gentlemen, and which ought, in his opinion, to silence the opposition, at least in the quarter from whence it chiefly proceeded. Is it objected that two Judges are too many for the five States of Ohio, Kentucky, Missouri, Illinois, and Indiana? No, sir. Those who advocate the bill as it came from the House, have, throughout, contended for two additional Judges to hold their circuits within those States. And can one Judge transact the business in Kentucky and Ohio? No one could doubt it. He would have to attend the term of the Supreme Court, which could not employ him more than three months, including travel; this would leave him nine months, in each year, to hold the circuits in Kentucky and Ohio, at places not more than one hundred miles apart, with excellent roads, and every other facility for travelling. It is only necessary to state the case, to show, incontrovertibly, that, whoever else may have cause to complain, Kentucky and Ohio will not—at least on the supposition that they have no other views than the administration of justice among their citizens. Why, then, do *they* object? Why should *they* complain that a Judge is also given to Missouri, Indiana, and Illinois? It is true that, by the amendment of the Senate, Kentucky and Ohio cannot *each* have a Judge. But, ought not the idea to be spurned, that it is the *Judges*, and not the *Court*, the *administrators* and not the *administration* of justice, which have been so earnestly and loudly called for by these patriotic States? He would not, for a moment, entertain an idea so degrading to these respectable members of our Confederacy. The Representatives from Ohio and Kentucky will recede. Their known intelligence will discern the danger of this ground. Should this bill fail, they cannot but be aware of the difficulty which would attend any subsequent effort to induce the Representatives of other States to act upon the subject, especially if an impression should exist that a scramble for office was at the bottom of all the movements which have taken place.

The just rights of Kentucky and Ohio being thus satisfied, he would say a few words as to the other States. He could not but express his surprise, that the objection that too much had been done for them, had proceeded from Ohio and Kentucky. That they had an equal right, with others, to urge this objection, there can be no doubt: but he still thought that there were some circumstances in the case which would have rendered its emanation from the old States more appropriate. He was free to admit that it was an act of liberal legislation in favor of the States of Illinois, Indiana, and Missouri. An application for an additional Judge in any other of the States, would not be listened to for a moment. If justifiable at all, it was only so in consequence of their forming three sovereign, independent States, and, if not leading, certainly prominent members of our Union. It was this view of the subject, and the consideration of their rapidly increasing population, which had induced him to yield his assent to a measure by which the administration of justice would be placed on a more perfect and permanent footing. This would be effected by the amendment proposed by the Senate,

in conformity with the views expressed by the representation from these States, in both branches of the Legislature, without a dissenting voice. Why should Ohio and Kentucky, having their own claims satisfied, desire to impose on these States a plan to which their Representatives are decidedly opposed? I cannot but persuade myself that, upon reflection, they will abandon a ground, which, to my judgment, appears alike ungracious and untenable.

The question arises, what will now be the decision of the Senate? Shall we *insist*, and ask a conference, or *adhere*, and thus avow, at once, frankly and explicitly, the course which we mean to pursue? On the score of respect, there could be no objection to either course. If the Senate are disposed to yield either of the points, it would be advisable to insist, and ask a conference. If, however, they have formed the deliberate conclusion not to yield, it appeared to him best to adhere: and, in order to test the sense of the Senate, he moved that they do adhere to their amendment.

The motion was further sustained by Messrs. BENTON, BRANCH, HOLMES, ROWAN, and WHITE, and was opposed by Messrs. RUGGLES, HARRISON, and JOHNSON, of Kentucky, and was finally carried by Yeas and Nays, as follows:

For adhering—Messrs. Barton, Benton, Berrien, Branch, Chandler, Clayton, Dickerson, Eaton, Edwards, Findlay, Harper, Hayne, Hendricks, Holmes, Kane, King, Lloyd, Macon, Noble, Randolph, Robbins, Rowan, Smith, Tazewell, Thomas, Van Buren, White, Williams, Woodbury—29.

Against it—Messrs. Bouligny, Chase, Harrison, Johnson, of Ken. Johnston, of Lou. Knight, Marks, Reed, Ruggles, Sanford, Seymour, Willey—12.

[The effect of the vote of adherence is to preclude, on the part of the body adopting it, all compromise on the question.]

PANAMA MISSION.

The bill making appropriations for carrying into effect the appointment of a Mission to the Congress of Panama, was read a third time, and PASSED, by Yeas and Nays, as follows:

YEAS—Messrs. Barton, Bell, Bouligny, Chase, Clayton, Edwards, Harrison, Hendricks, Holmes, Johnson, of Ky. Johnston of Lou. Knight, Lloyd, Marks, Noble, Reed, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Willey—23.

NAYS—Messrs. Benton, Berrien, Branch, Chandler, Dickerson, Eaton, Findlay, Harper, Hayne, Kane, King, Macon, Randolph, Rowan, Tazewell, Van Buren, White, Williams, Woodbury—19.

BANKRUPT BILL.

The Senate then resumed the consideration of the bill to establish a uniform system of Bankruptcy throughout the United States.

Mr. RANDOLPH rose and moved the indefinite postponement of the bill, and then delivered a speech of nearly six hours, in opposition to the bill. Mr. R. concluded his speech about seven o'clock.

The question then being about to be put, on the motion of postponement, it appeared that there was not a quorum of the Senators present; and, without taking the question,

The Senate adjourned.

THURSDAY, MAY 4, 1826.

On motion of Mr. HAYNE, the Senate proceeded to consider the resolution of the House of Representatives, expressive of the sense of Congress of the gallant conduct of Lieutenant S. Duncan, of the United States' Navy.

Mr. HAYNE explained the facts of the case.

Messrs. LLOYD, CHANDLER, KING, and HOLMES, were opposed to the resolution, as the individual was not in the action for which the thanks of Congress and rewards were conferred; that swords, medals, &c. were voted for services actually done, and that there were hundreds of individuals who had performed actions equally glorious, of which no particular notice had been taken. Mr. LLOYD expressed his willingness to allow him a pension.

Mr. HAYNE further supported the resolution, urging the claims which the individual had on account of the important services he had rendered with the fleet, and the severe wound which he had received in the action of the 6th September, rendering him incapable of joining in the action on the 10th.

The question was then taken on laying the resolution on the table, and lost—ayes 14, noes 15.

Mr. RANDOLPH said, he hoped the resolution would not pass. He knew nothing of this case, but he thought the thanks of this body the greatest treasure they possessed. He would rather give this individual $100,000, or $200,000, put him on a footing with Lafayette, or give him 100,000 acres of the best land in the United States, than the thanks of this House.

Some further conversation ensued between Messrs. HARRISON, WOODBURY, BELL, BARTON, and EATON, the latter gentleman renewing the motion to lay on the table, on account of the difference of opinion which existed, and the injury the feelings of the individual would sustain by a rejection. The motion was lost—ayes 16, noes 17; and the resolution was then ordered to a third reading—ayes 22.

Mr. BENTON, from the Select Committee to whom was referred the subject of inquiring into the expediency of reducing the patronage of the Executive Government, made a report, which was read. The report was accompanied by the six following bills:

A bill to regulate the publication of the Laws of the United States, and the public advertisements;

A bill to secure in office faithful collectors and disbursers of the revenue, and the displacement of defaulters;

A bill to regulate the appointment of Postmasters;

A bill to regulate the appointment of Cadets;

A bill to regulate the appointment of Midshipmen;

A bill to prevent military and naval officers from being dismissed the service at the pleasure of the President; which were severally read, and ordered to a second reading. (*See Appendix.*)

Mr. TAZEWELL then moved that an extra number of the report and bills be printed.

Mr. RANDOLPH hoped that the largest number would be printed that had been printed of any document during the present session, whether that document was any message sent to this body, or an attempt to answer, which they could not do, the argument of his friend to the right; or under color of a message to the House to announce an electioneering arrangement, what in Maryland was known by the name and appellation of a stump speech. Though he had little faith in the strength of the virus of the Executive poison which was attempted to be instilled into the public mind, he wished the antidote to proceed with it, *pari passu*.

Mr. TAZEWELL said, his ignorance of what that number was, occasioned his leaving the blank.

It was then moved to fill the blank with 6000, which was carried.

BANKRUPT BILL.

The Senate then resumed the consideration of the bill "to establish a uniform system of Bankruptcy throughout the United States;" and the question being on Mr. RANDOLPH'S motion of indefinite postponement—

Mr. BERRIEN rose, and said he hoped this motion

would not prevail. I trust, said Mr. B. this House will not commit itself by adopting, nay, that it will not even countenance any resolution which shall disaffirm the principles of this bill, unless gentlemen are of opinion that the time which yet remains of the present session, is sufficient for a full and deliberate discussion of the Bankrupt question on its merits, and unless they will act upon that opinion. If this is so; if they believe that the requisite time can be devoted to the subject, and, so believing, will proceed to discuss it, we do not object to the form of the motion, but are prepared, as the advocates of the bill, to meet the question.

Under the influence, certainly, of the most unaffected respect for those who differ with us on this occasion, but, at the same time, with an entire conviction of the truth of the principles which we advocate, I desire to present this idea distinctly to the Senate. The friends of the Bankrupt system will consider as unjust the adoption of any resolution, from which may be inferred a disapprobation by this House of the principles of this bill, if that resolution shall be adopted from the consideration, that sufficient time does not remain during the present session, for the full discussion of those principles. It is the tendency of the present motion to produce that result; and therefore we resist it. Therefore it is, that, without entering into an examination of the general features of the bill, still less without going into the consideration of its details, I am disposed to trespass on the attention of the Senate, while I endeavor to reply very briefly to some of the prominent objections which have been urged against this measure.

I am content to abstain from an examination of the principles of the bill, or its details. That duty has been performed by my associate on the Committee, the Senator from South Carolina, (Mr. HAYNE,) in a manner perfectly satisfactory to me, as a member of that Committee. With a sincere and anxious desire that this bill may receive the support of the Congress of the United States, with a belief that it is demanded by the wants of the country, and that it is consistent with the Constitutional Powers of the Government, I am willing, at present, to rest the question of its general merits on the unanswered argument of the gentleman from South Carolina. My purpose, at this moment, is merely to reply to some of the objections, which were submitted to the consideration of the House yesterday, by the Senator from Virginia. Those objections include these ideas:

That this bill will increase to an alarming extent the patronage of the Executive:

That its natural and necessary effect will be, to produce a consolidation of the States of this Union in one national Government, subversive of their individual sovereignty:

That, so far as it gives to the Federal Courts jurisdiction in matters of controversy between citizen and citizen of the same State, and so far as it proposes to discharge the obligation of contracts entered into anterior to the enactment of the bill, it is in its principles violative of the Constitution of the United States:

That it will bolster up the paper system, and will enable fraudulent debtors to set their creditors at defiance:

That it is inimical to the agricultural interests of the United States, and that it will apply the axe to the root of the freehold system of Virginia.

In every view, it seems to me to be the right of the advocates of this bill, that these suggestions should be replied to; if in the opinion of the Senate there remains time for the examination of the question on its merits, it is proper that those objections which have been stated should be discussed. If, on the other hand, it is to be disposed of in such a way, as, without committing the Senate by an expression of opinion, favorable, or unfavorable, to its adoption, to suspend the determination of Congress on the subject, and to hold it up to public view as a question for future discussion, it is proper that these suggestions should be met, and, according to the best of our abilities, that they should be answered.

The first and most prominent objection to this bill, that which accompanied the argument of the Senator from Virginia, in almost every successive step of its progress, was that which attributes to it the effect of increasing to an alarming degree the patronage of the Executive. On this subject, I presume, it is not necessary for me to protect myself by the declaration, that it is not my desire that the patronage of the Executive should be unnecessarily increased. The objection is, however, inappropriate; it was to a certain extent applicable to the bill heretofore reported to the Senate, but cannot apply to that which is now under consideration. So far as the patronage of the Executive can be directly exercised under this bill, it is limited to the appointment of a single General Commissioner in each of the States of this Union. The bill heretofore reported to this House, and the law, which was formerly in existence on this subject, provided that the President might appoint any number of Commissioners at his discretion, within the several States of the Union. The bill now under consideration restrains the exercise of this power, limiting it to the appointment of one single General Commissioner in each State, and inasmuch as that Commissioner will in some, perhaps in most of the States, be incompetent to the discharge of all the duties which will devolve on him, it contains a provision by which he is authorized to appoint special Commissioners under the advice, and with the sanction of the Judge of the District Court of the District, in which he exercises his functions. This is an improvement in the Bankrupt law, which is anxiously desired in England, although it has not yet been introduced into their system.

[Mr. RANDOLPH said it went to increase the sphere of action of the Federal Government in contradistinction to, and in opposition to, the State Institutions. With one swoop, it involved in its vortex the whole of the judicial power of the land; and that by involving that power in one swoop in the Federal Courts and Federal Government, so far the Judicial Power of any component part of the Government was abolished. He would go farther, and state that he considered every increase to the Judicial authority of this Government, *sub modo*, an addition to the Executive authority of this Government.]

Mr. BERRIEN resumed. In replying to the objection founded on the increase of Executive patronage, it does not occur to me, said Mr. B. that the considerations to which my attention has just been called, are necessarily involved. Indeed, they do not seem to me to have any natural connection with it. They are objections to the bill, arising from its operation and effect, which are calculated in the view of the Senator from Virginia to limit the sphere within which the sovereignty of the States is to be exerted, by unduly extending the sovereignty of the Union.

The result, however, admitting it for the purpose of the argument, is not produced by the patronage which is given by the bill, and, therefore, does not belong to this branch of the discussion. I may dismiss this objection, then, with a single remark; limiting it to that which properly falls under the denomination of patronage; there cannot be found in the provisions of this bill any thing which can be alarming even to the Senator from Virginia. The extent of its operation is to allow the appointment of a single General Commissioner in each State, who will be entitled, while actually exercising his functions, to a per diem allowance of ——— dollars, to be distributed among the several causes pending before him. Thus considered, the objection on the score of patronage is entirely without foundation. If the passage of this bill can be resisted, it must be on other grounds.

The great objection, however, of the Senator from Virginia, that which attracted my attention to the argument

which he delivered to this House yesterday, was, that this bill, in its operation, would have a tendency to consolidation, to a diminution of the powers of the Sovereign States composing this Union. If there be any principle of policy, which may be considered vital, which, in my view of the subject, ought to control every other, it is that which inculcates the preservation of the sovereignty of these States. I may err—I may attach to this consideration an importance which does not belong to it. The opinion is, however, frankly stated, as the result of some reflection, as one which has been strengthened by the short experience which I have had on this floor. It is not founded merely on that attachment which is so natural for home, and the things which belong to it; nor simply on a preference for the Governments of the States. On the contrary, it results more especially from a sincere and unaffected devotion to the Union, from a belief that it can only be secured, by preserving the State sovereignties in healthful and vigorous activity.

It will be seen that the opinion which I have on this subject originates in a different principle from that from which the Senator from Virginia derives that which he expresses; and, being thus variant in its origin, it seeks to display itself by different means. The principle which I am advocating, it does not seem to me will be promoted by an attempt to enfetter the exertion of Federal power, in cases which are clearly subjected to its control by the Constitution of the United States. Each successive contest in which a State may be engaged with the General Government, and in which that State is defeated, operates not merely to impair her sovereignty in relation to the subject of the controversy, but to weaken the capacity of the State for resistance, in any future struggle to which she may be called. Such contests are, then, to be avoided. The powers which are expressly given to the Government of the Union should be freely exercised. Those which are deduced by implication from the Federal charter, by strained constructions tending to the consolidation which the gentleman apprehends, are to be resisted by preserving, in its unimpaired vigor, the sovereignty of the States; and that resistance should commence at the precise point at which these implied powers come into contact with the established authority of the State sovereignties. No other limit can be given to the powers which may be exercised by the General Government, not only under the Constitution as it now exists, but under any other, which shall be adequate to the purposes of its institution, that the wit of man can devise.

With this view of the subject, I am not pressed by the difficulties suggested by the Senator from Virginia. I cannot believe that we ought to be prevented from passing this act, by an apprehension that it may be injurious to the sovereignty of the States. The power to pass uniform laws on the subject of bankruptcy, is a power expressly granted by the Constitution to the Federal Government; and, according to the system of policy which I adopt, its free operation ought not to be restrained. The strength of the States of the Union should not be wasted in an attempt in which they must ultimately fail; the attempt to oppose the exercise of a clearly defined power of the Federal Government.

There is yet another aspect in which this question may be viewed. If the consequence which is attributed to the bankrupt law, that of a tendency to annihilate the sovereignty of the States, can be legitimately ascribed to it, what is the extent of the proposition then to be deduced? Has not the question of consolidation, in that event, been decided by the People of the States of this Union, by the very act of adopting the Constitution? Since the power to pass such a law is expressly given, what does the argument I am combatting do, more than assert that the Government of the Union, in the exercise of powers which confessedly belong to it, will be necessarily subversive of the State sovereignties—that its tendency to consolidation, even in the exertion of its legitimate authority, is inevitable? This is carrying us beyond the limits which belong to this discussion. We are not now engaged in settling the terms of the compact which shall connect these States with each other. If this were so, taught by experience, there would no doubt be many points of coincidence between the gentleman and myself. Our object, however, is different. It is a mere question of the exercise of legislative power under a charter which has been already settled for us; and if, as is contended, the exercise of those powers which are expressly granted by that charter to the Federal Government, will eventuate in the subversion of State sovereignty, then I say the argument does also further prove that the Union of these States, and the Constitution of these States, have a necessary and inevitable tendency to consolidation; and that, instead of giving effect to that Union, and to the principles of that Constitution, we should be engaged in considering the means by which we may escape from their oppressive influences.

[Mr. RANDOLPH.—The gentleman has not yet got the point of my argument. He has fairly, ably, and correctly stated the points of objection I made to this bill. I am afraid I must concede to the gentleman from Georgia that he states me correctly and fairly, as far as he now goes. I am afraid I must confess that I am of opinion that the inevitable tendency of this system, by even a fair exercise of the powers of the Federal Government, has a centripetal force, the centrifugal force not being sufficient to overcome it, and at every periodic revolution we are drawing nearer and nearer to the final extinguishment that awaits us. That was not the objection I made. I agree with the gentleman from Georgia, that it is not a fair question to be brought here, except by way of caution, by way of warning—being forewarned, being forearmed—not to strain the powers of this Government any higher. This bill is not merely to exercise a power which, I grant, is legitimately given in the charter to this Government, to establish a uniform system of bankruptcy throughout the United States. My objection to the former bankrupt bill, and to the present bill, is, that it is, under the pretence of the exercise of that power, a flagrant abuse of that power. I admit you may pass a bankrupt bill constitutionally. You may say who shall be a bankrupt. You may say more. But it is enough for my argument, to take this doctrine of how much more you can do. It is not for me to say there is that in this bill of ninety-three sections which you cannot do. Under pretence of the exercise of a power specifically given to the Federal Government, this is an attempt to do that which it was never intended should be done. It is a flagrant abuse of the power of Congress to establish a uniform system of bankruptcy, which I admit Congress may do under the exercise of that power.]

Mr. BERRIEN resumed. I did not ascribe to the Senator from Virginia the argument which I have just been endeavoring to controvert. The gentleman did not so understand me. I stated it as a consequence deducible from the proposition which he has urged, when that proposition is carried out to its legitimate conclusions, as one incapable of being sustained; and thus carried out, for the purpose of shewing that it was so. I was not unmindful of the suggestions of the gentleman from Virginia, which shall, in due time, receive attention; and I certainly did not intend to do injustice to an argument which commanded my attention, although it failed to convince my judgment. The argument is this: the tendency to consolidation which this bankrupt bill is supposed to have, it is said, is to be effected by its superseding the State laws regulating the remedies between debtor and creditor. I adverted to the given power, the express grant in the Constitution, to shew, that if this is the consequence of the exercise of a power specifically granted, the Constitution, and not the bill, is obnoxious to this objection

But can this result be produced by the operation of the bill now under consideration? Will its effect be to supersede the State laws in the case supposed? If so, must consolidation follow? The argument goes to assert that an act of Congress operating generally throughout the United States, and exclusively of the laws of the several States on the subject-matter of that act, must necessarily produce this result. What is the fact? The instances are multiplied in which acts of this character have been in operation from the commencement of the Government, yet no such consequence has followed. In the exercise of all those powers which are granted by the Constitution to the Federal Government that are internal, and designed to carry into effect the great objects of the Confederation, those which are external, these principles of exclusiveness and uniformity have been called into action; and yet this tendency to consolidation has not been felt, or, if felt, has been resisted.

Let us take another view. If this tendency to consolidation be as it is contended it is, the necessary consequence of any law of the United States which, acting uniformly throughout the several States, excludes in its operation the local laws of such States, the inquiry would then be, to what extent would the provisions of this act supersede those local laws, in relation to the remedies between debtor and creditor? And here the delusion vanishes. It is an assumption which goes very far beyond the facts of the case, to say that the whole system of that law will be superseded by this act. That which is assumed is, that every debtor must be a bankrupt. In relation to all that class of debtors who are not at present amenable to the forum of Federal jurisdiction, and who shall not become bankrupts, the sovereignty of the States of this Union remains untouched by this bill. This single reflection affords a sufficient answer to the suggestion of the Senator from Virginia.

I may, however, propose an inquiry. The effect of allowing the objection would be to limit the operation of the bill to those persons who are now the objects of the jurisdiction of the Federal Courts, and to exclude its action between citizens of the same State. A bill so modified, would be, in the view of the gentleman, within the constitutional powers of the Government, and would be relieved from the objection of a tendency to consolidation. Without stopping to inquire how, and in what precise manner, this could be done, I ask, what would be the condition of citizens of a State, under a bankrupt law passed by the United States, and acting upon their fellow-citizens, in reference to their contracts with aliens and with the citizens of other States, but from the operation of which they should be excluded? The proceedings in bankruptcy being more prompt in divesting the debtor of control over his property, of whatever description, that comes within its operation, than the process of the common judicial tribunals, the result would be this: A commission of bankruptcy awarded against a citizen of Virginia would admit, to the distribution of the effects of that bankrupt, all foreigners and non-residents—all persons competent to go into the Federal jurisdiction—and would exclude from all share of the estate a citizen of Virginia. Unless this is a consummation to be wished for, the limitation suggested by the Senator from Virginia cannot be desirable. These are the very brief remarks which I propose to submit, in reply to the suggestion that it will be the tendency of this bill to produce consolidation.

It is next urged that it is unconstitutional, because it gives jurisdiction to the Federal Courts between citizens of the same State; a jurisdiction not conferred on them by the Constitution of the United States. It is agreed that, in carrying into execution the provisions of this bill, you will render amenable to the forum of the Commissioner citizens of the State in which he sits, as well as those of other States, or aliens, who have claims against the individual against whom the commission of bankruptcy has issued. It is because a citizen of the same State, having such claim, may go before the Commissioner, and may have his rights decided by him, that the bill is supposed to be unconstitutional.

Jurisdiction, speaking of it as belonging to the judicial department of this Union, is derived from various sources under the Constitution of the United States. It is unnecessary to enumerate them. The gentleman who suggested this objection no doubt recollects that provision of the Constitution which, enumerating the objects of the jurisdiction of the Federal Judiciary, declares that it shall, among other things, extend to all cases arising under the laws of the United States. If it be within the constitutional competency of Congress to pass a bankrupt law, as a necessary consequence, all controversies arising under it must be brought before the Federal forum. The grant of jurisdiction to the Judiciary is as explicit as the grant of power to the legislative department. If, then, Congress, in the exercise of its constitutional power to pass laws establishing a uniform system of bankruptcy, shall adopt this bill, unquestionably the jurisdiction of the Federal Court would attach, and rightfully and constitutionally attach, to all controversies under it, as to cases arising under a law of the United States.

The Senator from Virginia denies this conclusion; and, for the purpose of repelling it, he inquires whether the same consequence will not follow from the provision which authorizes the Congress of the United States to establish a uniform rule of naturalization, which is to be found in the same sentence? This is the purport of the inquiry. Inasmuch as the power to establish a uniform rule of naturalization is given in equivalent terms, in the same article of the Constitution with that relating to bankruptcy, do not rights derived under the naturalization acts fall within the jurisdiction of the Federal tribunals, as questions arising under a law of the United States. The particular case stated is this:

If a foreigner be naturalized in virtue of a law which has been passed in the exercise of this power, and by force of that naturalization shall acquire rights which, independently of it, he could not have enjoyed: if, in the exercise of those rights, he shall enter into contracts with a citizen of the United States resident in the same State with himself, and such citizen shall call him before the State tribunal; would not this, equally with a question of bankruptcy, be a case arising under a law of the United States, and liable, therefore, to be withdrawn from the State forum, and carried before the Federal jurisdiction? I answer, the analogy between the two cases is not perfect.

[Mr. RANDOLPH.—The analogy is not perfect, as the gentleman has stated it; but, because candor is the goddess at whose shrine I worship, he will permit me to explain. There is a force in the analogy greater than the gentleman is willing to allow, as he states it. By a law of that ancient and venerable Commonwealth, whose feeble and unworthy but zealous and faithful servant I am, no foreigner can hold land. But, by the Constitution of the United States, a citizen of the United States, or of any State, is entitled to all the privileges of a citizen in the other States, respectively. By that wise provision of the Constitution, which bottoms the Government on *terra firma*, no foreigner is capable of holding land. You naturalize him—I mean you gentlemen federalists. A man comes into Virginia who cannot hold land in Virginia till, by the act of naturalization of the United States, he becomes qualified to hold land—not by the act of Virginia, but by the law establishing a uniform rule of naturalization. You may naturalize him if you please, the moment he strikes the wharf—he comes under the law, and buys my land. The law gives him capacity to take and to hold; and when I give him the deed, he shall give me a given sum of money, or I will have a mortgage till he does that. When I come

to oust him from the land and compel him to pay the money, he says to me, "I was incapable of holding but under the act of Congress establishing a uniform rule of naturalization; in spite of the institutions of Virginia, I take shelter under that rule. My land lies in the extreme West part of Virginia, and as I believe it is very inconvenient for you to go to Richmond, instead of going to the County Court at Charlotte, I will carry you to Richmond." I say, "I will not go." He says, "You shall go. This controversy grows out of my capacity to take from you, and hold from you, under the shelter of the establishment of a uniform rule of naturalization. I claim the benefit of the Federal Court, because this is a case that arises under a law of Congress, as much as a case arising under the bankrupt law."

Mr. BERRIEN resumed.—I understood the case proposed as the Senator from Virginia has now stated it; and if my poor opinion on a question thus purely professional is of any value, the gentleman may be relieved from all apprehension, if he should ever enter into such a contract, that he can be deprived of his right of going into the County Court of Charlotte, and be carried against his consent to Richmond. The individual who has been naturalized under a law of the United States, and who, exercising the rights acquired by that naturalization, has bought a tract of land from the gentleman from Virginia, being himself a citizen of that State, cannot resort to the Federal jurisdiction in any controversy growing out of that contract.

To the inquiry, whether, as in the case of bankruptcy, the controversy does not arise under a law of the United States, inasmuch as the competency of the individual to hold land within the State of Virginia is derived from the naturalization act, I answer that such controversy does not arise under a law of the United States, but under the contract entered into between the native and the naturalized citizen of Virginia. The right to take, the capacity to contract, is one thing: the fact of taking, the actual contract, is another. The right to take, the capacity to contract, are derived from the law of the United States; but *they* are not questioned—no controversy arises from that source. It grows out of the contract, and is founded alone upon its alleged violation.

In the case of the bankrupt law, the questions arise exclusively under the provisions of the act. It prescribes that, on the occurrence of certain events, a particular description of persons may be proceeded against in a prescribed manner, by which they may be declared bankrupt. The question of their occurrence will constitute a controversy under a law of the United States, and will, therefore, vest the jurisdiction in the federal courts; while, in the case stated by the Senator from Virginia, the controversy will not arise under any law of the United States, but simply under a contract entered into by an individual, whose capacity to contract was given by that law.

I will not, however, rest the right to invest the courts of the United States with jurisdiction between citizen and citizen, solely on that provision of the Constitution which gives to those courts jurisdiction over controversies arising under the laws of the United States. It is well derived from that source; but it is moreover the necessary consequence of the grant which is now the subject of consideration. Unless Congress possess the power to give to the federal tribunals exclusive jurisdiction in matters of bankruptcy, by what possible process could uniformity be given to the system? If the action of those tribunals is limited to cases where they have jurisdiction *in personam*, and all controversies between citizens of the same State must be settled in the domestic forum, the system would be moulded according to the diverse legislation of the different States, and would be subject to the almost necessarily varying decisions of twenty-four distinct and independent judicial tribunals. These would be, in effect, two systems of bankruptcy in each State, one operating on that class of persons who are amenable to the federal jurisdiction, by the grant of power to those tribunals to hear and determine controversies between aliens and citizens, and between citizens of different States; the other, confined in its operation to citizens of the same State: and that uniformity, to secure which was the chief motive for investing the General Government with this power, would not be attained.

I will make a brief observation on the next objection to this bill, which asserts that it is unconstitutional, because its effect will be to discharge existing contracts. The power to pass a bankrupt law, is a power to pass an act discharging the obligation of a contract. The term bankruptcy is technical. Its meaning was clearly settled in England before it was transferred from her statute book to the Constitution of the United States. The bankrupt had ceased to be considered a criminal. The law of bankruptcy, alike beneficial to the creditor and the debtor, secured to the former a faithful application of the bankrupt's effects; to the latter, on certain conditions, a discharge from his debts. Such was the well settled interpretation of the term when the framers of the Constitution used it in the clause under consideration; and, so using it, the power to discharge a debtor from the obligations of his contract was a necessary consequence of the grant of power to pass a bankrupt law.

But, it does not rest merely on this general grant of power; nor is it simply a consequence deducible from it. It results from this also, that, while the Constitution of the United States inhibits the States from passing any law impairing the obligation of contracts, no such restriction is imposed on the Government of the Union. Even if it had been, still, if, in the exercise of the power, expressly granted, of passing a bankrupt law, it became necessary to impair the obligation of contracts, the two clauses must have been so construed as to have been reconciled. The power to pass a bankrupt law would have been considered as an exception to the inhibition to pass laws impairing the obligation of contracts. But, when we observe that this inhibition operates only on the States, while the Legislature of the Union is left free and unrestricted, the inference is plain—the bill is free from this objection.

It is objected that it is calculated to bolster the paper system. I am not disposed to enter into the consideration to which I am invited by the argument of the Senator from Virginia, whether the establishment of banks within the United States has been beneficial or otherwise. I have an opinion on this subject, which I will express when the occasion requires it. But, certainly, it is a singular objection to the system sought to be established by this bill, that it is calculated to operate to the exclusive, or even to the particular, benefit of the banks. On the contrary, it is most obvious that it will afford to individual debtors a resource which they cannot otherwise have against the exactions of those institutions, by admitting them to a participation in the effects of an insolvent's estate. At present, when a case of insolvency occurs, inasmuch as the concerns of trade are carried on by the aid of the banks, the first operation is an assignment of the property to certain preferred creditors, consisting, generally, of the endorsers of the insolvent; and the assignees under the State insolvent laws enter upon their offices after the effects are disposed of.

The Bank of the United States, particularly, has the right to sue in the Federal Courts by express grant, and the Judges of those Courts, invested with the power of Judicial Legislation, have exercised it in some of the Circuits, by the establishment of rules which conduct the suitor *velis levatis* to the desired haven. Within thirty days after the institution of an action, final judgment may be obtained, and in those States where the judgment constitutes the lien, the Bank has it thus in its power to appropriate to itself, exclusively, the effects of an insolvent

estate; or, if it shares them, it will be with aliens and non residents; for the Banks of the State, and the citizens of the State, confined to the domestic tribunals, cannot enter into the competition. It would be the effect of a Bankrupt law to put this institution on a footing with the other creditors of a bankrupt, admitting them all to a rateable distribution.

The objection that a Bankrupt law would enable fraudulent debtors to set their creditors at defiance, seems to me to be singularly inappropriate. That is the consequence of the actual state of things—a consequence only to be averted by the provisions of this bill. Until you can get a judgment against your debtor, except where the process of attachment is used, his property is at his disposal, and he wastes it as he thinks proper, either in desperate adventures, or in the indulgence of his own extravagance. He takes it from you to give it to another, and when he has done this, is entitled to the benefit of the insolvent laws of the several States, which have no inhibition against this preference of individual creditors, and which cannot prevent him from wasting his property, while he has the sole disposal of it. Under such laws, an insolvent may assign his effects to trustees, and may, indeed, set his creditors at defiance; while, under the operation of a Bankrupt law, it would be wrested from him and subjected to distribution, under the direction of the Commissioner and Assignees.

Still less liable is this bill to the objection so earnestly dwelt upon, that it will apply the axe to the root of the freehold system of Virginia. The provisions, in relation to voluntary Bankruptcy, are too clear to admit of doubt on this subject. No freeholder can be subjected to the operation of this law, without his own free will and consent, unless, besides being a freeholder, he is also engaged in some species of traffic, designated in this bill. It merely authorizes the award of process, against a person not so engaged in traffic. If he comes in voluntarily, and assents, or being served with process, neglects to answer, from which his assent is inferred, he is then, and only then, subject to the provisions of the bill. There is, then, no ground of alarm, in relation to the freeholders of Virginia, or the citizens of any other State of the Union, who do not belong to those classes which are designated in the first section of the bill, since no others can be made subject to its operation, without their own free consent.

If this bill is not liable to any of these various objections, are there not considerations which forcibly appeal to the National Legislature for the enactment of such a law? I invite the Senate, in their consideration of this subject, to look back to the events of the last twenty years, to the vicissitudes to which commercial men have been subjected during that period. So far from considering this as a measure connected with the banking or paper system, and for that cause to be rejected, I would urge the ruinous effects of that system, as it has been conducted, as furnishing one of the very grounds on which individuals, who would become objects of this bill, would be entitled to claim its passage from you. Why is it that so many Banks exist throughout the United States? Is it not owing to the vacillating policy of this very Government? When the charter of the former Bank of the United States expired, if the question of power, in regard to the creation of banks, had been then considered and settled affirmatively, the banks of the different States, which have since inundated us with paper, would not have been established; but when the power of the General Government to create a bank was denied, by the refusal to renew the charter, and in the discussions which took place on that occasion, the individual States called into existence their respective institutions. When afterwards a change of opinion took place, in those who administered the Government, and the present Bank of the United States was established, its effect certainly was, to depreciate the paper, and deeply to affect the interests of the State banks, in which the merchants were principal stockholders. This, therefore, is one, and not the least of those calamities, with which they have had to contend during the last twenty years.

During that time, also, they have encountered the calamities of war, and the great mercantile crisis, which followed the restoration of peace, to all the nations of Europe. From being the carriers of the world, they have found the ocean, at one time, no longer accessible to their own peaceful enterprise. They have passed through a period of commercial calamity, to which neither here, nor in Europe, has there been found a parallel in history. Their claims are, therefore, presented to the Legislature of the Union at this moment, with strong and peculiar force.

On the subject of mercantile character, I am not disposed to pronounce the eulogy of my countrymen, though I also have some knowledge of that character. The pursuits of professional life have thrown me, for more than twenty years, into frequent intercourse with the mercantile community, and, like the Senator from Virginia, I too, am a planter. The result of this observation enables me to say, that the character of the American merchant is eminently distinguished by liberality and enterprise, by integrity and intelligence. The question whether a numerous class of our citizens, thus qualified to contribute to the public weal, with such claims on our sympathy, aye and on our justice too, shall be permited to exert the powers which God has given them, for their own and the public benefit, or whether they shall be doomed to wear out their lives "in servitude and chains," is then a solemn question, one which is entitled to the grave consideration of the Senate of the United States.

The passage of this bill is not called for, however, merely by debtors, by that portion of the community whose situation I have just described. The interest of the creditor equally demands it. It will enable him to arrest the debtor in that career of wasteful extravagance, or of wild adventure, to which he is tempted by the desperate condition of his affairs. Especially, it will be beneficial to the agriculturist, who is a creditor; what is his situation under existing laws, when he is the creditor of an insolvent merchant? Does he receive any portion of the effects? The planter who places the produce of his estate in the hands of a factor, is not generally a preferred creditor. He takes the distribution out of the remains, after such creditors shall have been satisfied. Therefore, to the agricultural interest this bill will be eminently beneficial, instead of being, as has been suggested, injurious in its operation.

In concluding these hasty remarks, I wish to present again to the Senate this idea. If it is believed that the time which yet remains of the session, is not sufficient for the ample discussion of this bill, we ask that such a disposition may be made of it, as shall be consistent with this belief; such a disposition as shall neither commit its opponents nor its advocates, but shall present it to the public, as a question left open for the consideration of a future Congress, and held up, in the mean time, as a pending measure, on which the judgment of the People can be deliberately exercised.

Mr. RANDOLPH rejoined in a speech of two hours.

Mr. BERRIEN then observing there was no quorum present, moved an adjournment.

Mr. RANDOLPH then withdrew his motion.

Mr. CHANDLER said they could debate without a quorum, though they could not vote without one.

The motion to adjourn was lost.

Mr. HAYNE rose in reply to Mr. RANDOLPH, and said that, notwithstanding the lateness of the hour, he felt himself called upon to repel the attacks made upon the bill, and to correct some of the errors into which the gen-

tleman from Virginia had fallen. He had intended to reply at large, (as it was his right, and perhaps his duty to do,) to the arguments of that gentleman, but he could not now consent to detain the Senate, and he relinquished the design, the more willingly, because the able arguments of his friend from Georgia (Mr. BERRIEN) had, in a great measure, superseded the necessity of his doing so. I promise, therefore, said Mr. H. to detain the Senate for but a few moments longer.

I must begin, Mr. President, by making my acknowledgments to the gentleman from Virginia for the very flattering terms in which he has been pleased to speak of my exertions on this occasion. Oppressed by the weight of the subject, and deeply conscious of my deficiencies, I will acknowledge that I have received some consolation from the assurance, coming both from my opponents and my supporters, that I have not altogether failed in fulfilling the arduous duties imposed on me by the committee. Sir, I have listened to the gentleman from Virginia with the greatest attention, often delighted by his eloquence, but not convinced by his argument. I will admit that my positions have been powerfully assailed, but they have certainly not been shaken; and, supported as they are, by the gentleman from Georgia, I may now consider them as impregnable. The gentleman from Virginia has done me the honor of considering me as *the father of this bill.* Sir, I have no just claim to that high distinction. In reporting this bill, I am merely the organ of a most respectable committee, composed of gentlemen of talents and experience far greater than mine. I do not say this to avoid any *responsibility* which may rest on those who have proposed this measure. I am never disposed, sir, to shrink from responsibility, and on this occasion am prepared to take my full share of it. But I am unwilling that the measure should be prejudiced by its being supposed to have proceeded from one of so little experience as myself, and having such small claims on the confidence of the public.

The gentleman from Virginia has told us that he considers the political principle involved in this bill as so completely heretical, that those who vote for it will, by that very act, have separated themselves from him "by a gulf, broad, deep, and impassable." Sir, it is not for me to dictate to that gentleman, either as to the principles he shall support, or the political associations he shall form. I know that on such subjects he always thinks and acts for himself. But, for my own part, I will declare that I know no rule of right but *the convictions of my own understanding,* and the *unbiassed dictates of my own heart.* To whatever road these may point, there will I travel. Nor shall I be deterred from following these faithful guides by any consequences whatsoever. Sir, on this subject permit me to say to the gentleman from Virginia, that I shall always be happy in my journey through life to meet with such a companion as himself, and to travel with him as far as possible, confident that while in his company I shall be enlivened by his wit, instructed by his knowledge, and, most of all, that I shall have a companion who will never desert me amidst the dangers of the way; but when we come to that *fork in the road,* (which he the other day described,) if the right hand path should lead to that gentleman's house, and the left to *my home,* and if my duties call me there, and the gentleman will not consent *to go with me,* there we must part—I hope it will be in peace—but I repeat *there we must part,* though it should be to meet no more in our weary pilgrimage through life.

The gentleman has told us he is opposed in principle to a bankrupt law—to the article in the Constitution which gives power to Congress to pass one—and to all the principles and provisions in this bill. He seems to consider the whole question as a political one, involving the disputed points which have arisen out of the questions of State sovereignty and constructive powers: nay, he goes so far as to say that he considers this bill as a test by which you may distinguish the disciples of Washington from those of the Jefferson school in politics. Sir, *this is not a political question at all;* the power to be exercised is *expressly given,* and is not *incidental*—intrenches in no respect on the powers reserved to the States, and it has nothing to do with the party questions which have divided the people of this country. I was not old enough to know any thing of the principles of what is called "the Washington school," while that great man was at the head of affairs. When these principles, however, (as claimed and practised by his successor,) were submitted to my choice, contrasted with those claimed by the followers of Thomas Jefferson, I embraced the latter without hesitation—became a zealous though humble disciple of the Jefferson school, and have maintained my political creed to the present hour. But, sir, a bankrupt law—a *mere regulation of the commercial rontracts of the country*—has nothing whatever to do with party principles; it has nothing to do with public men nor political measures.

The whole question, Mr. President, is perfectly simple, and may be confined in a nut-shell. The 8th sec. 1st art. of the Constitution declares that "Congress shall have power to establish uniform laws on the subject of bankruptcies throughout the United States." The power of passing wise and efficient laws on the subject, has been taken away from the States. So the Supreme Court of the United States have *expressly decided.* The laws of Louisiana, on this subject, have been suspended, and those of New York and other States annulled. From these causes the whole commercial community now are suffering incalculable evils, and the question simply is, shall Congress exert their power to remedy these evils? The power which the States formerly possessed and exerted has been expressly taken away from them and given to you. It is not in your power to restore it, and you are called upon to say whether, by refusing to act, you will make those evils perpetual, the magnitude of which I have already displayed. Sir, in my view of the subject, the States have a right to demand of you the exercise of this power, and the whole community, now suffering from your neglect of duty, have a right to insist on your affording them relief. Sir, I suspect that the true difference between the gentleman of Virginia and myself, consists in our different feelings towards this Constitution. I fear the gentleman does not entertain for this instrument the reverence that I do. The gentleman considers that the Constitution itself trenches on State rights. But, sir, I was brought up to revere it as the highest effort of human wisdom.

I am not one of those, Mr. President, who believe that the rights of the States were sacrificed by the adoption of this Constitution, nor that the exercise of the powers expresly delegated, in proper cases, can be injurious to the rights and interests of the States. This very clause relative to bankruptcy, I believe to be a wise provision, and I also believe that the occasion exists for its beneficial exercise. The gentleman from Virginia, perhaps, differs from me in all this, and neither of us, I know, will yield his opinion to the other. The gentleman from Virginia has fallen into very great mistakes as to the provisions of this bill—mistakes into which he never could have fallen, if he had only consented *to read it* He tells you that he has looked at but two sections in this whole bill of "seventy-eight pages and ninety-three sections," and even these he has certainly not made himself acquainted with, for I shall shew that he has altogether mistaken the meaning. Sir, without putting my judgment in comparison with that of the gentleman of Virginia, perhaps it may not be considered presumptuous in me to suppose that I may possibly be better acquainted with this bill, over which I have pored for days and weeks, by night and by day, than the gentleman of Virginia, who

assures us that *he has not even read it*—no, not even two short sections of it. The gentleman has protested against *the power granted to creditors*, under this bill, to make farmers and planters bankrupt: he has invoked the agricultural interest to rally in defence of their dearest rights: he has called upon them to resist, "even unto the death," *being dragg'd* into the Courts of the United States *against their consent*, and having their castles invaded by the *domiciliary visits* of a host of commissioners and other instruments of this detestable system, and has concluded by declaring, that "he will resist, by force of arms, all such attempts upon his rights and liberties." Now, Mr. President, if there was one word of all this in the bill—if it proposed to make the agriculturists of this country liable to a *compulsory system*, I would give it up at once. But let me assure the gentleman from Virginia, that though this bill should become a law to-morrow, he will be as free from any possible molestation in his castle as he is now: and if any officer created by this bill shall venture to intrude upon his domain to make him a bankrupt, *without his own request*, he has my free consent to give him "a warm reception"—to receive him with that very gun which, he tells us, "chambers eleven buck shot," and to make him pay dearly for his violation of the law and the Constitution. Mr. President, no man but a trader is subject to the compulsory system of bankruptcy provided by this bill—indeed, the whole system is designed only for mercantile men. After the system was thus arranged in this House some five or six years ago, the gentleman, who felt a peculiar interest in the agriculturists of the country, proposed, as *a privilege to them*, that they should be suffered to become bankrupts, should they at any time desire to do so. It was claimed as a privilege, and demanded on the score of justice, and the system of *voluntary bankruptcy* was thus introduced. The last section of this bill, which is an exact copy of the clause proposed in the Senate in 1820, by the gentleman from Maine, gives farmers and others not traders, the privilege of being made bankrupts on the application of their creditors, *and with their own consent*. If it is objected that the wilful refusal of such a person to attend after being notified, is by this clause construed into consent, I answer we will have no objection to require the consent to be as formal as any gentleman may choose to make it; nay, it it shall be, if they please, *by deed*, duly signed, sealed, proved, and recorded. The consent of the farmer, planter, or mechanic, is intended to be the foundation of the whole proceeding; and, I repeat, this provision is not wanted by the traders. We do not desire it, but will yield to it. Can farmers or planters, therefore, be molested by their creditors under this bill? Not at all. Are they to be made bankrupts against their consent? No such thing. But if they wish it, if they ask it, then they may, by the same consent of creditors which is required in other cases, obtain the benefits of the bankrupt system.

The gentleman from Virginia tells us that this bill originates with the *merchants*; that it is intended to bolster up the *paper system*, and to give privileges to the *banks*. Sir, he is wholly mistaken in every particular: this bill has not been prepared by merchants, nor is it brought forward by them. For my own part, it is my good or ill fortune to have no concern whatever in mercantile transactions. I do not own a cent of stock in any bank, nor have I a father, brother, or relation concerned in trade. Like the gentleman from Virginia, I am, and have been for several years, *a planter and a slave holder*. I am embarked in the same bottom with the gentleman, and will stick to the ship as long as any man. Sir, there is another point in which I resemble that gentleman: like him, I have "discovered the *philosopher's stone*," which, he assures us, consists "in never dealing on credit"—"in paying for your wine before you drink it." Neither the gentleman nor myself, therefore, can ever become bankrupts—*we* do not want this law. But there is one point in which we differ widely: I have witnessed and have felt the evils under which the *commercial world* is suffering for want of a bankrupt system: the gentleman has neither seen nor felt them. The gentleman asks why the banks are not made bankrupts under this bill, and says, if we will devise a system to prevent the frauds practised by the banks, he will vote for it. Then, sir, I will have the gentleman's vote yet, and for this very bill too. If banks are determined to be fraudulent, the existing laws give them the means of effecting their object. They can give a fictitious credit to failing men, and then draw the whole estate to themselves. This bill is designed to prevent *that*, and to introduce perfect equality. As to making the banks bankrupts, I see no objection to it, except where charters have been granted by the United States or the States. In these cases their duties and liabilities are prescribed by the charter, and it is to be feared that the *sovereign States* will not submit to any invasion of what they may consider their right to regulate their own corporations in their own way.

The gentleman from Virginia, in the course of his remarks, in noticing the fact, that the clause in the Constitution relative to bankruptcy, was introduced by *John Rutledge*, (as chairman of a committee, to which it had been referred,) took occasion to express an opinion that it was designed by that great man for his own ease. Sir, this is altogether a mistake; I do not believe that Mr. Rutledge's circumstances were, at that time, embarrassed. If they were, can any one seriously believe that *he* could have been influenced by such a motive *on such an occasion?* or that that the committee and the Convention would have entered into his views, or sanctioned the proposition, except on general principles? The truth is, sir, that John Rutledge occupied a position in his native State which never could have made it necessary *for him* to seek relief from pecuniary embarrassments. In the worst condition of his fortunes, such was the gratitude for his services, and the reverence for his character, that he stood in the midst of his fellow citizens as a father surrounded by affectionate and dutiful children. He never needed any protection beyond that which was found in their gratitude and affection. Sir, I have detained the Senate too long: I must leave the other observations of the Senator from Virginia without a comment, merely remarking that this bill is not designed (as he imagines) to "promote frauds," but to *prevent them*; not "to give privileges to the banks," but *to put them on an equality with other creditors*; not to extend "the paper system," but to *limit and restrain it*; that the debtors it proposes to relieve are the *unfortunate*, not "the fraudulent;" that its views are not confined to debtors, but that it looks steadily to *securing the just rights of creditors*; in short, that it is the great object of the bill, without interfering with any of the rights of the States, so to exert the Constitutional powers of Congress on this subject, as to prevent frauds, secure justice, establish credit, and, as far as possible, to put the commerce and the commercial contracts of the country on a firm and solid basis. And now, Mr. President, having said thus much, I feel myself constrained to yield to the known wishes of the Senate in consenting that the further consideration of this question shall be postponed to the next session. In compliance with my earnest request, the Senate consented to take up this bill at a period of the session when there was but little hope of its being finally disposed of, on a pledge on my part that I would consent to lay it on the table the moment it was discovered that its discussion would occupy more time than the Senate can now afford to bestow upon it. This pledge I find myself called upon to redeem. A week has elapsed since the bill was taken up, and we have not got beyond the first section without having taken a single vote on any of its principles, or one of its provi-

sions. The few days that remain of the session, if exclusively devoted to the subject, would probably not be sufficient to dispose of the bill even in the Senate, and there is no hope whatever of its being taken up in the other House. In compliance, therefore, with the wishes of the most zealous friends of the measure in both Houses, and in obedience to the instructions of the committee, I shall move that the bill be now laid on the table. In yielding to the necessity which forces us to abandon the hopes of obtaining a bankrupt law at this time, we confidently trust and believe that the subject will come up at an early period of the next session, under the most favorable auspices. With a bill already prepared, and to which the attention of Congress and the nation will have been called, it is to be hoped that the members will come here prepared to act upon it promptly and decisively. The arguments for and against this measure will go to the people, and an opportunity will be afforded for the clear and unequivocal expression of public opinion. The Representatives will assemble, bringing with them the feelings and wishes of their constituents; and *should public opinion sanction the measure*, another year will assuredly not elapse without our witnessing the operation of a uniform system of bankruptcy throughout the United States.

Mr. HAYNE concluded by moving that the bill be now laid upon the table; which motion was agreed to unanimously.

And the Senate then adjourned.

FRIDAY, MAY 5, 1826.

The Senate took up the bill supplementary to "An act further to establish the compensation of officers of the customs, and to alter certain collection districts, and for other purposes." [This bill allows, in lieu of the commissions allowed by law, to the Collector of the District of Baltimore, one-fourth of one per cent.; to the Collector of Norfolk and Portsmouth, two per cent.; of Savannah, one and a half; of Middletown, two and a half; on all moneys by them received on account of duties and tonnage of vessels; $500 salary to the Naval Officers and Surveyors of the Districts of Portsmouth, Norfolk and Portsmouth, and Savannah, in addition to their emoluments, but in lieu of any salaries now allowed by law. The salary allowed the Collector of Wilmington is abolished; and a Surveyor is to be appointed for the District of Bath, with a salary of $250, in addition to his other emoluments.]

Mr. SMITH explained the different items in the bill.

Mr. BELL then moved to increase the emoluments of the Collector of the District of Salem and Beverly (General Miller) to one per cent.

The motion was supported by Messrs. BELL, WOODBURY, and HARRISON, and opposed by Messrs. FINDLAY and BENTON, on the ground of the compensation being already sufficient.

Mr. BENTON said, there was one proposition in this bill which astonished him—the proposed increase of the emoluments of the Collector at Norfolk. The revenue arising from the Port of Norfolk to the United States was $60,000, and there were forty-one officers for collecting it, and $16,000 were paid for this purpose; and at the very time when he was expecting a proposition to reduce this establishment to six or seven, here was a proposition to increase their emoluments. Mr. B. said it was in Republics as it was in Monarchies, it was almost impossible to reduce the expenditure, to reduce patronage. When he introduced this sentiment in the report he had yesterday made, little did he expect that, within twenty-four hours after, such a proof of its truth would have been exhibited on this floor as had been shown in this bill.

Messrs. SMITH, HOLMES, LLOYD, and TAZEWELL, severally spoke in reply, urging that the officers employed at Norfolk were absolutely necessary for the collection and protection of the revenue; that the emoluments of the collector arose from his commission and fees of office, which came from the pockets of individuals, and not out of the public Treasury, and that the inferior officers were paid by him out of those emoluments. If these officers were reduced, smuggling would increase to an enormous extent, and it was an act of economy to retain them. Mr. TAZEWELL allowed the argument of the gentleman from Missouri to be fair when it was directed to any particular case or office in the country, to show what patronage the Government possessed in that particular place, or what patronage was annexed to that particular office; but, directed to the subject of compensation, it was not fair to say that the officers who were really necessary for the collection of the revenue at Norfolk, should not be compensated as they deserved.

Mr. LLOYD then moved an amendment to the amendment of Mr. BELL, proposing to allow the Deputy Collector of the port of Boston and Charlestown, ——— dollars per annum. Mr. M. said this was one of the most responsible and laborious offices in the country; sometimes fifty persons were pressing on him at a time—he had the charge of all the cash going through the Custom House, amounting to five millions a year; and the highest eulogy he could pass on that gentleman would be to state that, during the last twenty-two months, during which time ten millions of the public money had passed through his hands, not one cent had been lost, owing to his vigilance and integrity. Mr. L. said his character would rise superior when compared with that of any officer in a similar station in the country.

Mr. MACON moved to lay the bill on the table. When the country was in a state of distress, which it was very probable would be increased, it was not the time to raise the salaries of these officers. The motion was lost—and then,

On motion of Mr. LLOYD, the bill was re-committed to the Committee on Finance, together with the proposed amendments, after Mr. BRANCH had suggested to the attention of the Committee the propriety of striking out the third section, which abolishes the salary of the Collector of the District of Wilmington.

The Senate then proceeded to consider the message from the House, requesting a conference on the disagreeing votes of the two Houses, on the amendment proposed by the Senate to the bill "further to extend the Judicial System of the United States."

And, on motion of Mr. WHITE, it was laid on the table.

The Senate then resumed the consideration of the bill to grant a certain quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois River with those of Lake Michigan.

Mr. KANE supported the bill at some length, explaining the present situation of the canal; the value it would be to the State, to the public domain in that quarter, &c. &c.

Messrs. MACON and CHANDLER offered a few remarks in opposition to the bill.

Mr. HOLMES then moved the following amendment:

"With the exception of twenty sections, contiguous to the said canal, to be designated by the Secretary of the Treasury, which shall be reserved for the use of the United States, and be disposed of as other public lands."

Mr. H. said, if this canal was to be for the benefit of the United States they might as well reserve a little of this land which was to be given to the State for three miles on each side of the canal. The bargain was all on one side, and it was only a very little that he asked to be reserved.

Mr. VAN BUREN moved to lay the bill on the table, which motion prevailed.

SATURDAY, MAY 6, 1826.

The bill "to authorize the Secretary of the Treasury to sell a house and lot in New Orleans, and a store house at the quarantine ground in Louisiana," was then taken up. And the question being on the amendment proposed by the Committee on Public Lands, "if the same, in his opinion, shall be deemed expedient"—

Mr. ROWAN observed that it was for the Senate to judge of the propriety of the sale; either they were convinced of the propriety of disposing of this property, or they were not. If they were, and passed this law, they ought not to permit the Secretary of the Treasury to have the power of repealing it at his discretion; Mr. R. therefore, proposed to modify the amendment so that it should read, "*whenever* the same, in his opinion," &c. which was agreed to, and the bill was ordered to a third reading.

MONDAY, MAY 8, 1826.

Agreeably to notice, Mr. NOBLE asked leave to bring in the following bill:

"*Be it enacted*, &c. That, so soon as the road shall be located through the State of Indiana, as declared by the act of Congress, entitled "An act to authorize the appointment of commissioners to lay out the road therein mentioned," approved 15th May, 1820, and the act, entitled "An act for the continuation of the Cumberland Road," approved 3d of March, 1825, the President of the United States shall cause the said road to be opened eighty feet wide, by cutting off the timber, digging out the roots, and removing them from the road, preparatory to making a turnpike road, commencing at Indianapolis, cutting and digging, as aforesaid, to the Eastern and Western boundary of the said State.

Sec. 2. *And be it further enacted*, That the sum of fifty thousand dollars, of moneys not otherwise appropriated, be, and the same is hereby, appropriated for the purpose of opening and making the road, as mentioned in the first section of this act; which said sum of fifty thousand dollars, shall be replaced out of the fund reserved for laying out and making roads, under the direction of Congress, by the several acts passed for the admission of the States of Ohio, Indiana, Illinois, and Missouri, into the Union, on an equal footing with the original States.

Sec. 3. *And be it further enacted*, That, for the accomplishment of this object, the President shall appoint some fit person, as the superintendent of said road, whose duty it shall be, under the direction of the President, to divide the same into sections of not more than ten miles each; to contract for, and personally superintend and make the said road, as before mentioned, as well as to receive, disburse, and faithfully account with the Treasury for, all sums of moneys by him received in virtue of this act. That the said superintendent, before he enters upon the discharge of the duties enjoined by this act, shall execute a bond to the United States, with security, to be approved of by the Secretary of the Treasury, conditioned for the faithful discharge of his duties prescribed by this act. That he shall hold his office during the pleasure of the President, and shall receive at the rate of fifteen hundred dollars per annum for his services, during the time he may be employed in the discharge of the duties required by this act."

Mr. NOBLE said, he would detain the Senate but a few minutes, in explaining the details of the bill, and the reasons which induced him to ask leave to introduce it.

The act to authorize the appointment of commissioners to lay out the road therein mentioned, contemplated that the United States' lands might become more valuable. That is the object of the bill he now offered; also, to give to the State of Indiana that which she expects and claims as her right, under the proposition and stipulation entered into with her by the United States, pledging two per cent. arising from the sale of the public lands, for the purpose of making roads leading to the said State, under the direction of Congress. The act he referred to did not contemplate the road to pass by the seats of Government in Ohio, Indiana, Illinois, and to the seat of Government in Missouri.

The commissioners appointed to locate the road, reported to the War Department that the distance would only be increased a little upwards of two miles, and on better ground, less expensive to the United States, to make Columbus, in Ohio, Indianapolis, in Indiana, points. From the date of the act, which was in 1820, although the Senators from the States of Ohio, Indiana, Illinois, and Missouri, as well as the Representatives, have been engaged every session of Congress, to obtain the passage of a law to make the seats of Governments points, in the three first named States, and to extend it to the latter; though a bill for the purpose did pass the Senate, we were delayed with our road, even as to its location, till the passage of the act of March 3, 1825. The road will pass through counties in the State, and in many of them the United States own the greater part of the land. The moment the road is located, and unequivocally, the moment when the opening commences, not one single tract of land bordering on the road, will remain long the property of the United States, but will be purchased by actual settlers, in which there will be great competition.

Mr. N. said he would have introduced the bill early in the session, if he could have done so with propriety; but he wanted important information, which he now had. The Commisssioner under the act last named, completed the location of the road during the last year, as far as Columbus, and reported, during the present session, to the Secretary of War, and was to visit this city for the purpose of receiving his instructions, as to the further location. Within the last two weeks he arrived here—received his instructions from the Secretary of War, and recently left the city to visit his family at or near Union Town, Pennsylvania, and will proceed forthwith, to complete the location of the road. Mr. N. said he had seen his instructions; they were promptly given to him by the Secretary of War, and, for the want of knowledge as to the nature and extent of the instructions, and the probable time that the location would be completed in Indiana, he had been compelled to delay the introduction of the bill till the present. He was now satisfied that the location would be early completed in Indiana, during the present year, and he did not wish to lose sight of the interest of the People of Indiana longer. He would have been willing to have included Illinois, as he is willing to extend to her and Missouri that which he asks for Indiana, but for the fact, that the location cannot be completed during the present year in those States. Ohio is now at work, not merely cutting off the timber, and digging up the roots, preparatory to making a turnpike road, but actually making it; he rejoiced to see it, and let Indiana commence, at least, to make preparation. Mr. N. said, one more suggestion, and he would sit down: we must have the road, and when he said so, it was in respectful terms to the Senate, and hoped it would be granted. Nine months in the year was the road opened; the great Western mail could be transported through the State and States in stages; and our commercial men, and all other persons, would have the advantage of speedy conveyances, as well as our fellow citizens on this side of the mountains, to the commercial cities, passing by many important places. The first section of the bill provides, that, so soon as the location is completed, the President shall cause the road to be opened. The second proposes

the means, and the third declares that a superintendent shall be appointed, to aid in accomplishing the object. He hoped that leave would be granted, and the bill would take the usual course.

The leave was then given, and the bill was read the first time.

Mr. VAN BUREN, from the Committee on the Judiciary, to whom was referred the message from the House, requesting a conference on the subject of the Judiciary bill, made the following report:

"The Judiciary Committee, on the message from the House of Representatives, proposing a conference on the subject of the disagreeing votes of the two Houses, on the amendment proposed by the Senate to the bill, entitled 'An act further to amend the Judicial System of the United States,' report:

That, in the opinion of the committee, the condition of the question, and the circumstances of the case, render a concurrence in the proposed conference inexpedient. They will, in deference to the high source from which the invitation has proceeded, make a brief explanation of the reasons which have led to this conclusion. The amendment proposed by the Senate was freely discussed, and adopted with but four dissenting voices. Upon being advised of the disagreement of the House of Representatives, the question was distinctly presented to the Senate, whether it would *insist*, and ask a conference, or whether it would at once *adhere*, and thus, probably, although not necessarily, avoid one. Upon full discussion, and careful consideration of the subject, the Senate, with but twelve dissenting voices, decided to adhere, and thereby prevent the unprofitable formality of a conference, at this advanced period of the session. That decision was within the rules established for the government of the two Houses, consistent with usage, on other, and important occasions, (and it cannot be necessary to say) was made without the slightest disrespect to the House of Representatives. The committee believe that the same unanimity with which the question of adherence was originally determined in the Senate, still exists. The appointment of conferees would be a virtual waiver of the vote of adherence, or, if otherwise considered, would manifest a disposition to meet the conferees of the other House upon unequal terms. Assuming that the Senate is opposed to a waiver of the vote of adherence; and believing that the appointment of conferees, without it, might justly be considered objectionable by the House of Representatives, the committee recommend the adoption of the following resolution;

Resolved, That, in the opinion of the Senate, no good will result from a conference upon the subject of the disagreeing votes of the two Houses, on the amendment proposed by the Senate to the bill, entitled "An act further to amend the Judicial System of the United States," and that the Senate does, therefore, decline the same; and, further, that a copy of the annexed report be sent to the House of Representatives, as explanatory of the views of the Senate."

The report was read, and ordered to be printed.

The Senate then took up the joint resolution to provide for the care and preservation of the Capitol and Capitol Square, in the City of Washington.

[This resolution proposes that the regulations of the Corporation of the City of Washington, for the preservation of the public peace, &c. be extended to the Capitol Square, and that the presiding officers of the two Houses should be authorized to appoint, annually, a Superintendent, &c.]

Mr. BELL moved to strike out that part which provides for the extension of the regulations of the Corporation; which was carried.

Some discussion ensued between Messrs. MACON, BELL, EATON, HARRISON, BRANCH, and KANE, as to the constitutionality of Congress appointing an officer who was not to be an officer of either House, but an officer of the Federal Government.

Mr. EATON moved to amend the resolution so as to leave the appointing power with the President; but,

On motion of Mr. HARRISON, the resolution was recommitted.

AMENDMENT TO THE CONSTITUTION.

The Senate then took up the resolution proposing an amendment to the Constitution of the United States, as it respects the election of President and Vice President of the United States.

Mr. DICKERSON said he did not rise to enter into an argument upon the resolution, but to offer an amendment. He believed that the plan of a second election by the People, as proposed in the resolution, was inexpedient and impracticable: that he could perceive no well grounded objection to the choice of electors provided they are chosen in single districts; that electors never have abused their power, nor could it be feared that they would; that the object to be gained by the change proposed was not such as to warrant an alteration of the Constitution; although he would have been satisfied with the mode proposed, if it had been originally adopted and found to be safe in practice; that the amendment he offered proposed to elect the President, in the last resort, by a joint ballot of the two Houses of Congress, voting per capita—a body which would be precisely analagous to the whole body of electors, should they be brought together; that the strong objection to a choice by the House of Representatives, voting by States, did not apply to a joint meeting of the two Houses; that there could be no danger in trusting them with this important duty.

Mr. D. then submitted the following amendment. His object was to have it printed, and then to move to lay it, with the resolution, on the table, for the present session:

"After the word *concurring*, in the third line, strike out the residue of the resolution, and insert—

"That the following amendment to the Constitution of the United States be proposed to the Legislatures of the several States; which, when ratified by the Legislatures of three-fourths of the States, shall be a part of the said Constitution:

"For the purpose of choosing Representatives in the Congress of the United States, each State shall, by its Legislature, be divided into a number of districts, equal to the number of Representatives to which such State may be entitled. These districts shall be formed of contiguous territory, and contain, as nearly as may be, an equal number of persons entitled by the Constitution to be represented. In each of these districts, the persons qualified to vote for the most numerous branch of the State Legislature, shall choose one Representative.

"For the purpose of choosing electors of President and Vice President of the United States, the persons qualified to vote for Representatives, in each district, shall choose one elector; and, at the same time, the two additional electors to which each State is entitled shall be chosen by the persons so qualified to vote, in such manner as the Legislature of the State shall direct.

"The electors, when convened on the day, and at the place prescribed by law for the purpose of voting for President and Vice President, shall have power, in case any of them shall fail to attend before noon of such day, to choose an Elector, or Electors, in place of him or them so failing to attend.

"The division of States into districts, as hereby provided for, shall take place immediately after this amendment shall have been adopted, and immediately after every future census and apportionment of Representatives under the same. And such districts shall not be altered until another census shall have been taken, and an ap-

portionment of Representatives under it shall have been made.

"When the lists of all persons voted for as President and Vice President, and the number of votes for each, shall have been signed, certified, and transmitted, sealed, to the Seat of Government, as required by the Constitution, the Senate and House of Representatives shall form a joint meeting, in which the President of the Senate shall preside, who shall open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and, if no person have such majority, then, from the highest numbers, not exceeding three, on the list of those voted for as President, the joint meeting, shall immediately, by ballot, choose the President. A majority of the votes of all the members present shall be necessary to a choice on the first ballot; after which a plurality of votes only shall be necessary to a choice. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed; if no person have such majority, then he shall be chosen by the Senate, as directed by the Constitution."

Mr. BENTON said it was very well understood throughout the Senate, that this resolution was not to be acted on during the present session. The reason would be apparent to every one. The resolution was reported in the Senate at an early day, and was put off from day to day, and from week to week, upon the request of gentlemen, until the same subject had been taken up and discussed in the other branch of the Legislature. It was not, Mr. B. said, deemed advisable to carry on a duplicate debate at the same time; and the issue of the discussion in the House had been such, that it was not deemed advisable to take any further step to get a definitive vote on it this session; but it was deemed advisable to keep the subject in a situation for being acted upon at the earliest possible day at the next session, earnestly and vigorously, and to have it decided one way or the other. It was with a view to this resolution, and some other subjects of importance, which it was probable would not be finished at this session, that he had conceived the idea of continuing over all the subjects remaining for discussion to the next session, that they might then be taken up, without loss of time. Mr. B. said, should not this rule pass, he pledged himself to the Senate, and to the American People, that he would again move the reference of the subject to a committee, and have it disposed of as early as possible. It was here, Mr. B. said, as it was with their great prototype the British Parliament—the greatest difficulty in getting any thing done, was to find the right time for doing it. When the great question of reforming the British House of Commons was brought up, it was agreed all round that the representation ought to be reformed, but the difficulty was as to the right time of accomplishing it. During the American war, it was the wrong time, and after the French Revolution broke out, it was the wrong time still. This resolution, Mr. B. said, was introduced two years ago, and it was then deemed an improper time, because the Presidential Election would soon come on. It was again introduced soon after, and then it was an improper time—it was too soon after the election, and it might have a bearing on the events of that election, and be considered as personally offensive; therefore, as it was impossible to find a time which should be free from objection, Mr. B. said he would pledge himself to the Senate and to the American People, to continue the subject with all the energy he was master of, till he brought it to a conclusion. He would endeavor to get a decisive vote on the principle which the resolution contained; he did not do it from a spirit of reckless perseverance, but from a conviction that the principle itself was correct, and one which was approved by an immense majority of the American People, so far as he had any opportunity of learning their sentiments, and if they could get a chance of voting on it, it was one which they would carry. Mr. B. concluded by saying, that if he could not get it before the People, upon a proposition submitted by Congress, he would transfer his exertions to a different theatre—to the theatre of the People themselves, and urge the call of a national convention.

Mr. VAN BUREN said, that, being a member of the committee by whom the resolution, under consideration, had been reported, he would add a few words to the observations made by the Chairman. He concurred in the propriety of the disposition of the resolution proposed by the Chairman. The advanced period of the session, would alone furnish a sufficient inducement for the adoption of that course, but he had further reasons. The progress which had been made in the subject in the other House, was well known to the Senate. The result of its deliberation satisfied him, that, if there was time sufficient to act definitively upon the subject here, nothing efficient could be done at the present session. He would if his life was spared, unite his exertions with those of the Chairman, to press the matter to a favorable conclusion early in the next session; and, notwithstanding that the question would have to be decided by the same House of Representatives, he would do so in full confidence, that their labors would be crowned with complete success. He would briefly state his reasons for that belief. He was satisfied that there was no one point on which the People of the United States were more perfectly united, than upon the propriety, not to say, indispensable necessity, of taking the election of President from the House of Representatives. The experience under the Constitution, as it stands, as well formerly as recently, had produced that impression, and he considered the vote of the House of Representatives as the strongest manifestion of its existence. In that respect, it would be of value, but beyond that, it could produce no results. Although it could, he thought, be satisfactory shewn, that the small States would, if nothing more was done, be better off than they are under the Constitution, as it stands, still all experience has shewn that they do not think so. There is no reason to believe that they will ever consent to give up the power they now have without an equivalent, without a resort to the principle upon which the Constitution was founded—that of compromise. The equivalent with which they would be satisfied, with which they ought to be satisfied, is the breaking up of the consolidated strength of the large States, by the establishment of the district system. It is in vain, therefore, for gentlemen to be, or to affect to be, in favor of taking the election from the House, unless they are willing to do that also, without which the leading object cannot be effected—without that, all is empty profession. We must, for the purpose of the election, make all the States of the same size, which would be the effect of the district system, and then, and then only, can we give the election of President and Vice President to the People, preserve the purity of the system, and, in reality, restore the balance of power among the States to the footing on which it stood at the adoption of the Constitution. Believing that the desire to take the election from the House had sunk deep in the public mind—knowing the all-powerful agency which public sentiment fortunately had in our Government—he had the strongest hopes that the correct sentiment which now happily existed upon this one point would be able to carry the other with it. He hoped, and believed, that the People of the United States would, in the coming recess, in all constitutional forms, express their opinion upon this subject. If they did so, and if they really desire the election of their Chief Magistrate, and were true to themselves, another session would not pass by without an opportunity being

furnished to the States to express their opinion upon this most interesting subject; a subject with which, in his opinion, the future welfare of the country, and the liberties of its citizens, were more closely connected than any other which had been agitated in Congress since the adoption of the Constitution.

Mr. JOHNSON, of Kentucky, said he had never seen the time, since he had read the Federal Constitution, but what it had been prudent, without respect to time, place, or person, to vote for the amendment to this part of the Constitution of the United States; and he would pledge himself to himself, and he would pledge himself to the gentlemen who had spoken, if he thought they would pledge themselves to him on another occasion, to go with them at the next session. He referred to the subject of abolition of imprisonment for debt, which he wished to go *pari passu* with these other great measures. There were three things, Mr. J. said, which were necessary to perpetuate this Government: To give to the People—whether in the district or general ticket—to give to the People the selection of their rulers; and, when the People proved recreant, and could not govern themselves at the polls, without the intervention of a third party, he said, let the Government go down. Another subject was, the abolition of imprisonment for debt. He wished that the liberty of the American citizen, as regarded his personal safety, should be more sacred than that of the Roman citizen. The third of these important subjects was, the revival of, what he knew never would be revived, the old compensation law. He wished now to inquire, whether it would be in order (supposing the rule lately proposed by the gentleman from Missouri not to pass) to refer this subject to a certain day, say, the second Monday of December next? because he wished to call up the subject of imprisonment for debt, and refer it to a certain day at the next session of Congress.

The CHAIR said, according to the present state of the rules, such a motion would not be in order.

Mr. MACON said there was no time now for the discussion of this question. He never wished great questions such as this, to be taken up when the members were exhausted; but he was very willing to take it up at the first day of the next session, and go on with it till it was decided. Mr. M. said he had been uniformly in favor of the district system, but on such a mighty question—and this was one that increased daily in magnitude—it could hardly be expected, that in a Government like this, it could be done at once. The gentleman from Missouri might satisfy himself that this question must be decided by Congress some time or other. The cases he had cited in England were certainly true, but the comparison did not hold with the character of the two Governments, and the power of the People. In England the right of voting was limited to a few, and there were many boroughs which had but a single vote. Here, nothing of that kind existed; here, every body votes. No person has the power of sending a member here; therefore, the difficulties were not, he thought, so great in this country as in England. The idea of reform is gone in England at present. Though it was known in the earlier part of the Revolutionary war, such is the character of man, such his unwillingness to part with it, that it was not till the year 1781 that the Articles of Confederation were signed; there was no National Government till then. The moment peace came—indeed before the peace took place—every man in the United States was convinced that the Federal Government could not answer the purpose for which it was intended. It was then the year 1787, before an attempt was made to revise this Government. Still the opinion had progressed that the Federal Government must be altered. Mr. M. said, when they looked back and saw how things progressed, the gentleman should not despair of his measure, but give time for this principle to progress through this extensive country. He did not know whether he could go so far with the gentleman from Kentucky as that gentleman wished. If the thing was right, all that was necessary was perseverance. If the People were capable of self-government, we ought never to despair of carrying measures that were calculated to promote their happiness. No great events were ever brought about but by perseverance. So in these amendments, we ought not to despair, but to persevere.

There seemed to be, Mr M. said, an opinion prevalent, that the Constitution was too sacred to be touched. Certainly it ought not to be amended on slight occasions. The first Congress that met under the Federal Government were so convinced that it wanted amendment that they proposed several. The faults in the Constitution, said Mr. M. will never be discovered till you go into action; you must try it by experiment, and if, on experiment, it does not answer the purpose, then propose to amend it. I am against any amendment on mere theory; but, when an inconvenience is found to result from practice, it is the duty of Congress to provide that remedy which experience has demonstrated; and that is the case in the present instance. The inconvenience has been felt, and under this view of the thing, there is nothing to be alarmed at. Look back to the beginning of this Government, and see how many scenes we have passed through. Only leave the People alone to their good sense, and they will set the thing right themselves. This Government is founded on the principle that the People have sense enough to govern themselves; and if passion should sometimes show itself, it will burn out, and reason will resume her throne, and the thing will come right. It is true there are times that are more favorable than others for getting any thing great done; and next session, or the session after that, will be as favorable a time for getting this done as any that can happen. I mention this because I do not know that I shall be here two years hence. Elections will take place, a new third will come into this body, members will be fresh, and this is a great object which will be agitated in all the elections. I have no objection to laying the resolution on the table.

Mr. BRANCH said, believing as he did that the perpetuation of the liberties of this People depended on the adoption of the amendment proposed; believing that it depended on bestowing on the People the right of choosing their Chief Magistrate; believing, further, that it could not be maintained without yielding an equivalent to the small States; he rose for the purpose of returning his thanks to the gentleman from New York (Mr. VAN BUREN) for the magnanimity he had displayed on the present occasion, as he had done on all others. He said his magnanimity—for having expressed to the Senate his willingness to yield up the present system to adopt the district system, provided that he could get the amendment that was proposed. He trusted the influence of this example would not be lost on the large States of the Union, and that Virginia would follow the example of New York, and display that liberality which was becoming her character.

On motion of Mr. BENTON, the resolution was then laid on the table; and, Mr. DICKERSON'S amendment was ordered to be printed.

NAVAL ACADEMY.

The Senate then took up the bill "for the establishment of a naval academy."

Mr. BRANCH said the session was rapidly drawing to a close, and they ought first to bestow their attention on such subjects as were decidedly of importance. The benefits that would result from the passage of this bill would be at least problematical; nor could its friends expect to carry it through this session. Therefore, to try the sense

of the Senate, he moved that the bill be indefinitely postponed.

Mr. KANE said this was a subject of importance, and would come up again at an early period of the ensuing session. There was one gentleman of the committee who had reported the bill, who had matured his sentiments on the subject, and he thought it would be desirable they should be communicated to the public. He therefore moved an adjournment, and, soon after, the Senate adjourned.

TUESDAY, MAY 9, 1826.

The Senate again resumed the consideration of the bill "to grant a certain quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of Lake Michigan;" and, the question being on Mr. HOLMES' proposed amendment, to reserve twenty sections on each side of the canal, for the use of the United States, it was carried; and

Mr. KANE then moved to strike out all after the enacting clause, and to insert a clause reserving to the United States —— sections, on certain conditions.

The amendment was ordered to be printed, and the bill was laid on the table.

The Senate next took up the bill for the relief of Don Carlos Dehault Delassus, (authorizing the payment of one thousand three hundred dollars, with interest from September, 1810; also, six thousand dollars, with interest; being for money taken from him at the capture of Baton Rouge, in West Florida, on the day and year before mentioned.)

The facts of the case were stated by Messrs. BENTON and RUGGLES, and some discussion ensued between Messrs. CHANDLER, BENTON, EATON, RUGGLES, WHITE, JOHNSTON, of Lou. JOHNSON, of Ky. and HARRISON, as to the propriety of refunding the six thousand dollars to Col. Delassus, as it was the property of the Government of Spain. It was urged, on the one hand, that, if there was any claimant, which was denied, all claim to indemnity having been relinquished by treaty, it was the King of Spain, on the other hand, it was alleged, that it was incumbent on this Government to place him, as nearly as possible, in the situation he was in before the attack took place, at which time he was the officer with whom the money was deposited, and that the treaty alluded to would not embrace this case.

The bill was finally laid on the table for the present.

The following message was received from the President of the United States, by Mr. J. Adams, jun.:

To the Senate of the United States:

WASHINGTON, 9th MAY, 1826.

In compliance with a resolution of the Senate, of the 28th ult. I transmit herewith a report from the Secretary of War, with a copy of the proceedings of the recent Court Martial, for the trial of Col. Talbot Chambers, and other documents requested by the resolution, or relating to the subject of it.

JOHN QUINCY ADAMS.

Referred to the Committee on Military Affairs.

WEDNESDAY, MAY 10, 1826.

The Senate proceeded to the consideration of the following resolution, submitted by Mr. ROWAN:

Resolved, That the rules of court, adopted by the Circuit and District Courts of Kentucky, which have been read on the nomination of Robert Trimble, be referred to the Committee on the Judiciary, with instructions to consider and report upon what authority they were adopted.

Mr. NOBLE said it seemed so much like personality, he could not vote for it.

Mr. JOHNSON, of Kentucky, denied that the resolution was intended to operate personally on the Judge.

Mr. HOLMES suggested the propriety of modifying it, so as to make it general, and moved to strike out the words, "which have been read on the nomination of Robert Trimble."

Mr. ROWAN accepted the modification. As the rules had not been produced, it occurred to him, in writing the resolution, it might be necessary to notice how the rules got before the House. The name of Judge Trimble had only been introduced by way of reference.

Mr. NOBLE moved to amend the resolution, so as to make it applicable to all the States.

Mr. VAN BUREN said, that this subject had some time since been referred to the Committee on the Judiciary, by a resolution of a gentleman from Illinois, (Mr. KANE.) The Committee had considered the subject attentively, and it was probable they would report to-morrow. It would be better, therefore, to lay the resolution on the table, until the report should be made, and then they would be able to determine whether there was any necessity for it. With the amendment proposed by the gentleman from Indiana, (Mr. NOBLE,) it would be very extensive. Where were the Committee to get the rules of the other States? Those adopted in Kentucky were before the Senate. No inconvenience could result from laying the resolution on the table until to-morrow, and he therefore made that motion; which prevailed; and

The resolution was laid on the table accordingly.

ILLINOIS CANAL.

The Senate then resumed the consideration of the bill to grant a certain quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of Lake Michigan; and the question being on the amendment proposed by Mr. KANE, to strike out all after the enacting clause, and to insert, "a quantity equal to three sections, on each side of the canal, from one end to the other, reserving to the United States —— sections on each side of the same," &c.

Mr. CHANDLER entered into a calculation to prove that the value of the land, at the minimum price, would be between five and six millions of dollars. He therefore moved to fill the blank with 900, so as to reserve half the land for the United States.

Mr. HENDRICKS contended that this would amount to more than the whole grant.

Mr. CHANDLER then moved to insert 150; which was lost.

Mr. KANE moved to insert 10; which was carried, and then the question was taken on engrossing the bill for a third reading, and decided in the negative, as follows:

YEAS.—Messrs. Barton, Benton, Bouligny, Chase, Edwards, Harrison, Hendricks, Johnston, of Lou. Kane, Marks, Noble, Reed, Robbins, Ruggles, Seymour, Smith, Thomas—17.

NAYS.—Messrs. Berrien, Branch, Chandler, Clayton, Dickerson, Findlay, Harper, Hayne, King, Lloyd, Rowan, Sanford, Tazewell, Van Buren, White, Williams, Woodbury—17.

The votes being equally divided, the Vice President voted in the negative, and the bill was rejected.

Mr. WHITE, from the Committee on Foreign Relations, made an unfavorable report on the case of sundry inhabitants of Philadelphia and Baltimore, praying remuneration for claims on the Spanish Government.

JUDICIAL SYSTEM.

On motion of Mr. VAN BUREN, the Senate proceeded to consider the report of the Committee on the Judiciary relative to the conference asked by the House of Representatives, on the subject of the Judiciary Bill.

Mr. VAN BUREN said he would detain the Senate but a few moments. The report spoke the views of the committee; and, in deference to the House of Representatives, the resolution provided for its transmission to that House. The opinion of the committee was founded on two assumptions—first, that the appointment of Conferees on the part of the Senate would be a waiver of its vote of adherence; and secondly, that a large majority of the Senate are opposed to such waiver. Although the books of precedents do not say expressly that the appointment of conferees, on the part of the House *adhering*, in effect rescinds the vote of adherence, yet such is certainly the good sense of the case; and it appears that the other House have asked the conference under that view of the matter. Were it not so, the conferees would meet on unequal terms. Upon the other point, the members of the Senate will speak for themselves. If they have any thing to yield, they will, of course, vote against the resolution; if not, the meeting of the conferees would be an unavailing ceremony. Mr. VAN BUREN said, that he had understood that some objection had been made to the form of the amendment, so far as it relates to the residence of the Judges. By the first section of the bill, the appointment of three additional Justices of the Supreme Court is authorized, and they are placed, to all intents and purposes, on the same footing with the present Judges. In the amendment, they are described as Judges to be appointed for the three new circuits, and required to reside in their respective circuits. The bill from the House authorizes the President, in terms, to designate the circuits in which they are to serve; and the amendment does so by necessary implication. If the amendment of the Senate had been regarded as essentially objectionable, on that ground, it would have been in order for the House of Representatives to have amended the amendment; not having done so, he was satisfied that the objection was not regarded as entitled to as much weight as was by some supposed.

Fully satisfied that no good could be effected by a conference, he was opposed to it. He thought the danger of losing the bill would be increased by the measure. The bill was now in the other House. He could readily conceive that the members of that House, who were opposed to the amendment, might be disposed to send the bill here with a vote of adherence, in the hope that the Senate would yield, who would not vote to adhere if they knew that the success of their votes would certainly lose the bill. Convinced that the Senate would not recede, he thought it most advisable that the other House should act upon the bill with full knowledge upon the point.

Mr. VAN BUREN said, that the committee had thought proper to notice the idea that, in voting to adhere, in the first instance, the Senate had indicated a want of respect for the other House. They had done so, because they had seen, with surprize and regret, that such construction had elsewhere been put upon the act. Nothing, he was certain, was farther from the truth. The Senate is incapable of treating, otherwise than with perfect respect and decorum, any other branch of the Government, and least of all could they be wanting in this respect to the House of Representatives. The temperance, not to say forbearance, which the Senate has, on more than one occasion during the present session, evinced, ought, he thought, to have saved it from the injurious supposition, that such could have been its motive. It is true that, in some of the ancient books of precedents, in the English Parliament, it is so considered; but it is equally true, that the course now pursued, had been repeatedly pursued before, and had not heretofore received so unfavorable a construction. There is nothing in the nature of the act that calls for it. The committee had, however, thought it advisable to disclaim it, in behalf of the Senate. Mr. V. B. said, he would very much regret that the difference between the two Houses should cause the loss of the bill. He hoped that such would not be the case. But, if it should be otherwise—if the difference should prove irreconcileable, he saw no reason why the circumstance should occasion the least asperity or heartburnings between the two Houses. The question was one exclusively of a public character, totally disconnected, as far as he knew, from personal considerations of any description. If the two Houses viewed the public interest in different lights, it was their duty to adhere to the course which they respectively believed best calculated to promote it. Differences of that description were incident to all public proceedings, and the consequences, however much to be regretted, should be submitted to with dignity and moderation.

Mr. HARRISON said, he did not wish to renew the discussion on this subject, and therefore should content himself with asking for the yeas and nays on the question.

Mr. RUGGLES said that the course pursued by the Senate, on the present occasion, was not the usual one. What was the state of the facts? The House of Representatives had passed a bill which came up to the Senate, where it was amended and sent back to the House, who disagreed to it. It was returned to the Senate, and what was done? In the first instance, they had adhered, and had thus shut the door upon it. They were not willing to meet the House, and to tell them their reasons for having made this amendment. Perhaps they might know what had passed in this House, but the two branches of the Legislature were distinct and independent of each other. By voting to adhere, the Senate closed the door against all communication with the other House. That House had exhibited a degree of forbearance which was not known elsewhere. They had voted to insist, and they invited a conference on the disagreeing votes. Would the Senate let a Committee go to explain to a Committee of that House the reasons why they had voted as they had done; or would they at once shut the door against all conference? Mr. R. said he thought this was an unreasonable course to pursue, and one, which, whatever they might do now, they would not follow on any future occasion.

Mr. WHITE said, he had not wished to trouble the Senate with a single remark further on this subject; but he was unwilling that the belief should be entertained that he was capable, individually, or with others, of offering to any other department of the Government, any disrespect. When it was found that the House did not accede to the amendment made by the Senate to the bill, he was inclined to believe it would be better to insist on the amendment and to ask for a conference. Reflecting on the subject, he had come to this conclusion: that, if they did so, it would be taken as an intimation that a majority of the Senate were under a belief that, rather than lose this bill, they ought to yield some of the principles incorporated in the amendment. Being persuaded that this was not the sentiment of a majority of the Senate, and believing so himself, he thought it would be the most respectful course towards the other department of the Government, at once to manifest to them what was the temper and disposition of the Senate. So far from being disrespectful, it was acting candidly, fairly, and openly, to let them know at once, that acceding to a conference would only be loss of time. If we had gone into a conference, said Mr. W., it would have manifested a disposition that we were in a situation that we believed we were erroneous on one of the points, perhaps on both, and that we should retrace our steps, and take the bill as it came from the other House, entire, or with a qualified amendment. Being satisfied that this would not be done, and the session drawing to a close, I, said Mr. W., came to the conclusion, that the best way would be to take the sense of the Senate on the question of adherence; for, though not the usual course, it is not unprecedented. I still live and act

under the belief that candor, from one department of Government towards the other, at all times manifested, is the best way for us to keep up that confidence with them which we all wish to entitle ourselves to; and to hold out the appearance that we are willing to do that which we have come to the conclusion we will not do, is always disrespectful. I wish to be understood by all, that, though I vote in favor of adherence, there is nothing farther from me than to yield to that course, if it would render me justly liable to the objection, that I was treating disrespectfully the House of Representatatives or any member of that House. So far as it relates to the question which has been submitted, if it had been left to me individually, to have selected the course to have been given to this matter, I should have been inclined to have yielded to the invitation of the House, and to have appointed a Committee of Conference. It is a subject I have carefully looked into, thought of, and conversed upon. I was under the impression, in the first instance, that we could have a conference, without showing a disposition to part from the adherence; that it might be in our power to explain to the members of the other House composing the committee, fully and freely the principles on which we had acted in the course we had taken, without going into the merits of the amendment again. I am now satisfied that if we appoint a Committee of Conference on our part, it will be a virtual departure from the adherence, and holding out the idea that we are still willing to go into the merits of the amendment. It would be a waste of time; and, so far from its being disrespectful towards the House, it will be most respectful, candidly to inform them of the situation of the minds of the Senate on this subject, and then they will decide; and, if they think it better that the bill should fall than to yield to the amendment, let them do so. The bill is intended to benefit, in a special manner, that part of the country from which I come. I do not wish to take up the public time, or to increase the labors of those who have already labored so much on this subject. Going into useless discussion would not benefit the public interest, but would have a tendency to delay other business; and I am, therefore, willing that the report should be adopted, and let the House act decisively on the subject. At an earlier period of the session, I would not have yielded my assent to this course; but I will now vote in favor of the resolution, though I would not do so if I thought I was doing an act that could be construed into an act of disrespect towards the House.

Mr. EDWARDS said an opinion had been expressed, that, by voting for the adhesion, the door would be closed against a conference. He did not consider it in that light. The common course pursued was to insist, and that was generally succeeded by a conference. The only difference that existed between the two votes he conceived be this: that one was considered as a more decided expression of opinion than the other, and a conference could take place after the one, as well as after the other. Mr. E. here referred to the Manual to prove that conferences had taken place after a vote of adherence, and even after two votes of adherence; and contended that there could be no question about it. What was then the situation of this body? They had passed a vote of adherence: the House was aware of the nature of that vote; and, after it had passed, they asked the Senate for a conference—that fact increased the obligation on the Senate to grant it, because it showed there was a great desire on the part of the House still to confer with them on the subject: whether any good would grow out of the conference, he could not say; that was more than they could pretend to determine, in any instance. Why was it asked at all? Because the one House entertained views of the subject different from those entertained by the other; and in what way could the two Houses have access to each other's views, but by meeting together in a Committee of Conference? For these reasons, although he was one of those who had voted for adherence, he should vote against the adoption of the report.

Mr. VAN BUREN said that the Judiciary Committee of the other House had not made any report to which access could be had, to ascertain what were the views of the other House on asking a conference. But from what he could understand from the course of the discussion on the subject, and the explanations which had been made, they were of the character which he had stated would be the effect of appointing a committee of conference on the part of the Senate. The Chairman of the Judiciary Committee in the House had said, that the appointment of conferees on the part of the Senate, would be a vote of waiver on the part of the Senate, and, that, if it were not so, the conferees ought not to meet the conferees on the part of the Senate: for, one party coming to the conference with a declaration that they would adhere to what they had done, the parties would not meet on equal terms. No doubt, according to the practice of Parliament, a conference might be held, after several votes of adherence. The two Houses might come together on any subject, but that course of proceeding was not applicable to the present case. There was an express rule of the two Houses, that, after a vote of adherence on the part of each House, the bill must be lost. The two Houses might then confer, but not upon the bill. There was one view of this subject, which he thought was entitled to much weight. If the Senate did intend to have conferred with the House, it ought to have been done when the bill was here; but now the ground was changed. The bill originated in the other House, and, if it was lost, it ought to be lost in that House. The origin of the business was there, and the final vote ought to be there also. Such would not have been the case, if the Senate had asked for a conference in the first instance; such would not now be the case if the conference were agreed to; and the bill would be lost in the Senate. This, Mr. V. B. said, was some little responsibility, and every member of the Senate would judge for himself how much. In pursuance of a reasonable object, they would be willing to take that, or any other responsibility; but, if they were determined to adhere, it would be but idle talk, seeing they were not willing to change the condition of the affair. To those who came from the other portions of the Union, having no particular interest in the questions, this might be a matter of trifling importance; but, to the other portions of the country, it was but an act of justice to them, after having voted to adhere, not now to change the question by putting it in the power of the other House to send the bill here to be lost.

Mr. KING wished to explain the reason why he would vote against the adoption of the report. It would have been preferable, in the first instance, that the Senate should have insisted on the amendment, and have sent to the other House; then, if they thought proper, a Committee of Conference would have followed, as a matter of course: but, as the proposition had been made to adhere, the other motion could not be made while that was pending; and, not being willing to yield the amendment made by the Senate, he had determined to vote in favor of adhering. That vote had placed the other House in this situation. They must recede, and the amendment would become a law; they must adhere, and the bill would be destroyed, or they must do what they had done—insist, and ask a conference. He would ask, whether it had not always been the case, that, when a conference was asked, it had been given to the other House, to explain their views, and, if there was any new light which could be thrown on the subject, the Senate might receive the benefit of it? Because, in the course

of the discussion, reasons had been assigned, was it to be said they were not now prepared to give additional ones? He should vote for the conference, and if they refused to grant it, it might jeopardize the passage of the bill. He was anxious the bill should pass in some way or other; as a Representative, he wished to do, on all occasions, what was right; he deemed it right the amendment should prevail, and that the arrangement of the circuits should be such as the amendment made; yet, he was not willing, on account of some technical difference, or from some little responsibility, to risk the loss of the bill altogether. If the Senate did not show some conciliating spirit, the House might become excited, and adhere on their part; but, by evincing a conciliatory spirit, this body might bring about an arrangement which would be satisfactory to all, and which would allay the fermentation which had been attempted to be got up, and the bill would pass. He should therefore vote against the adoption of the report.

Mr. BENTON said he was pleased with the report, and entirely concurred with it. There was one question which he had advanced, which had never been answered, in the House or out of it: Was not the Judge capable of doing the business in Ohio and Kentucky? This was the third time that he had presented the question in this point of view to the Senate; and he would ask some of the gentlemen who advocated the course pursued by the other House, to say whether or not the Judge was capable of doing the business of those two States? That inquiry had never been met, here or elsewhere. With regard to treating the House with disrespect, he was glad the committee had noticed it in their report. It was due to the Senate that it should be repelled. He was not versed—he had no manual—he had access to no book on the subject of etiquette; but if things went on at this rate, it would be necessary to have a manual published, in which they might all learn how they should be respectful, or how not. In his idea, it was a new sense of the term disrespect, to charge the Senate with disrespect for doing a thing which it had a clear right to do, and which it had done in the usual form.

Mr. BARTON said there were but two questions involved in the amendment of the Senate to the Judiciary bill, sent here by the House of Representatives. One was, shall a Judge be appointed for a circuit, and permitted to reside out of the circuit, only visiting it occasionally? To this question he answered, No; and had neither conference nor compromise to offer upon such a proposition. The other question was, shall the State of Missouri be subjected to the inconvenient attachment to Kentucky, in the formation of a circuit? To this question he answered, No; and had no compromise to make upon the question. For, although it was true that the Northwestern angle of Kentucky touched the Southeastern angle of Missouri, yet, for all practical purposes, there were two States lying between Kentucky and Missouri, during the greater part of the year, during which, steam-boat transportation and passage were not to be relied on. Besides, there were long distances between the respective seats of Government in Kentucky and Missouri, and the points of embarkation in each, during the season of steam-boat navigation on the Ohio; he should, therefore, upon such plain questions as those involved in the Senate's amendment, upon which he had nothing to give up, vote at once for the resolution of the committee, and, he again repeated, without the slightest feeling of disrespect for any individual or public body.

The question was then taken on agreeing to the report of the Judiciary Committee, and decided by yeas and nays, as follows:

YEAS—Messrs. Barton, Benton, Berrien, Branch, Chandler, Dickerson, Eaton, Findlay, Harper, Hayne, Hendricks, Holmes, Johnson, Ky. Kane, Noble, Robbins, Rowan, Smith, Tazewell, Thomas, Van Buren, White, Williams, Woodbury—24.

NAYS—Messrs. Bouligny, Chase, Edwards, Harrison, Johnston, of Lou. King, Knight, Lloyd, Marks, Reed, Ruggles, Sanford, Seymour—13.

The resolution proposing to amend the Constitution, so as to exclude members of Congress from being appointed to civil offices under the authority of the United States, being the subject next in order—

Mr. DICKERSON observed, that, as there was not time to discuss this proposition during the present session, he should move to lay it on the table; and it was laid on the table accordingly.

On motion of Mr. HENDRICKS, the Senate took up the bill to grant a certain quantity of land to the State of Indiana, for the purpose of aiding said State in opening a canal, to connect the waters of Wabash river with those of Lake Erie.

Mr. HENDRICKS, after having made some observations relative to the importance of the proposed canal, offered the following amendment; which was ordered to be printed.

"*And be it further enacted*, That, in consideration of the grant aforesaid, the United States shall be entitled to receive such part of the tolls and revenues of said canal, as shall be equal to the proportion which one half of the land appropriated to the construction of the same, shall bear to the whole amount expended therein: the said half of the land to be estimated at the minimum price at which the public lands may, at any time hereafter, be sold."

And then the Senate adjourned.

THURSDAY, MAY 11, 1826.

EDUCATION AND INTERNAL IMPROVEMENT.

Mr. DICKERSON, from the select committee appointed on the first instant, to consider of the expediency of dividing among the States, annually, a portion of the revenues of the General Government, for the purposes of Education and Internal Improvement, made a report, accompanied by a bill to provide for the annual distribution of a part of the revenues of the United States to the several States of the Union; which was read, and passed to a second reading.

Mr. HOLMES said this was a concise, able, matter of fact report, and he felt much obliged to the committee for it; he therefore moved that three thousand extra copies be printed.

Mr. BRANCH said he concurred entirely with the gentleman from Maine. A very little reflection would be sufficient to convince every thinking man of the dangerous consequences to be apprehended from the manner in which the funds have been distributed, giving the Government a greater portion of patronage than could be conferred by any system in any country whatever.

The question was then taken on Mr. HOLMES' motion, and carried.

THE INDIANA CANAL.

The Senate resumed the consideration of the bill to grant a certain quantity of land to the State of Indiana, for the purpose of aiding the said State in opening a canal to connect the waters of the Wabash river with those of Lake Erie: and, the question being on the amendment proposed yesterday by Mr. HENDRICKS; after some remarks by Messrs. CHANDLER, NOBLE, and HENDRICKS,

Mr. BRANCH moved to lay the bill on the table, on account of the indisposition of his colleague, who particularly wished to vote upon it.

The motion prevailed—ayes 17, noes 15.

The Senate then took up the bill from the House, fixing the salaries of the Surveyors of the ports of Hudson and Kinsale, and of the Collector of the port of Barnstable; and, the question being on agreeing to the amendment proposed by the Senate, allowing the Collector of the District of Baltimore a half per cent.; of the District of Savannah one and a half per cent.; of the District of Norfolk and Portsmouth two per cent.; of the District of Salem and Beverly three quarters per cent., in lieu of the commissions allowed by law on account of money received by them on account of duties on goods, &c. and the tonnage of vessels. [It allows to the Naval Officers and Surveyors of the Districts of Portsmouth, Norfolk and Portsmouth, and Savannah, salaries of $500 each, in lieu of any salary now allowed. It also authorizes the appointment of a Surveyor for the District of Bath, at a salary of $250.]

Mr. LLOYD moved to amend the amendment so as to include the Deputy Collector of Boston and Charlestown, allowing him $500 a year in addition to his present compensation. After some discussion between Messrs. LLOYD, FINDLAY, CHANDLER, WOODBURY, SMITH, and HOLMES,

Mr. LLOYD modified his amendment so that the emoluments of the Deputy Collector should not exceed $2000 per annum.

Mr. JOHNSTON, of Louisiana, moved to amend this amendment, so as to include the Deputy Collector of New Orleans; and, Mr. LLOYD having accepted the modification, the amendments were concurred in, and the bill was ordered to a third reading.

The Senate then resumed the consideration of the bill from the House, further to amend the charter of the town of Alexandria; and, after a few remarks by Mr. ROWAN, the bill was reported to the Senate, and the question being on concurring in the amendment made in Committee of the Whole, striking out the privilege to draw lotteries, the amendment was disagreed to.

Mr. EATON then moved to insert an additional section, authorizing the Washington Library Company to raise $10,000 by way of lottery, to erect a building for the library.

The amendment was lost, and the bill was then ordered to a third reading.

WESTERN COLLECTION DISTRICTS.

The Senate then took up the bill to establish certain Collection Districts in the States of Kentucky, Ohio, Indiana, Illinois, and Missouri. [This bill creates three Collection Districts, Louisville, Cincinnati, and St. Louis, each of which shall be a port of entry, and contains various provisions relative to vessels arriving from foreign parts bound for these ports, and the restrictions under which vessels may break bulk at New Orleans, and transship a part of their cargo to ascend the Mississippi.]

Mr. LLOYD observed, that this bill was reported by the Committee of Commerce in consequence of a memorial from the merchants of St. Louis, which had been referred to that committee. They had consulted with the Secretary of the Treasury on the subject, who had concurred with them as to the propriety of granting the prayer of the memorial. The committee, Mr. L. said, were desirous of affording every facility to the trade of the Western country, but it must be considered as an experiment. The introduction of the right of breaking bulk at New Orleans, and shipping part of their cargoes in steamboats on the Mississippi, which would have to stop at a variety of places before arriving at the port of their ultimate destination, must be attended with some hazard to the revenue. If it gave rise to abuses, however, it could be remedied.

Mr. TAZEWELL said there would be a number of collection districts established. The collectors would have the same rights and powers as other collectors, and would be bound by the general collection law. Would there not, therefore, be a certain number of officers called into action, whether there was any thing to do, or not, whose salaries would come out of the Treasury?

Mr. LLOYD replied, that the amount of business to be done would be determined in a very short time. They would have to send in their accounts quarterly, and if abuses arose, they would be stopped. He acknowledged the bill was open to many objections, but if the Senate thought it would be too hazardous, they would not pass it.

On motion of Mr. HARRISON, the bill was, for the present, laid on the table.

FRIDAY, MAY 12, 1826.

MEDICAL COLLEGE IN WASHINGTON.

Mr. EATON remarked, that he wished the Senate to proceed to the consideration of a bill authorizing the establishment of a Medical College in the City of Washington. He said the application had been made to the Senate by several eminent physicians, and a number of respectable citizens. Unrepresented, as they were, on the floor of either House, he thought it but an act of sheer justice to give to their petition a patient examination—adopt it if right—reject it if wrong. To refuse to consider the application, by laying it on the table, and thus passing it in silence by, was not the course that should be pursued, or the course which the Senate should adopt. He did not presume it could occupy much time. They merely asked to be incorporated, with the view to the forming a College, where medical lectures should be delivered, and diplomas conferred. The only objection he had heard of, was, that the Columbian College already had a Medical Professorship attached to it. This was indeed true, and it would be for the Senate, if the bill were now considered, to determine whether they would, for this reason, refuse the application, and thereby sanction the idea, that monopolies, of any sort, should be permitted, and particularly in science. He wished the Senate to decide the bill upon its merits, and therefore moved to take it off the table.

Mr. WOODBURY said the bill had been placed on the table at his instance, owing to the Senator from Kentucky, who took an interest in the business, being, at the time, absent. He thought it was a bill which would consume much time. Memorials, and counter memorials, had been presented, one of which, protesting against the establishment of this College, he had in his hand, signed by one hundred citizens. He did not see the propriety of consuming the time of the House, at this late stage of the session, in discussing a measure which might well lay over for consideration until the next session of Congress. In doing so, nothing of public injury could result; and he hoped that the Senate would permit it to remain on the table.

Mr. NOBLE was sure that the bill would, if considered now, take up much of the precious time of the Senate. If gentlemen desired to make speeches, they could have an opportunity of doing so, by acceding to the motion made by the gentleman from Tennessee, but he thought the Senate had much better attend to other business, and let this alone for next session. There was one College of that description already here, and to establish another one, would be to destroy both; which he hoped the Senate was not disposed to do—at any rate it might well lie until next year.

The Senate refused to consider the bill.

On motion of Mr. EATON, the Senate then took up the bill to authorize the Corporation of Georgetown to erect a bridge over the river Potomac, within the District of Columbia.

Mr. EATON, to remove the objections which had been urged on a former occasion to the bill, moved to strike out the second section, authorizing the exaction of toll; which was carried; and the bill having been further amended, was ordered to a third reading.

The Senate *insisted* on their amendment to the act making appropriations to carry into effect the treaty concluded between the United States and the Creek Nation, ratified the 22d of April, 1826, which had been disagreed to by the House.

EXECUTIVE PATRONAGE.

The Senate next took up the bill to regulate the publication of the Laws of the United States and of public advertisements.

Mr. BENTON said this bill was one of a series relating to the same general subject, which had been reported under a resolution submitted by a gentleman from North Carolina, whom he saw in his seat, (Mr. MACON.) That gentleman would take an interest in the discussion and passage of this bill, but, Mr. B. said, to his certain knowledge, that gentleman was unable, from indisposition, to take any part in the discussion. Under these circumstances, he, for one, thought it his duty to consult him. He was at the bottom of the whole affair; he had collected a variety of facts; he had matured the subject, and he thought it right that the wishes of that gentleman should prevail.

Mr. MACON said the subject of diminishing of the patronage of the Executive, was one which he had reflected on for many years, but at this time he was unable to enter into the discussion of it; his health was at present so bad, that he would not be able to speak for ten minutes in succession. He should move, therefore, that the bill be laid on the table; which motion prevailed, and

The same course was adopted with respect to the other bills relating to the same subject.

MILITIA BILL.

The Senate then took up the bill "to provide for the National defence, by establishing an uniform system of militia throughout the United States."

Mr. CHANDLER said, though this was a very important subject, and ought to have been acted on, yet the time was so far gone, that it could not be properly discussed at the present session. He therefore moved to lay it on the table; which motion prevailed.

WESTERN COLLECTION DISTRICTS.

The Senate then resumed the consideration of the bill "to establish certain collection districts in the States of Kentucky, Ohio, Indiana, Illinois, and Missouri."

Mr. HARRISON offered a few remarks, urging the benefits that would be derived by the People of the Western colintry from the passage of the bill.

Mr. TAZEWELL inquired whether there was a single sea vessel owned in the State of Ohio, or a single merchant importing goods from a foreign country? If there was not, what was the use of establishing a Custom-house at Cincinnati?

Mr. HARRISON answered, there was no person who owned a sea-vessel, nor was there, to his knowledge, a merchant importing goods from a foreign country, but there were merchants of great capital, ready to embark in the business, and who were only waiting the passage of this bill to enter into operations in that way. There were also steamboats of considerable size at Cincinnati, capable of going to Havana, as soon as the difficulty of passing the Falls should be obviated.

A short discussion took place between Messrs. LLOYD, HOLMES, and BENTON, relative to the danger likely to arise to the revenue from the passage of the bill. The latter gentleman stated that he had seen statements, from which it appeared that goods had been imported into Cincinnati from Leeds and Liverpool and other ports, and that, at St. Louis, the merchants transacted all their business with England direct. They had likewise exporting merchants who wished to send their tobacco direct to Liverpool, without stopping at New Orleans, and to carry on a trade with the West India islands, and that a steamboat had arrived at St. Louis from Philadelphia.

Mr. CHANDLER then moved to strike out Cincinnati and Louisville, so as to confine the operation of the bill to St. Louis; as the bill was allowed to be an experiment, it ought to be tried on as contracted a scale as possible.

After some discussion, in which Messrs. EATON, FINDLAY, HOLMES, SMITH, HARRISON, TAZEWELL, and ROWAN, took part, a division of the question being called for, it was first taken on striking out Cincinnati, and decided in the negative, ayes 13, noes 18: it was then taken on the other part of the amendment, and decided in the negative.

Mr. BENTON then proposed to amend the bill by adding that not more than one permanent inspector should be appointed at each place.

Mr. HAYNE thought the amendment was not needed, and was opposed to the bill as being a dangerous experiment that would of necessity introduce one hundred ports of entry on the interior waters in a few years, and four thousand officers, and would add more to the Executive patronage, than the six bills of his friend from Missouri would destroy.

Mr. BENTON withdrew his amendment, and made various statements to show that no more than one officer would be required.

After a few remarks by Messrs. VAN BUREN and JOHNSTON, of Louisiana—

Mr. HOLMES moved to postpone the further consideration of the bill to the first Monday in December next, which was decided in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Barton, Berrien, Bouligny, Branch, Chandler, Clayton, Dickerson, Eaton, Findlay, Harper, Hayne, Holmes, King, Marks, Reed, Smith, Tazewell, Van Buren, White, Williams, Woodbury.—21.

NAYS.—Messrs. Benton, Chase, Edwards, Harrison, Hendricks, Johnston, of Louisiana, Kane, Lloyd, Robbins, Rowan, Ruggles, Sanford.—12.

And then the Senate adjourned.

SATURDAY, MAY 13, 1826.

The Senate took up the bill making an appropriation for removing the bar at the East pass of the mouth of the Pascagoula river, and for improving the harbor thereof.

[This bill appropriates 5,000 dollars for this purpose.]

Mr. REED, of Mississippi, strenuously advocated the passage of the bill, demonstrating, at length, the advantages which would result to the commerce of the Union from the obstructions being removed.

Mr. CHANDLER thought its further consideration might very well be deferred to the ensuing session; he therefore moved to lay it on the table; which was decided in the negative, by yeas and nays, as follows:

YEAS.—Messrs. Branch, Chandler, Dickerson, Harper, Macon, Rowan, Ruggles, Sanford, Van Buren, White, Woodbury.—11.

NAYS.—Messrs. Barton, Benton, Bouligny, Chase, Clayton, Edwards, Harrison, Hendricks, Holmes, Johnston, of Louisiana, Kane, King, Lloyd, Marks, Noble, Reed, Robbins, Seymour, Smith, Thomas, Williams.—21.

The bill was then ordered to a third reading.

DISCRIMINATING DUTIES.

The Senate then took up the bill supplementary to an act, entitled an act to regulate the commercial intercourse between the United States and certain British colonial

ports. [This bill provides that no other or higher duties of impost and tonnage, and no other or higher duty, or charge of any kind, upon any goods, wares, or merchandise, imported from the following free ports of the British colonies—(here follows a list of the ports in the West Indies, &c.)—in British vessels, shall be levied or exacted in any of the ports of the United States, (excepting the ports in Florida,) than upon the vessels of the United States, and upon the like goods, wares, &c. imported into the ports of the United States in the same. The act to go into force after the 30th of June next, and, if it is found that discriminating duties are levied on United States' vessels, the President may issue his proclamation, and the act may be suspended.]

Some discussion took place, in which Messrs. SANFORD, LLOYD, SMITH, HOLMES, and TAZEWELL, took part, as to the most advantageous mode of accomplishing the object, whether it should be done by the present bill, or be left to negotiation; it was urged that this bill would put our trade on an unequal footing with Great Britain, inasmuch as they might bring the produce of every part of the world to our ports, while we could only go direct to the West Indies with our own produce and manufactures.

Mr. HOLMES moved an amendment that the act should not extend to the importation of plaster of Paris into the United States from British provinces, unless the same advantages should be granted to the United States' vessels, as to the British vessels concerned in that trade. The amendment was agreed to.

Mr. SMITH then moved to amend the bill, by adding after the word colonies, "or such as may hereafter be declared to be free ports;" which prevailed.

Mr. HARRISON said, there was such a difference of sentiment amongst gentlemen on this subject, that to prevent its occupying more of the time of the Senate, he would move to lay it on the table; which was decided in the affirmative by yeas and nays, as follows:

YEAS.—Messrs. Barton, Benton, Bouligny, Chandler, Edwards, Harrison, Holmes, Johnston, of Louisiana, Kane, Lloyd, Marks, Noble, Reed, Robbins, Ruggles, Sanford.—16.

NAYS.—Messrs. Berrien, Branch, Chase, Dickerson, Harper, King, Macon, Rowan, Smith, Tazewell, Van Buren, White, Williams, Woodbury.—14.

So the bill was ordered to lie on the table.

MONDAY, MAY 15, 1826.

The bill from the House supplementary to an act for the gradual increase of the Navy, was taken up; and, after some discussion between Messrs. CHANDLER, TAZEWELL, BRANCH, MACON, and HAYNE, the bill was ordered to a third reading, by yeas and nays, as follows:

YEAS—Messrs. Barton, Bell, Benton, Berrien, Bouligny, Chase, Eaton, Edwards, Findlay, Harrison, Hayne, Holmes, Johnston, of Louisiana, Kane, Knight, Marks, Reed, Robbins, Rowan, Ruggles, Sanford, Seymour, Smith, Van Buren—24.

NAYS—Messrs. Branch, Chandler, Clayton, Dickerson, Harper, Hendricks, King, Lloyd, Macon, Pickins, Tazewell, White, Williams, Woodbury—14.

IMPORTED SALT.

Mr. SMITH said, as Chairman of the committee who had reported the bill, he felt bound to move to take up for consideration the bill repealing, in part, the duty on imported salt.

Some discussion took place between Messrs. HOLMES, BRANCH, LLOYD, MACON, SMITH, WOODBURY, NOBLE, VAN BUREN, SANFORD, and FINDLAY; and the Senate refused to take it up, on account of the late period of the session not affording time for the discussion of general subjects. The decision on the question of taking it up was—ayes 14, noes 19.

DISMAL SWAMP CANAL.

The Senate then took up the bill from the House for the subscription of stock in the Dismal Swamp Canal Company.

Mr. HENDRICKS (Chairman of the committee which reported the bill) made a general exposition of its object, and briefly advocated its passage.

Mr. CHANDLER said they had entered into every kind of speculation since they had been here, and now they were called on to enter into partnership with lottery venders and subscribers to stock companies, who had sacrificed one-half or two-thirds of their stock, and with the States of North Carolina and Virginia. It was said the report on the subject was too long to be read. If that was the case, he thought it was too late in the session to act on the subject at all. The gentleman from Indiana had called on the gentlemen from North Carolina and Virginia to make any explanations that should be called for as to the nature and utility of the work; but Mr. C's object in rising was, to ask the Chairman of the committee whether the stock had not once been fully subscribed for?

Mr. TAZEWELL said he should vote against this bill. He had done so on a former occasion, and he should continue to do so as long as he lived, and against every other bill of a similar kind, come from what quarter it might. He did not think that this Government possessed the authority, in any form, manner, or shape, to expend the public money in furthering this, that, or the other project; and, though this money was to be applied at his own door, and in his own State, he must vote against it. It came across his principles, and those he could not sacrifice to promote his interest; but, as he had been called on by the Chairman of the Committee on Roads and Canals, he felt it a duty he owed to the People he represented, and to those who had this business at heart, to eke out the statement which the gentleman from Indiana had made from the documents before him.

Immediately after the Revolutionary war, (said Mr. T.) the active mind of him who, by common consent, was placed at the head of all the citizens of this country, as soon as he was relieved from the toils of war, employed itself in looking over the map of his own country, and of his own particular State, to devise the ways and means by which its prosperity might be advanced. In this view he proposed, in a written communication to the State of Virginia, in 1784, to make the Potomac river navigable, from the head of tide water to the utmost point where its navigation was practicable, and the same with James river; and to connect the waters of James river with the waters of Albemarle Sound, by canals. The first subject was accomplished at once: because the whole territory lying in the State of Virginia, required no other aid or concurrence. His recommendation was attended to; and, in pursuance of it, as far back as 1786, laws were passed authorizing the construction of the Potomac and James river canals, which were afterwards carried into effect. The canal now in question extends half its length into North Carolina, and it required, therefore, the co-operation of the two States; and Washington's influence was exerted to procure the enaction of the law out of which it grew. The law authorized a canal of very limited dimensions, to connect the great waters of North Carolina and Virginia; and that law received the concurrence of the Legislatures of both these States. At that time, (Mr. T. said) we were in our infancy as it regarded canals. The sum necessary to accomplish this great work, of twenty-two and an half miles, was estimated at $80,000, which was subscribed for in North Carolina and Virginia. There was no such thing as a civil engineer in America, and some military engineer was picked up to cut the ca-

nal: a man who had never seen one constructed in his life, and was perfectly ignorant of the subject. He projected it, and they commenced it, in utter ignorance of every thing concerning such works. They finished the cut with the $80,000, and the tolls which were received while the canal was in operation. But, when it was finished, they had got a ditch of eleven feet wide and one foot deep, which foot, in Summer time, was frequently diminished, by evaporation, to six inches. They were occupied ten years in cutting this ditch. So soon as it was finished, or before it was finished, it was found, by survey, by some persons who were a little better acquainted with the matter, that, immediately West of the canal, at two miles distance from it, there lay the best feeder in the world, a lake which was seven miles long, five miles broad, and of extraordinary depth. This lake was found to be at an elevation of seven feet above the surface of this canal, and twenty-two feet elevation above the tide water. At this time the money was all expended. Application was again made to the Legislatures of North Carolina and Virginia to authorize an additional subscription to the stock. An additional subscription of $40,000, or more, was, accordingly, made by individuals, and some portion by the State of Virginia itself. He was not sure, however, that that was the case. This money was expended in the repair of some wooden locks which had been constructed in the course of the excavation of the canal, and which rotted once in ten years. Still the canal was only eleven feet wide and one foot deep. Things remained in this state until the late war with Great Britain. The Chesapeake was then blocked up, and the only outlet was through this canal, and the whole of the tobacco and every article of export in Virginia was carried through it into the waters of North Carolina, which nature has proclaimed shall never be blockaded by any enemy. Vessels, coming from Richmond and other parts, arrived at Norfolk, discharged their cargoes into open boats, which went through this canal to ports in North Carolina, and thence were shipped to every part of the world. The magnitude of this trade, and the importance of this canal, had attracted considerable attention. The original $80,000 were gone; the $40,000 afterwards subscribed were all gone; the new stockholders were not permitted to come in on the same terms with the old ones, and they refused to come in on any other. In this state of things, the Board of Public Works of Virginia was authorized to take two-fifths of the whole stock, and subscribed the remaining three-fifths of the stock. With this fund they cut a feeder two miles long, giving them the command of the canal; and they opened this canal to a width, on the surface line, of fifty feet, and at the bottom of thirty-two feet, with a depth intended for six feet, but, for some reason, was only made five and an half feet. The tolls received in the mean time had been applied to the erection of stone locks. There were, originally, twelve wooden locks, which are now all done away, and there are three or four stone locks, and finer pieces of masonry I never saw in my life. The money the State subscribed has been applied to widen the canal. There were required stone locks where wooden ones existed at the Southern outlet, and a cut of 200 yards, to change the place of disemboguement, because a better site for the foundation of a stone lock can be found than now exists. The funds are not provided, and, if they depend upon the tolls of the canal to raise these funds, they would not be forthcoming for some years, owing to the expenses of the canal. This (Mr. T. said) was the history of the origin and progress of the work, as far as he knew any thing about it.

This canal, Mr. T. said, was to be considered in a national point of view. By a reference to the map it would be seen, that, from the mouth of the St. Mary's river to the mouth of the Pedee, there is every where a chain of islands, leaving soundings which are navigable; a canal made by the hand of nature, which is perfectly navigable. At the mouth of the Pedee the island ceases: it there becomes necessary to enter this great river; ascending its Southern branch, you come within eight or ten miles of the navigable waters of Cape Fear in North Carolina. This is over a champaign country where there is not a single rock of any kind, and nothing but the roots of trees to produce any difficulty in the excavation: you ascend the nearest mouth of Cape Fear, and there approach within two miles of that chain of sounds which extends Northwardly to the State of Virginia. A canal of two miles, Mr. T. said, would connect the waters of Cape Fear with the first of these sounds; and he proceeded to show the facility of effecting a complete interior navigation throughout, to Albemarle Sound, and thence to the mouth of the Dismal Swamp Canal now under consideration, twenty-three miles in length, which connected Albemarle Sound with Hampton Roads in Virginia. You then, continued Mr. T., ascend the Chesapeake Bay and come to the mouth of the Chesapeake and Delaware Canal; through this you enter the waters of the Delaware, ascend to Trenton, and enter there the Delaware and Raritan Canal; by this means you get to New York; you pass up Long Island Sound to Providence, Rhode Island. Wherever else the canal may go, said Mr. T., I know not, but from there to St. Mary's River, in Georgia, there are only the insignificant obstructions existing which he had described. The high lands which separate the waters which fall into the Hudson from those that fall into the Delaware; those that separate the Chesapeake from the waters of Albemarle Sound; those separating Cape Fear from South Carolina, and on to St. Mary's, in Georgia, a distance of one thousand miles, required canals of something less than sixty miles altogether. Of this chain, said Mr. T., the Dismal Swamp canal is a link, which has already been completed to the extent I before stated. Another link is the Chesapeake and Delaware canal, for the completion of which Congress voted the same sum of money at the last session, as is now proposed for this canal. It will be completed in the course of the ensuing year. The link connecting the Delaware and the Hudson is now in train, but, Mr. T. said, he did not know what progress had been made in it. It was a fact that, during the last Summer, a vessel came from New York, passed through this canal in its present situation to North Carolina, took in her load, and made her return voyage. This, Mr. T. said, was the history and progress of this canal. He had done his duty in submitting it, but, inasmuch, as he conceived that Congress had no authority to exert this power, he could not vote for it.

Mr. BRANCH, of North Carolina, said this work was a most important one, and was connected with a power already exercised by Congress; for without this, efficiency could not be given to the fortifications; it was through this canal supplies were to be furnished which were to give efficiency to the fortresses at the Rip Raps and fortress Munroe; and should he, from a little squeamishness, deny to his People a participation in the feast which had been prepared out of their money? The money of the State of North Carolina had been taken, and often, by those very men, who now tendered him this little bone; for it was nothing but a bone to pick. The State of Virginia was more interested in this work than the State of North Carolina, perhaps more than any State in the Union, and those men who had taken the money of his People, and had applied it to objects of a different character, were now tendering him a small boon by way of return. If he should accept it, should he be compromitted by his vote; should he be bound to acquiesce in any violation of the rights of his People hereafter, by the vote he should give now? Mr. B. said he was an advocate for the equal and impartial distribution of the resources of the Nation; therefore it was that he had agreed with

zeal to the proposition of the gentleman from New Jersey. The State of North Carolina had received no returns for the money she had been pouring into the coffers of the Nation. Mr. B. then entered into some further statements in relation to the importance of the Canal, and said he could not suffer a morbid sensibility to prevent him from accepting this boon, the first which had been offered by those who had taken his people's money.

Mr. CHANDLER said he should be constrained to cry "help, Lord, help! for the mighty man faileth."—This was the first bone ever offered to the gentleman, the first bait held out to him, and he bit. We are, said Mr. C., a growing People—we were thirteen Confederated States; and from living under that Confederation for a time, we got a Constitution with limited powers. That Constitution is growing too, and as it expands it will give us all power, with no difficulty at all. I have no doubt, if we go on progressing, that in half the time that has elapsed since we were Colonies, we shall get to be a Kingdom—perhaps an Empire. I did suppose that the States of North Carolina and Virginia were able to make this Canal; I attribute no improper motives to the gentleman from North Carolina, for the vote he is about to give; but I did not expect gentlemen from any part of the country would, for such reasons as had been given, advocate the principle. However, I always vote for my own reasons, not for the reasons of other men, and therefore I extend the same right to the gentleman from North Carolina.

Mr. BRANCH said he hoped the Senate would excuse him for making his acknowledgments to the gentleman from Maine. On this occasion, said Mr. B., he has attempted to become my guardian, and knocked me down with one hand to pick me up with the other. The gentleman misconceives me very much, if he believes for a moment that I can impose on my understanding by such a Yankee subterfuge. I stated to the Senate a few of the reasons which would induce me to vote in favor of the proposition; reasons, which were sufficiently satisfactory to my mind. It is not the first step I have taken on the occasion; I do not know whether that gentleman voted for the appropriation for the Savannah river or not.

Mr. CHANDLER said the gentleman from North Carolina had stated this was the first boon that had been offered to him, not the first vote that he had given.

Mr. BRANCH resumed. The gentleman from Maine asserted this was the first bait which had been thrown out, and that I had bit at it. Mr. B. said, he admitted he was willing to receive at the hands of the General Government this small boon; he should do injustice to his People at home; he should be traitorous to their interests, if he should refuse it; and should the State of Maine be permitted to accuse North Carolina of improper motives for accepting it?—that State to which millions had gone by way of pensions and otherways, when not a dollar had gone to North Carolina? Where was the State in the Union which so little deserved the censure which the gentleman had cast upon it as North Carolina? He thought the gentleman from Maine had been actuated by nobler motives than to give to the Senate reasons of that kind; he had estimated his character differently. Mr. B. said he had given to the Senate frankly the reasons for the course he intended to pursue; but as to yielding to a bait or a bribe, the gentleman from Maine misconceived him, and his State most miserably, when he cast an imputation of that kind. It was not founded either on fact or in truth, an expression for which he was willing to meet the consequences here or elsewhere. He repelled the insinuation; he never had been influenced by a motive of that kind, since he had a seat in the Senate; his course had always been open and frank. Mr. B. said his colleague and himself were likely to differ on the present occasion. The motives of that gentleman were above suspicion; they had exalted him on a pinnacle, and he stood in need of no eulogy from him. On this occasion, as on every other, that gentleman would act according to the dictates of his understanding, and I, said Mr. B., shall do the same. I know there are difficulties connected with the question: I have considered them well. If I am wrong, I am not responsible to the gentleman from Maine. Sentinels who nod on their post, may be taken by surprise; I hope, while I represent my People here, I shall not be so shamefully surprised.

Mr. CHANDLER said he had no apology to make to the gentleman from North Carolina. The Senate would recollect that he had discharged that gentleman from any improper motive whatever; he did so from his heart, and he should not have made the observation at all, if that gentleman had not put it in his mouth.

Mr. NOBLE, of Indiana, said he labored under some difficulties in relation to this subject, but they were not constitutional ones; for his course had always been uniform on that subject. In relation to the subject of internal improvement, it was an object that ought at all times to be promoted, when it could be done without being burthensome to the People; yet, while he made this avowal, he must be permitted to say he labored under a degree of embarrassment in voting for the appropriation of a sum of money for making canals within the Commonwealth of Virginia, when the Senator from that State told them he was opposed to it from principle. Mr. N. said that being raised at the handle of the plough, and not having had it in his power to qualify himself to discriminate so well as many gentlemen could do on the subject of giving constructions to the Constitution, he felt somewhat embarrassed by the speech of the gentleman from Virginia. He loved the man who would give him information that should lead him to the path that would promote the interests of the People he represented; but he did not wish to impose on the State of Virginia this appropriation of money against her will. He saw a difference, if not a contradiction, of sentiment on the subject. I hear it advanced on this floor, said Mr. N. that the Executive officer wished to assume to himself power, and extend his arm over the whole creation, because in his message, while we have ten millions of people, he had recommended an exploration of the Northwest Coast of our Continent; yet, when I look back to the time of Jefferson, when we had only half the number of People, I find that he had sent, without censure, an exploring party to the Pacific Ocean. When I hear and see such contradictions, what, said Mr. N. am I to believe? The Constitution was the same then as it is now. Am I to be led into this vortex? When I go back to the forest which gave me birth, what am I to tell the People of that country? I will tell them facts. I came here for that purpose, and I will go back for that purpose. If any man who has administered this Government, has sinned less than another against the Constitution of the United States, it is John Quincy Adams; and if there is embarrassment in our way on the ground of the constitutional question, let truth be our guide, and let it be spoken throughout the country. Mr. N. said he wanted to come to some conclusion; and, as he had said on a former occasion, let the line of demarcation be drawn. Mr. N. then said he should turn to the Journal of the preceding session, and read a passage which the gentleman from Virginia could explain. That gentleman, said Mr. N. has satisfied me; he has taken me along with him like a torrent; he can not only split hairs, but he can quarter them: his mode of reasoning has such a powerful effect on my mind, that I am ready at all times to conform to his views. [Mr. N. then read from the Journal the amendment offered by Mr. TAZEWELL to the bill for the subscription for stock to the Chesapeake and Delaware Canal, at the last session of

Congress, proposing to subscribe for so many shares in the Dismal Swamp Canal Company; which amendment was rejected.]

Mr. N. proceeded. He could not, he said, see what the difference was between the bill on the table and the proposition which had been submitted at the last session, in the manner which he had just read. As he had before remarked, he was not able to make such nice discriminations. He intended nothing offensive; he was above that; he only wanted to be informed. The gentleman from Virginia had entered, at much length, into the history and prospects of the Canal, and had told the Senate, that though the money was to be expended at his own door, he could not vote for it. Now, when I compare this declaration with the amendment which I have just read, I feel embarrassed.

While he was up, Mr. N. said, he would put a question to his friend from Maine, (Mr. CHANDLER,) and if he did him injustice, if he would only say so before the Senate, he would ask his pardon. There was a subject before this House in relation to surveys within the State of Maine, and he wished to ask the gentleman from Maine, if, when the subject was up, he was in the House?

Mr. HOLMES said he regretted that so much had been said in this debate that was unnecessary. He should vote with the gentleman from North Carolina, (Mr. BRANCH,) in favor of the bill, but he was rather inclined to think that that gentleman had done his colleague, (Mr. CHANDLER,) injustice. He believed the mistake had arisen in his colleague's not quoting Scripture correctly; probably because he had not read his bible lately. The quotation was, "Help, Lord, help, for the ungodly man faileth." Now his colleage certainly could not intend to call the gentleman from North Carolina ungodly. Mr. H. said he hoped that his friend from Indiana would not for the future arraign a member who happened to be out of his seat when a vote was taken. To bring that before the Senate was not a course that accorded with its dignity and decorum. Why, too, read from the Journal the course which a member had pursued at the last session? The gentleman from Virginia did move the amendment, but avowed his intention of voting for the amendment, and against the bill, if the amendment should prevail. These suggestions of what members had done heretofore, should never be indulged. Mr. H. said he was happy that the gentleman from North Carolina could vote for the bill, even for the reason he had given. Perhaps, Mr. H. said, he had the same sort of feeling. If the question had been settled by all the constitutional branches of the Government; if the point was decided, and they were unlocking the Treasury and taking out money for this part of the country, and for that part, he saw no reason why he should refuse his part, or that gentleman his. It was true that very little notice had been taken of North Carolina in this respect, and Maine had been neglected as much as North Carolina; but he could not allow the argument, that because Maine had received something in pensions, it was to be considered as a boon. Who was it that received the pensions? The men who fought our battles—it is they who are rewarded; and wherever they are to be found, there the money would go. There was nothing to be set down to the debtor side of the State in consequence of what she received in Revolutionary Pensions.

Mr. TAZEWELL rose to set the gentleman from Indiana right. When the bill for appropriating a sum of money for the Chesapeake and Delaware Canal was up at the last session, it was argued by the Senator from Delaware, (Mr. VAN DYKE,) that this canal was one link of the great chain to connect the Southern with the Eastern country. Therefore, Mr. T. said, he offered the amendment to the bill, stating that this was another link in the chain, and, while they were providing for the chain, they might make two links instead of one. I was asked, said Mr. T. by the Senator from Delaware, if he agreed to the amendment, would I vote for the bill? I replied, that I would not, in any shape in the world; take my amendment, and I will vote against the whole bill; reject it, and I will vote against the bill. It was rejected, and, if the gentleman will turn over the next leaf of the Journal, he will find my name amongst the Nays. I never did vote for a proposition of the kind, and, so help me God, I never will.

Mr. NOBLE said he now recollected that, on that occasion, the gentleman from Delaware had said he was very glad to see the gentleman from Virginia offering this amendment, and that he was about to embrace the system of internal improvement. He knew it was argued, by other members, at that time, that the bill had passed the House of Representatives, and it was inexpedient to clog it with this amendment. He would ask the gentleman, if the system of internal improvement was improper at all, whether it was not so in relation to the Chesapeake and Delaware Canal? And was that gentleman prepared to tell the Senate, that, because he could not prevent that evil by stopping the Chesapeake and Delaware appropriation, he would, nevertheless, extend it, by giving an appropriation to another object also? Such would be the effect of his proposed amendment; and so the book would read; and it would go forth with a voice of thunder, and would reach every portion of the Union.

Mr. CHANDLER said he was not accountable to the gentleman from Indiana, as to where he was at any given time, or whether he had voted on the occasion alluded to.

Mr. NOBLE did not intend to treat the gentleman from Maine amiss, and, if he had done so, would beg his pardon.

Mr. HARRISON said he was anxious that this bill should pass, seeing that, as related to the great subject of internal improvement, so little had been done in that section of the country in which this was to operate beneficially. He was sorry that any member should vote against it on account of the particular opinion entertained by any of the members of the Senate. That gentleman might entertain one opinion, and his constituents another. When the subject was brought up, unless the State authorities had decided against it, the opinion of that particular individual ought not to have any influence on the votes of this House. There was a difference of opinion in Virginia, as elsewhere; where the majority lay, was not yet ascertained; the majority, last year, was opposed to it; it was possible that, in the succeeding session, a majority may be in favor of it. There was but one Senator from Virginia here, and he should hope that his opinion would not influence the votes of individual members; but that every one, who believed it to be a beneficial, and a constitutional measure, would vote for it.

Mr. KANE, of Illinois, said it was with reluctance he said any thing on the subject; but he was anxious that the vote he was about to give, should not be viewed in the spirit of retaliation. He had difficulties on this subject of a constitutional nature. Immediately after the vote on the Louisville and Portland Canal bill, the idea occurred to him that he ought to have inquired before he gave his vote as to this fact. Did the act of incorporation authorize the subscription of stock, on the part of the Government of the United States, or any Government, whatever? If the act of incorporation of the State of Kentucky, in that case, and of the State of Virginia, in this, did not give the authority to receive the United States subscription, he would ask whether the act, on the part of this Government, did not subvert, in a great measure, the power of these States over their corporations? Corporators are under liabilities as well as individuals; they may do acts which will be a forfeiture of their charter. Supposing, then, the Government of the United States should acquire, by any means, a majority of the stock, and do acts, which, if done by individuals, would sub-

ject them to a forfeiture of their charter, what a state of things would be produced between Virginia and the United States? He apprehended that no remedy could, in such a case, be applied by a resort to legal tribunals; and he quoted decisions of the Supreme Court, and argued, at some length, to shew the force of this objection. The Government of the United States, he said, would be a partner in this corporation; the Government of the United States could not be sued; one of the individuals composing the corporation, not being liable to be sued, no suit could be entered in the Supreme Court of the United States. Mr. K. said further, that he did not believe that the Government had the power, except in cases of most evident necessity, of exercising the right of improving within the limits of a State, without the consent of the State. What should be the evidences of that consent, he would judge for himself. If the Representatives of the State, on this floor, advocated the bill; and if, from the evidences which history furnished, he believed that the State consented to the measure, his objections would be done away. This was not the case here. The State of Virginia, by her Representative, protested against the exercise of this power; and had Congress the power to inflict this canal on her without her consent? It seemed to him they had not.

Mr. VAN BUREN said he rose principally to call for the yeas and nays; but while he was up, he would make one remark on this subject. He could not vote for this bill, for he did not believe that this Government possessed the Constitutional power to make these roads and canals, or to grant the money to make them; but, while he entertained this opinion, he did not wish to indulge in feelings of asperity towards those who differed from him. It was a subject not free from excitement, especially so far as the power to grant money was concerned. Different views were taken of this subject, by persons who were pure and honest; and, Mr. V. B. said, he should take the liberty, which, perhaps, he had no right to take, to express his regret, that in the course of the discussion on this question, such feelings had been drawn forth, as had been witnessed on the present as well as on former occasions. There were no two gentlemen on this floor, who placed more unqualified confidence in each others integrity, than the gentlemen from Maine and North Carolina; still from the misapprehension of a few words used in debate, these feelings had been drawn forth. It was their duty to avoid such feelings. He acquiesced in the opinion, that there was no State in the Union which had received so little notice, as the State of North Carolina; and, Mr. V. B. said, where he could do it, consistently with his view of the Constitution, he would with the utmost cheerfulness contribute his support to any project to assist that State; but on this occasion he could not do it. At the same time he must say, that, if he believed in the power of the Government to grant money for this purpose, the present mode would be the last one he should think of adopting. If there was any grant of money at all for this purpose, it should be direct. Where aid was granted in the mode now proposed, abuses would creep in, and, in nine cases out of ten, deception would be practised. In the State of New York they had had, Mr. V. B. said, full experience of this, in the application for charters for banks; plausible pretences were set up that the State would be thereby benefitted, till these practices became so numerous, that in the end public opinion was decidedly against them, and the Legislature, to her honor, at the last session, had refused all applications of this description. So it was with Congress: they would proceed from one thing to another, till many millions of the public money were thrown away on disadvantageous projects, and they would finally come to the same conclusion which the State of New York had arrived at. When an individual subscribed for stock, he had a personal, a direct interest, which induced him to move with caution, and to see that his interests were properly attended to, and he would not embrace any wild scheme. Would any man believe that the United States would be benefitted by the Louisville and Portland Canal? Every gentleman on this floor believed it to be a useless concern; it was nothing but a cover to give money in this form which could not be given directly; and now they were called on to subscribe for stock in the Dismal Swamp Canal, giving to the existing stockholders the money of the United States, to reimburse them for the money they had expended on a bad concern. Did this line of conduct comport with sound policy? He hoped the gentleman from North Carolina would not be discouraged; public opinion on this subject was taking the proper direction, and in the end this assumption of power on the part of the Government, would be put down, or there would be a salutary amendment to the Constitution to provide for an equitable and fair distribution of the funds of the Government for this purpose.

[A short explanation then took place between Messrs. CHANDLER and BRANCH, and then]

Mr. ROWAN rose to tell the gentleman from New York, (Mr. VAN BUREN,) that there was one gentleman on this floor who had been led to believe, that the stock of the Louisville and Portland Canal was profitable. Mr. R. said he might be deceived, but he would tell the gentleman that scientific and calculating men from the East and the North had believed it to be profitable, and had sent their money there to be invested. The gentleman from New York had asserted that he did not believe there was a member of the Senate who believed that that stock would be profitable. Mr. R. did believe in his conscience, and from all the information he had been able to procure, that it would be advantageous, and some of the most cautious men in America had invested their money in it. Mr. R. said, he thought the gentleman from New York might as well have waited till events should furnish the proof, and not take it for granted that the stock of that canal would be unprofitable.

Mr. CHAMBERS, of Maryland, said he thought this was a question on which the Senate of the United States were determined. All departments of the Government had acted on it, and the principle was settled, that the Government had power to appropriate money for Internal Improvement; the question was also settled as to the particular mode recognized by this bill. Mr. C. said he should beg leave to assert, that he never had, nor never would pursue the policy which gentleman intimated had been pursued by those who formed the majority on this question. He believed, that, in voting on this question, it was for the interest of the United States; if he did not so believe, he would not vote for it. If by the phrase, 'important to the interest of the United States,' the gentleman from New York alluded to the annual revenue the subscription would produce, he might, perhaps, agree to his proposition that it was not important; but, when they were told that this Canal was necessary for the defences of the country, to secure the interest of the agriculturist and merchant, and every part of our population, was it to be said they were not to protect the interests of all these valuable classes of People? Mr. C. said when individual gentlemen from a particular section of the country were appealed to for their knowledge of facts, more especially in their possession; if, in giving the result of their observation and experience, they expressed their conviction that the designed improvements would not be productive of any good, the utmost deference ought to be paid to their opinion; and, if the gentlemen from North Carolina and Virginia would rise from their seats, and say that this appropriation was to accomplish an object which would not be advantageous to the interests of that particular section of the country, or to the United States at large, Mr. C. said he would give a different vote from the one he

had intended to give. In this respect, the opinions of the gentlemen were entitled to great weight; but, Mr. C. said, when they differed from the course he meant to pursue on abstract legislation, or constitutional grounds, for the decision of which every man in this body must consider himself bound to himself, the opinions of those gentlemen were not entitled to more weight than those of any other individuals.

Mr. VAN BUREN regretted he was not so fortunate as to make himself understood. It was proposed that the United States should subscribe for a portion of the stock, and so place herself in the same relation as individual stockholders. His objection was, that this was bad stock, and a losing concern. If that was the case, and there were other reasons why the United States should benefit this company, it should be done by voting money directly. The gentleman from Maryland had said, there might be other advantages arising from this Canal; it was necessary for the support of the forts, and the general interests of the United States would be promoted by it. Then, Mr. V. B. said, his objection would apply; they should give money directly for these purposes, that their constituents might know, not only the purpose for which it was to be applied, but the extent also; and not go the round about way of promoting the public interest by becoming stockholders. As to the question being settled, he should protest against the admission of such a doctrine; and he should resist, to all intents and purposes, the idea that the acts of this Congress were to bind him, or his constituents, hereafter.

Mr. BRANCH said gentlemen had misconceived the value of this Canal; it was now yielding a handsome income. The bill for removing obstructions in the river Savannah had passed, and the constitutional scruples were removed on that question. And when questions of a similar character were daily passing the Senate, by an almost unanimous vote, could he sit here and do justice to the People he represented, without admitting them to a participation in these advantages? In the cases which had been cited, it was a donation; here it was taking stock in a work which would yield a large revenue, and would besides give efficiency to the fortifications.

Mr. HENDRICKS offered a few remarks in reply to Messrs. VAN BUREN and KANE, in which he reiterated the statements he had before advanced, urging the value and importance of the canal.

Mr. REED, of Mississippi, said he did not, on this bill, consider himself as called to act upon the general question. If the States, through whose territories the canal was to pass, had given any proof that it was their wish that the General Government should exercise the power, which he believed it possessed, he should not hesitate in assenting to that power being exercised for purposes beneficial to these States. There was only one Senator present from Virginia, and he opposed the appropriation. The People of Virginia, Mr. R. said, had not sought, or wished, the aid of the General Government; they had resources enough of their own, and did not require the interposition of foreign aid to assist them. So it was with regard to the other State concerned in this matter. He could not say that this Government should exert its power against the will of the People of those States, and their Representatives on this floor. Mr. R. said his feelings and his vote would have been different on this subject, if the two States, which were interested, had coincided in invoking the aid of the General Government. His opinion was, that the General Government had power to appropriate money for the purposes of internal improvement. The power to improve the country could not well be deemed unconstitutional. It was, therefore, not on the general principle that he felt himself called on to act—he stated this distinctly, that the basis of his vote might not be misunderstood.

Mr. BRANCH observed that the Legislature of North Carolina had, virtually, instructed its Senators on this subject, by authorizing a subscription to the stock.

Mr. TAZEWELL said he had but one further observation to make, and it should be in the shape of a query to the gentleman from Mississippi. How long was it since the powers of the Federal Government had been derived from the consent of two States?

The question on ordering the bill to a third reading, was finally determined by Yeas and Nays, as follows:

YEAS—Messrs. Barton, Bouligny, Branch, Chambers, Chase, Eaton, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnston, of Lou. King, Lloyd, Marks, Noble, Robbins, Ruggles, Seymour, Smith, Thomas—21.

NAYS—Messrs. Bell, Berrien, Chandler, Dickerson, Harper, Hayne, Kane, Knight, Macon, Reed, Rowan, Sanford, Tazewell, Van Buren, White, Woodbury—16.

So the bill was ordered to a third reading, and was then read a third time, PASSED, and returned to the House of Representatives.

TUESDAY, MAY 16, 1826.

PUBLIC LANDS.

On motion of Mr. BENTON, the Senate then took up the bill to graduate the price of the public lands.

The bill having been read, Mr. BENTON rose, and addressed the Chair as follows:

Mr. PRESIDENT: This is not a new bill, presented for the first time to the Senate, but one which I have annually brought in for three successive sessions. Circumstances have prevented me heretofore, from discussing its merits before you; but the vote which you have just taken, convinces me that the great majority of this body is willing to hear me, and I shall endeavor to acquit myself worthily of their indulgence, by the plain, brief, and common-sense manner in which I shall treat the subject. It is a subject of great moment to this Confederation, and worthy the most anxious deliberation of this Senate, whether we consider the value of the property to be disposed of, or the political consequences of permitting it to be held and wielded by the Federal Government.

The bill which I have introduced, contains two very plain and distinct principles; the *first* presenting a proposition to sell off the best of the land for prices adapted to its value; and the *second* contemplating a plan for the gratuitous donation of the remainder. I think, Mr. President, that these principles, under some modification, ought to be adopted; and I flatter myself that I can demonstrate the propriety of adopting them, whether the lands are to be considered as a source of revenue, or as a means of increasing the wealth and population of the country. The first would be the view of a mere financier, the second would be that of a statesman; and, as I mean to support my bill in both characters, I shall proceed to consider it, in the first place, as a mere revenue measure.

I then lay down the proposition fairly and boldly, that, as a mere scheme for raising money out of the Public Lands, the first principle of my bill ought to be adopted; and, in proceeding to maintain that proposition, I shall go back to the acquisition of these lands by the Federal Government, show the object for which they were acquired, and shall examine the manner in which that object has been pursued or neglected.

The Public Lands were acquired from two sources: the cessions of particular States, and purchases from France and Spain. The quantity thus acquired, and now lying within the limits of States and Territories, may be estimated at 240 millions of acres. The cessions from the States were made for the declared object of paying off the debt of the Revolution, and with a stipulation to erect the ceded Territory into sovereign States, with all the rights and powers which belonged to the original members of the Confederation; and the purchases from France and

Spain were made under the stipulation, secured by the faith of treaties, of erecting the purchased Territory into like sovereign, equal, and independent States. In both cases the Federal Government was nothing but a trustee, and bound by compacts and treaties to dispose of the lands according to the terms of the trust. The cessions by the States were made at the close of the Revolutionary war; the purchase from France, about a quarter of a century ago; and that from Spain, in the year 1819.

The first acts of the Congress of the Confederation, with respect to these lands were faithfully directed to the object for which they were intended. The Ordinance of '85 fixed their price at one dollar per acre in certificates of the public debt; directed them to be divided, as fast as surveyed, into thirteen portions, according to the quotas of the States in the last requisitions; distributed by lot among the different States, and offered for sale at the Court-house of every county. This ordinance was a faithful exposition of the views of the States, in making the cessions, and a fair acknowledgment of the obligation incurred by the Federal Government in accepting them. The mode of selling the lands was also eminently just and wise; but the intention of the ordinance was defeated by the monopoly which had been effected of the certificates of the public debt. These certificates were no longer in the hands of the soldiers who had fought the battles of the country, or of the farmers who had furnished support to the armies. They were in the hands of speculators, who had purchased them up at an average of two shillings and sixpence in the pound, and wished to convert them into a public debt, at twenty shillings in the pound, drawing an annual interest of six per cent. These speculators resided chiefly in the great cities, and Congress, finding that no sales could be effected at the County Court-houses, directed them, by a subsequent ordinance, to be held at Philadelphia, New York, and Boston; but without better success than before. The speculators would not take the lands, but relied upon their interest in Congress, in accomplishing their favorite object of funding their certificates at eight times as much as they had given for them. Thus passed off the time from '85 to '89; Congress endeavoring to pay the public debt with the public land, and the holders of the debt endeavoring to have it funded. The Federal Government, under the new Constitution, went into operation in the midst of the struggle, and the Executive Government faithfully pursued the plan of the Congress of the Confederation. The first and second messages of President Washington were directed to this object, and he strongly recommended a sale of the lands to pay off the *principal* of the debt.

Doubtless it will be agreeable to the Senate to hear the words of that great man, and as I wish to avail myself of his authority in the support of my bill, I will here read the passages to which I have referred.

Message of 1790.

"Allow me, moreover, to hope that it will be a *favorite* "policy with you, not merely to secure a payment of the "*interest* of the debt funded, but as far and as fast, as the "growing resources of the country will permit, to exonerate it of the *principal* itself. The appropriations "you have made of the Western Lands, explain your dispositions on this subject; and, I am persuaded, that the "*sooner* that valuable fund can be made to contribute, "along with other means, to the actual *reduction* of the "public debt, the more salutary will be the measure to "every public interest, as well as the more satisfactory "to our constituents."

Message of 1791.

"A provision for the sale of the vacant lands of the "United States is particularly urged, among other reasons, by the important considerations that they are "pledged as a fund for reimbursing the public debt; that, "if *timely* and *judiciously* applied, they may save the necessity of burthening our citizens with new taxes for the "extinguishment of the *principal*; and that, being free to "discharge the principal, but in a limited proportion, no "opportunity ought to be lost for availing the public of "its right."

These two extracts show the policy of Washington, his policy to reduce the *principal* of the debt, and to make the public lands subservient to that object, by "*timely*" and "*judicious*" sales.

The report of General Hamilton, his Secretary of the Treasury, made at the same time, may be considered as an amplification of the message, and the correct expositor of President Washington's idea of *timely* and *judicious* sales. This report recommends the immediate sale of the lands, at their then value, and fixes that value at an average of twenty cents per acre. The following extract conveys his sentiments in his own words:

Report of 1791.

After reciting that the public creditors are offered one-third of their debt in land, at twenty cents per acre, and an interest of six per cent. on the remaining two-thirds until paid, the report proceeds:

"The creditor is offered the advantage of making his "interest principal, and he is asked to facilitate to the "Government an effectual provision for his demands, by "accepting a third of them *in land at a fair valuation.*

"The general price at which the Western lands have "been heretofore sold, has been a dollar per acre, in public securities; but, at the time the principal purchases "were made, these securities were worth, in the market, "less than three shillings in the pound. The nominal "price, therefore, would not be the proper standard, under present circumstances; nor would the precise specie value then given be a just rule; because, as the pay, "ments were to be made by instalments, and the securities were, at the times of the purchases, extremely low, "the probability of a moderate rise must be presumed to "have been taken into the account. *Twenty cents, therefore, seems to bear an equitable* proportion to the two "considerations of value at the time, and likelihood of increase."

Here then is the plan of Washington and Hamilton, a plan which contains the true principle of action for every debtor, whether a nation, or an individual. They proposed to pay the *principal*, instead of piddling at the annual interest, of the debt, and to sell the land at once, for what it was worth, instead of holding it up for a future and indefinite rise. But the plan of these great men did not succeed. It met a vehement opposition, both in and out of Congress. The speculators in certificates, and the political enemies of General Hamilton, combined to attack it. They represented it as a prodigal waste of the public lands, to sell them at an average of twenty cents an acre, when, by holding them a few years, they would rise to a great price. They urged the advantage of paying the annual interest of the debt, until this great rise should take place. They set up loud and piteous lamentations in favor of the poor, whom they represented as destined to remain forever the tenants and vassals of the speculators who would monopolize the lands at such low rate. They excited the jealousy of the old States, by showing them their population drawn off to the West; and they affected great concern for the injury which would be done former purchasers who had given one dollar per acre. In short, they prevailed. The mass of the People were deceived and imposed upon, and a powerful party in Congress, in favor of converting two and six-pence in the pound, into a national debt at twenty shillings in the pound, obtained the complete ascendency over the policy of Washington and Hamilton. That party prevailed. They prevented the sale of the land, according to the recommendation of these great men. They procured twenty-five millions of

their certificates—certificates which had been got for a song from the People—to be converted into national debt, at twenty shillings in the pound, and six per cent. interest. Having done this, their next object was, to make the debt perpetual, by limiting the sales of lands to as much as would pay the annual interest. To accomplish this purpose, the price of land was raised to two dollars per acre, in gold and siver; the law which permitted evidences of the debt to be taken in payment of land, was repealed altogether; the nett proceeds of the lands were pledged, by themselves, to themselves; and the People were unblushingly told, that a national debt was a national blessing, because it would create a powerful moneyed interest, to support the Government.

Such are the facts, Mr. President, relative to the origin of the present system of selling public lands. Such were the actors, such their motives, and such their merits, in the establishment of this system. Having displayed these, let us next look to the fruits of the system—let us see what the People of these States have gained by paying interest upon the debt, and waiting for the rise in the price of their lands. I hold those fruits in my hand, (showing a paper,) and I will present them to the Senate.

[*Here Mr.* BENTON *presented the following table, which he informed the Senate, had been procured by him from the Register of the Treasury:*]

STATEMENT of the amount of money annually received from the sales of Public Lands from the year 1789, to 1825, and of the amount annually paid for interest on the Public Debt, during the same period.

Years.	Amount paid for interest.	Amount received for lands.
1789		☞ No money received from 1789 to 1795, payments being made in *certificates* of the public debt.
1790	2,090,637 44	
1791		
1792	3,076,628 23	
1793	2,714,293 83	
1794	3,413,254 50	
1795	3,136,671 16	
1796	3,183,490 56	4,836 13
1797	3,220,043 06	83,540 60
1798	3,053,281 28	11,963 11
1799	3,186,287 60	
1800	3,374,704 72	443 75
1801	4,396,998 69	167,726 06
1802	4,120,038 95	188,628 02
1803	3,790,113 41	165,675 69
1804	4,259,582 55	487,526 79
1805	4,140,998 82	540,193 80
1806	3,694,407 88	765,245 73
1807	3,369,578 48	466,163 27
1808	3,428,152 87	647,939 06
1809	2,866,074 90	442,252 33
1810	2,845,427 53	696,548 82
1811	2,465,733 16	1,040,237 53
1812	2,451,272 57	710,427 78
1813	3,559,455 22	835,655 14
1814	4,593,239 04	1,135,971 09
1815	5,700,374 01	1,287,959 28
1816	7,157,500 42	1,717,985 03
1817	6,381,209 81	1,991,226 06
1818	6,016,314 98	2,606,564 77
1819	5,163,538 11	3,274,422 78
1820	5,126,097 20	1,635,871 61
1821	5,162,543 66	1,212,966 46
1822	5,165,819 99	1,803,181 54
1823	5,010,409 44	916,523 10
1824	4,993,861 47	984,418 15
1825		725,440 17
	136,308,035 54	26,547,933 65

Such, Mr. President, are the fruits of this system! One hundred and thirty-six millions of dollars paid in interest! Twenty-six millions received from the sales of public land! The debt increased instead of diminished: for it was seventy-six millions at the end of the Revolution, and it is eighty millions now! And the lands which were to rise in ten years to four and eight dollars an acre, are remaining unsold at one dollar twenty-five cents! But even the amount of interest paid, or the greater part of it, had to be collected from other sources. Look to the table. In no one year was more than half enough received from the sales of land to meet the interest of that year; seldom more than one-fourth; at present not one-fifth; and the amount annually decreasing; and still we have advocates for the continuation of this ruinous policy; men who look forward to the rise, and want us to continue, I presume, for another half century, the experiment of a system under which we have already paid the amount of the principal twice over, in annual interest, without diminishing the principal one dollar; under which we see the best of the lands dribbled and piddled away without accomplishing the object for which they were ceded to the Federal Government, or being felt among the resources of the nation. I trust, Mr. President, that we shall not be guilty of this improvidence; I trust, that after fifty years' experience, and the loss of one hundred and thirty-six millions of dollars, we are brought to a condition to listen to the venerated voice of Washington, and to go to work in earnest at selling off the land for what it is now worth, and paying off the principal of the public debt instead of wasting that great fund in the payment of annual interest. It is, indeed, a great fund, and capable, under a judicious administration, in conjunction with the sinking fund, of extinguishing the public debt in eight years. I say eight years! and prove it like a proposition in mathematics. Our debt is eighty millions of dollars, and the sinking fund is ten millions. Now it is just as plain as that two and two make four, that the sinking fund would extinguish the debt in eight years, if its whole amount could be applied to the principal; but about one half is absorbed in the payment of interest. Let the interest, then, be raised from the lands, while the duties on imports furnish ten millions for the sinking fund. The lands amount to two hundred and forty millions of acres, and if so disposed of as to raise the interest of the debt for eight years, the sinking fund would extinguish the principal in that time. The amount to be raised, supposing ten millions of the principal to be annually extinguished, would not exceed twenty millions, and surely the sales could be so managed as to raise that sum in that number of years. Here, then, is a paradox. I maintain that it is better economy to sell the lands, or the best of them, in eight years, for twenty millions, than to sell them in the progress of ages and centuries for three hundred millions. One would enable us to get rid of the debt; the other would not. The lands were ceded to the Federal Government to pay the debt. In fifty years they have paid no part of it, not even the one-fifth part of the interest. In fifty years to come they can do no better if administered in the same way; but in eight years they will extinguish a debt of eighty millions if the present ruinous system is abandoned, and a new and judicious one adopted.

I propose, then, to accelerate the sales, and to raise twenty millions in eight years. How is this to be done? By letting the land go for what it is worth—by selling for the present value—instead of waiting for a future, distant, and uncertain rise. There are several ways to accomplish this object. One of these would be to abolish the *minimum* price, and sell all the lands off hand for what they would bring. This mode is not recommended for reasons too obvious to need enumeration. Another would be, to class and appraise the lands, reserving the two first classes

for sale, and surrendering the third to the States. The third mode would consist in letting the lands class themselves, as proposed by the bill now under consideration.

This bill proposes successive annual reductions of twenty-five cents per acre, until the price is reduced to twenty-five cents, when the refuse would be subject to gratuitous donation. Its operation would be to quicken the sales, to infuse new life and animation into them, and to sell more in five years than would be sold, under the present system, in as many ages. A district would be sold out in five years. Each tract would find a bidder, as it fell from one price to another, until it got to its true value. The fear of losing it by the purchase of another person, and the idea of being given away as a donation, would compel those who wanted a tract, to buy it as soon as it got to its real value. At present, people do not purchase the second and third rate lands, because it is absurd and contradictory to give the same for that kind as for the first rate.

No man will give one dollar twenty-five cents for a quarter section that has but one half, one quarter, or one tenth part of it fit for cultivation; or which is only desirable for the timber upon it, or for a spring, or a quarry, or a place for building, or which might be wanted for the mere purpose of keeping off too close a neighbor. People will not buy such inferior tracts at one dollar twenty-five cents; for that would bring the little good land which it contains, to eight or ten dollars an acre. They will not buy, because they know that nobody else will, and that they can buy it ten or twenty years hence, and, in the mean time, have the use of it without paying taxes. I say, have the use of it; and this refers to the timber it may bear: for it is notorious that the public timber is used as common property, and that no blame or censure attaches to the practice. Statutory enactments are unavailing when unsupported by the moral sense of the community for which they are intended. The Federal Government has its statutes upon this subject; but they are no protection to the land—they are nothing but instruments of revenge in the hands of neighbors, who fall out and quarrel with one another, and commence the "unprofitable contest of trying which can do the other the most harm." But, in general, there are none to inform, or to bear witness. Whole neighborhoods are in the same predicament. By common consent they go and take timber from the public land, and let their own stand for a future occasion. In the level countries they often go five miles; and on the banks of the great rivers, immense numbers make a regular business of cutting large rafts, and floating them off to market, even to New Orleans, at a distance of five hundred or a thousand miles. Thus, those who please have the benefit of the land, without the payment of tax or purchase money. Thus the inducement to purchase is destroyed. Thus is accounted for the notorious fact, that the sales are declining; that we are receiving less and less every year, and that the Registers and Receivers, in most of the Districts, do not receive as much for their commissions as would compensate them for the loss of their time; and yet the system costs the Government upwards of 33½ per cent. on the amount collected. The salaries, commissions, surveys, contingencies, &c. are upwards of $300,000 per annum; the receipts into the Treasury are only about nine hundred thousand; and thus is presented the anomalous fact, that, in the operation of the most enormously expensive system of revenue that ever was heard of, the principal officers who administer it cannot live upon their compensation. Look to the document which has been laid upon your tables. See Registers and Receivers, whose commissions are, in many instances, less than one hundred dollars per annum, and very few exceeding twice or thrice that sum. Look, also, to the table of lands sold, and remaining unsold, in the different States and Territories, and see how slowly the system proceeds. Take, as an example, the oldest and most populous districts of the oldest and richest of the new States, and see how little has been done towards completing the sales.

[*Here Mr. Benton exhibited the following table:*]

STATEMENT of Lands sold by the Federal Government, and remaining to be sold, in the State of Ohio.

DISTRICTS.	SOLD.	UNSOLD.
Marietta, - - -	152,687	500,113
Zanesville, - -	919,728	709,492
Steubenville, - -	1,464,741	418,223
Chillicothe, - -	995,692	1,027,015
Cincinnati, - -	2,660,889	752,632
Wooster, - - -	887,403	347,097
Piqua, - - -	229,685	2,334,936
Delaware, - - -	20,793	1,802,106

What will be the fruit, Mr. President, of continuing this system? Sir, I will tell you what it will be. First, one third of what is received for the lands, will be sunk in the expenses of collection, and the most meritorious officers will be driven from the public service for want of adequate compensation. The public debt will continue to accumulate, and the lands intended to pay it will be dribbled away upon the interest, and dissipated upon a thousand unknown and unknowable objects. The public debt will be saddled upon us forever: for unless it is paid quickly, paid in this season of peace and prosperity, it will be fastened on us to eternity. I say the debt must be paid now, or never; and my meaning is, that, if it stands until another war intervenes, it will receive an increase which will put payment forever out of the question. This is the progress of all national debts. It has been the progress, especially, of the debt of that great nation from which we sprung, and whose institutions, whether good or bad, we copy from instinct and fatality. The British debt, like our own, grew out of their Revolution. Like our own, it was considered a trifle, which could be paid off at any time. Like ourselves, the British thought it better to pay the annual interest, and postpone the principal to a more convenient season. But wars came on to increase it. The balance of power in Europe added some hundred millions; the American war added an hundred more; the wars of the French Revolution put it up to a thousand millions of pounds sterling: the annual interest is now near two hundred millions of dollars, a sum greater than the whole debt was when the fatal policy was adopted, of paying interest, and postponing the payment of the principal. Shall we act upon the same principles, until overwhelmed, like Great Britain, by the magnitude of our debt? And that we shall be so overwhelmed, is beyond all doubt, unless we pay it off in this season of peace and prosperity. Nothing is easier than to pay it within the eight or ten succeeding years, and nothing more honorable than to do so. The Congress which shall accomplish that object will be entitled to the glorious appellation of *blessed*. "*The public debt is paid.*" What a subject for a circular letter! What a noble letter would that little sentence alone compose! A nation without a national debt would, indeed, be a rare and sublime spectacle; but, rare as it is, our nation must soon exhibit it, unless our affairs be grossly, and, I might say, criminally mismanaged.

Thus far, Mr. President, I have considered the bill before you in a mere financial point of view. I have discussed it as a revenue measure, and, under that aspect, which is not the most favorable which it wears, I have demonstrated the advantage of adopting its principles. But I should be false to myself, and to the place in which I

stand—I should be false to the character of Senator, with which I am clothed, and which should include the character of statesman—if I should suffer the bill to go off under this limited and contracted point of view. Far from it. A wider horizon opens before me. Consequences far superior to the accumulation of dollars in the Treasury; consequences even superior to the honor and advantage of paying off the public debt, present themselves to my vision. I see, in the adoption of this great measure, consequences which connect themselves with the durability and prosperity of this Republic—the number of tenants diminished; the class of freeholders increased; the multiplication of that class of population which is to pay taxes, bear arms, defend the country against foreign and domestic enemies, and to furnish the future statesmen and warriors of this Republic. These are the grand advantages which are to result from a distribution of the soil among the children of the country: and, happily, I speak to those who understand and anticipate me. I speak to statesmen, and not to compting clerks; to Senators, and not to *Quæstors* of provinces; to an assembly of legislators, and not to a keeper of the King's forests. I speak to Senators who know this to be a Republic, not a Monarchy; who know that the public lands belong to the People, and not to the Federal Government; who know that the lands are to be "disposed of" for the common good of all, and not kept for the service of a few; and knowing that I speak to such enlightened men, I feel my labor abridged, and my task anticipated. The American Senate is not the place for the illustration of truisms. Senators who have passed their lives in the administration of the public affairs, whose minds are trained to the induction of truth, need no elaborate discussion of great principles. It is sufficient to state them, and the practical consequences are forthwith comprehended.

I state a proposition, then, of received and universal truth, when I say that the power of a Republic is in its population; that the basis of population is agriculture; and that the agriculture which combines wealth and population, is that of the freeholder. Quotations in support of a truth so plain would be out of place in the Senate; but there is one which I flatter myself they would be willing to hear, one to which it would listen with pleasure, whether it be for the justness of the sentiments, the simplicity and beauty of the language, or for the eminent authority from which it comes. I speak of General Hamilton's report in favor of manufactures, and in the front of which he places the following just and noble encomium upon the agricultural interest:

The Quotation.

"It ought readily to be conceded, that the cultivation of the earth, as the primary and most certain source of national supply—as the immediate and chief source of subsistence to man—as the principal source of those materials which constitute the nutriment of other kinds of labor—as including a state most favorable to the freedom and independence of the human mind—one, perhaps, most conducive to the multiplication of the human species—has, *intrinsically*, a strong claim to PRE-EMINENCE over every other kind of industry."

Tenantry is unfavorable to freedom. It lays the foundation for separate orders in society, annihilates the love of country, and weakens the spirit of independence. The tenant has, in fact, no country, no hearth, no domestic altar, no household god. The freeholder, on the contrary, is the natural supporter of a free government, and it should be the policy of republics to multiply their freeholders, as it is the policy of monarchies to multiply tenants. We are a republic, and we wish to continue so: then multiply the class of freeholders; pass the public lands cheaply and easily into the hands of the People; sell, for a reasonable price, to those who are able to pay; and give, without price, to those who are not. I say give, without price, to those who are not able to pay; and that which is so given, I consider as sold for the best of prices; for a price above gold and silver; a price which cannot be carried away by delinquent officers, nor lost in failing banks, nor stolen by thieves, nor squandered by an improvident and extravagant administration. It brings a price above rubies—a race of virtuous and independent farmers, the true supporters of their country, and the stock from which its best defenders must be drawn.

"What constitutes a State?
"Not high rais'd battlements, nor labored mound,
"Thick wall, or moated gate;
"Not cities proud, with spires and turrets crown'd,
"Nor starr'd and spangled courts,
"Where low-born baseness wafts perfume to pride:
"But MEN! high-minded men,
"Who their *duties* know, but know their RIGHTS,
"And, knowing, *dare* maintain them."

What made *these* States? What *constitutes* their power? What brought *them* to their present height of power and freedom? What made *them*, as they now are, the pride and admiration of the universe, and the sole depository of human liberty? What produced these great results, but the operation of the system, which, with so much more zeal than ability, I now recommend to the Senate? A system of cheap and ready distribution of the soil among the People, by the combined action of sales and donations; sales upon easy terms to those who are able to pay, and gratuitous gifts to those who are not. These Atlantic States were donations from the British crown; and the great proprietors distributed out their possessions with a free and generous hand. A few shillings for an hundred acres, a nominal quit rent, and gifts of an hundred, five hundred, and a thousand acres, to actual settlers: Such were the terms on which they dealt out the soil which is now covered by a nation of freemen. Provinces, which now form sovereign States, were sold from hand to hand, for a less sum than the Federal Government now demands for an area of two miles square. I could name instances. I could name the State of Maine; a name, for more reasons than one, familiar and agreeable to Missouri; and which was sold by Sir Ferdinando Gorges to the proprietors of the Massachusetts Bay, for twelve hundred pounds, provincial money. And well it was for Maine that she was so sold; well it was for her that the modern policy of waiting for the rise, and sticking at a *minimum* of $1.25, was not then in vogue; or else Maine would have been a desert now. Instead of a numerous, intelligent, and virtuous population, we should have had trees and wild beasts. My respectable friend, the Senator from that State, (Gen. CHANDLER,) would not have been here to watch so steadily the interest of the public, and to oppose the bills which I bring in for the relief of the land claimants. And I mention this to have an opportunity to do justice to the integrity of his heart and to the soundness of his understanding—qualities in which he is excelled by no Senator—and to express my belief that we will come together upon the final passage of this bill: for the cardinal points in our policy are the same—economy in the public expenditures, and the prompt extinction of the public debt. I say, well it was for Maine that she was sold for the Federal price of four sections of Alabama pine, Louisiana swamp, or Missouri prairie. Well it was for every State in this Union, that their soil was sold for a song, or given as a gift to whomsoever would take it. Happy for them, and for the liberty of the human race, that the Kings of England and the "Lords Proprietors," did not conceive the luminous idea of waiting for the rise, and sticking to a *minimum* of $1.25 per acre. Happy for Kentucky, Tennessee, and Ohio, that they were settled under *States*, and not under the Federal Government. To this happy exemption they owe their present greatness

and prosperity. When they were settled, the State laws prevailed in the acquisition of lands; and donations, pre-emptions, and settlement rights, and sales at two cents the acre, were the order of the day. I include Ohio, and I do it with a knowledge of what I say: for ten millions of her soil, that which now constitutes her chief wealth and strength, were settled upon the liberal principles which I mention. The Federal system only fell upon fifteen millions of her soil; and, of that quantity, the one half now lies waste and useless, paying no tax to the State, yielding nothing to agriculture, desert spots in the midst of a smiling garden, "waiting for the rise," and exhibiting, in high and bold relief, the miserable folly of prescribing an arbitrary *minimum* upon that article which is the gift of God to man, and which no parental Government has ever attempted to convert into a source of revenue and an article of merchandise.

But it is not to the wealth and population of the States alone, that the fatal effects of this Federal dominion over their soil is extended. It reaches and affects a still higher object—*the sovereign character of the States themselves.* The new States are not equal in sovereignty to the old ones. The points of difference are numerous, striking, and highly material. The old States have a right to make primary disposition of the soil within their limits; the new ones have not. The old States have the right of taxation; the new ones have not. The old States possess the right of eminent domain; the new ones have it not. The Federal Government has no jurisdiction over the soil, timber, grass, and water, of the old States; they assert and exercise jurisdiction over all those in the new States; denouncing penalties of fine and imprisonment against the citizens of the new States who may cut a stick, dig a hole, tread down grass upon the public land, or boil the salt water of the great Federal landlord; and her Federal courts are authorized to punish these offences, and her military force is armed with power to expel with the bayonet, whomsoever her agents may choose to consider as intruders upon any ground that they may please to suppose belongs to the great Power before which all must bend. This condition of inequality I hold to be inconsistent with the terms and spirit of the Constitution; inconsistent with the terms and spirit of the cession acts, by which the Northwestern and Southwestern Territories were ceded to the Federal Government; inconsistent with the terms and spirit of the treaties by which Louisiana and Florida were ceded to the United States; and wholly incompatible with the independence of the States themselves. To remove this inequality, and all its consequent evil; to avoid, especially, the conflict of laws, of jurisdiction, and, perhaps, of arms, to which it is to give rise—immediate steps should be taken to surrender the public lands to the States within which they lie. The bill before you does not contemplate this measure; but the consideration of this bill has turned the minds of eminent statesmen in that direction, and I shall expect to see the proposition distinctly brought before the Senate from a quarter as distinguished for political wisdom, as for the disinterestedness of its action.*

I have thus demonstrated, Mr. President, the truth of the two propositions, with which I sat out. I have shewn that, whether we act as mere Treasury officers, raising revenue, or, as Statesmen, improving their country, we ought to adopt the principles of the bill which is under discussion; and I am cheered and flattered by the belief that they will be adopted. A great change is going on in the public mind. The injustice and folly of attempting to make revenue out of lands, is becoming manifest; the necessity and advantage of passing them easily into the hands of the people, is beginning to be admitted. The bill which I have introduced, embraces two principles—sales upon fair terms, and donations to actual settlers. They are intended to accomplish the double purpose of paying off the public debt, and increasing the population and wealth of the country. The approbation of these principles, though rapidly advancing upon the public mind, is not yet universal; some objections are heard; and the view which I proposed to take of my subject, would be incomplete if these objections were not stated and overthrown. I will state and overthrow them. The task is easy; for the most of them are the same which were brought forward by the funding system men, about half a century ago, and which were condemned by the voice of reason then, and blasted by the touch of experience since. The are,

1. That the Atlantic States will be depopulated.
2. That speculators will be encouraged.
3. That monopolies will be created.
4. That former purchasers will be injured.
5. That it is better to wait for the rise.
6. That the lands are pledged to the public creditors.

To each of these objections, I will give a brief and candid answer:

FIRST—*The depopulation of the old States.*

I lay it down as a general proposition, Mr. President, that a country which is fit for the propagation of the human species, cannot be depopulated, nor even sensibly affected in the amount of its population, by any process of emigration to which it can be subjected. No matter how many go off, the vacuum will be immediately filled. For the truth of this proposition I refer, among European countries, to Ireland, a little hive, which has been sending forth its swarms, for ages and centuries, to every corner of the globe, (Scotland excepted—I never heard of an Irishman in Scotland)—and which is still one of the most populous districts in Europe, and most rapidly increasing in numbers. I refer also, among ourselves, to the State of Connecticut; a State which sends out more emigrants, in proportion to its size, than any other in the Union, and whose population, to the square mile, is still among the most populous districts in the Union. On the other hand, a country which is unfit for the propagation of the human species, cannot be peopled by the arbitrary regulations of man. For the truth of this position, I refer to Africa, a region stigmatized, for two thousand years, as the "*mother of monsters,*" and in which all attempts to increase, or to tame, its population, have been found to be vain and idle. Even the English, with their peculiar power, and means, of vanquishing the obstacles of nature, after expending two millions sterling upon the project of a settlement at *Sierra Leone*, are forced to admit the impossibility of succeeding.

To seduce people to emigrate to a country not fit for the propagation of the human species, is to commit a crime against God and Nature; and to compel them, by arbitrary regulations, to remain in a country where they cannot "*increase and multiply,*" is another offence against God and Nature, aggravated by an open violation of a Divine command. I look upon it as the height of cruelty and injustice to seduce the ignorant to go from America to Africa; and but little less cruel and unjust to compel the poor to remain in some parts of the Atlantic States. I refer particularly to the tide water region, and to the class of cultivators, whether tenants or freeholders, who inhabit the pine woods, and work in the sand. My position is a plain one, and I repeat it, because I defy contradiction. I say, then, that it is an offence against God and

* *Virginia.* Mr. Randolph and Mr. Tazewell had each informed me that they would bring forward this proposition. The former being absent, the latter did it.

Nature, to compel people to remain in a country, where, instead of increasing, they are decreasing; instead of multiplying, they are subtracting; instead of replenishing the earth, they are diminishing and disappearing from its face; for that decrease, subtraction, and diminution, besides being a breach of the Divine command, *implies a* STINT *of food*, with all its consequent train of bodily suffering and disease, intellectual and moral degradation, loss of physical strength, animal courage, and the spirit of independence. This I affirm to be the case in the tide water region of the Atlantic States; commercial cities, and particular districts, of course, excepted. I know it to be the fact that, in this region, the human animal is scarcer, and the beasts of the forest more plenty, than their respective species were before the war of the Revolution. I know it from books, from conversations with aged men, and from personal observation. Throughout this extensive region, the progress of man upon earth is reversed. Every thing is going backwards and downwards. Houses dilapidated and deserted; fences gone; fields grown up in broom-grass and pine saplings; people grown scarcer; wild animals more plenty; and the cultivator of the earth reduced, I would say, to the *minimum* and the *pessimum* of human subsistence, if I had not heard the description, or rather, if I had not seen the picture which the Senator from Virginia, Mr. RANDOLPH, has drawn you of the misery and degradation of the South of Ireland. Hopeless and deplorable, indeed, is the condition of the tenant and cultivator in this region of pine and sand. In vain does he solicit grit, and gravel, and heartless clay, to send up the corn and oats which man and beast demand for the support of life. Even vegetable manure is not to be had. The watery element is resorted to for a substitute, and, at a certain season, affords it. I have just witnessed an example of the fact. In a short excursion, which I made into the country a few weeks ago, I became an eye-witness of the fact, of which I had before heard, but, until then, had not seen an instance. It was not twenty miles from this city—the metropolis of four-and-twenty States—it was not very far from Mount Vernon, the renowned seat of Washington. I was travelling the high road between this city and Fredericksburg, when I heard a clinking among the stones on the side of a hill, stopped my horse, looked up, and saw laborers engaged, apparently burying something in the ground, at regular intervals. I inquired what they were doing? and a voice replied, that they were planting corn. I asked, what are you burying with it?—"*Herring heads.*" What for?—"*To make the corn come up.*" How many heads do you put to a grain?—"*Two, Sir.*" How high does your corn grow?—"*So high,*" (measuring upon the leg.) How do you gather it?—"*In baskets.*"—I stopped the dialogue, and continued my journey, ruminating upon the scene which I had witnessed, and growing stronger in my conviction that the country, truly rich, truly independent, truly fitted for the production of republicans, is the country in which provisions are produced in the greatest abundance, a country in which, as in the vast and magnificent valley of the Mississippi, there is neither count, nor weight, nor measure, for any thing that is given to man or beast to eat. In such a country, the animal spirits run high. Master, slave, and beast, live at their ease. Each knows the virtue of cribs and smokehouses, crammed to bursting.

"*Each feels his rights,*
"*And feeling, dares maintain them.*"

Instead of preventing people from going to such a country, by putting lands out of their reach, it is certainly the duty of a wise and paternal Government to aid their removal to it.

But the opponents of this bill, seem to think otherwise. They repeat the objections of thirty years ago. They say that population will be drained off from the Atlantic States; that these States will lose their political weight; landlords will lose their tenants; day laborers will become scarce; white servants will disappear; and, to prevent all these consequences, so terrible in *their* eyes, they propose that the Federal Government, with respect to the public lands, shall act the odious part of the "*dog in the manger.*" But I answer, that the objections are untrue in some respects, and unjust in others. The States will not lose their population, except in places where they ought to lose it. No vacuum will be created in a place fit for the habitation of man. The place of the emigrant will be filled up immediately, as the place of an old house burnt up in the conflagration of a city, is immediately filled by a new one, frequently larger and more beautiful. Experience proves this. For forty years, population has been passing off from the Atlantic to the Western States, and, all the while, the Atlantic States, (with the exception of particular districts) are rapidly increasing in numbers, advancing in wealth, and flourishing in improvements. Thus, it is untrue, in point of fact, that increased emigration to the West is to depopulate the East. Many will doubtless go the West, but their places will be filled up. The earth, which is fit for the propagation of man, cannot be depopulated, neither by emigration, nor by wars, no more than the sea can be exhausted of the finny tribe, by the operation of the fisherman; or the air can be deprived of its plumed inhabitants, by the guns and nets of the fowler. The other objections to emigration are of a nature too selfish and anti-republican, to need particular refutation. We live in a free country, and any man has a right to better his condition, by moving to the right or left, according to his will and pleasure. With us no citizen has a right to the person of another; nor any legal or equitable claim to detain him in any place, from motives of personal or political aggrandisement. Nor is such a motive of any extensive prevalence. More just and generous feelings prevail. The venerable Senator from North Carolina, (Mr. MACON,) speaks the sentiments of a great majority of the Atlantic People, when he says that he never sees a man moving to the West, but he wishes him a good journey, hoping that he will improve his own condition, and certain that he will improve the condition of those left behind, by giving them more "*elbow room.*" As for the march of power, that is a thing not to be arrested by the puny efforts of man. It goes from East to West; from the rising to the setting Sun. It marches in the rear of the Sun; it follows the God of Day.

"Westward the Star of Empire wings its way."

The course of conquest is from North to South; because the man that handles iron, will be the master of him that wears gold. But the course of emigration is from East to West, because it began in the East, and, to accomplish the purposes of God, must end in the West. Those purposes will be accomplished. The valley of the Mississippi will be filled up; the barrier of the Rocky Mountains will be passed; the boundary of the Pacific Ocean will be reached; the circumambulation of the globe will be completed; the oldest and the youngest People will be brought together; and the emigration of the human race will stop where it began, upon the borders and confines of the "*Celestial Empire.*"

SECOND OBJECTION.—*Encouragement to Speculators.*

There is neither truth nor reason, Mr. President, in this objection. Speculators will not buy small and dispersed tracts of inferior land, and they could get no other at a low price, under the operations of this bill. The land would be four or five times picked over before the price could fall to twenty-five or fifty cents per acre; all the choice spots would be taken up, and nothing but the refuse left. Speculators do not want such. They want large bodies of good land, compactly situated, and well

supplied with wood and water. But even the day for this is now gone by. Speculating in wild land is at an end. Sell as low as you will, and no man will *buy* to sell again; because, by crossing a line into Canada, Texas, or Mexico, he can get as much as he wants for nothing; and, for the further reason, that land cannot be an object of speculation for a century or two to come. There is too much now in market, and coming into market to permit it to rise. Within the present age, the gates of the world have been thrown open, and immeasurable regions are spread before us, and inviting us to come and occupy them. There can be no rise until the two Americas, from the Atlantic to the Pacific, from Hudson's Bay to Cape Horn, are covered over with people; and no reasonable man will vest his money upon the contingency of waiting for that event. Besides, bad land is no cheaper at a low price, than good land is at a high one. Twenty-five cents per acre is just as dear for a tract which is four-fifths good for nothing, as one dollar and twenty-five cents is for a tract which is all good. But let us grant the objection. Let us admit for the sake of the argument, that speculators will buy up the land by the one hundred thousand acres, as soon as it falls to twenty-five or fifty cents. Will that be an injury to the State, the Federal Government, or the People? I maintain that it will not. The State will get her taxes; the Federal Government will get so much money into the Treasury; and the People will get the land cheaper from the speculator than they could get it from the Government. Here is the proof, one out of thousands which might be produced.

[Mr. B. then read the following advertisement:]

"*Bounty Lands.*

"The subscriber having about 700 Quarter Sections of Military Bounty Lands, in the State of Illinois, between the Illinois and Mississippi rivers, will dispose of any part thereof, at a low price for cash, horses, beef cattle, cows, and calves, or country produce—or he will exchange for improved property either in this State or Missouri.

"*Belleville, (Ill.) December* 17."

This, Mr. President, is a fair example of the progress of speculation in wild land. It commences with a dream of principalities, and ends with a prayer for relief. Hawked about—offered for every thing, and any thing; credit, as long as you please; pay in any thing, at any price; and, if not got rid of in that way, the Sheriff, Marshal, or Executor, will find a way by which it shall go. This, sir is the progress of speculation in wild land; and, far from being an injury to the People, it is a great advantage to them, and affords them the easiest means of procuring homes.

But I must be permitted to look at this objection under another aspect—an aspect which will shew the absurd contradiction into which those who make it, unconsciously involve themselves. These objectors oppose a reduction of price, because, they say speculators will buy up the land, keep it in reserve, and extort upon the poor. The falsity of this objection has just been exposed, but its folly is still greater than its falsity: for what is the Federal Government itself but a hard-hearted speculator of the first magnitude, and most inexorable temper? It buys land from the Indians at *two cents*, or *less*, for the acre, and sells it to the People for *one hundred and twenty-five cents*, to the acre, or *more*. This is at the rate of more than a thousand per cent; and the Federal Speculator will be satisfied with no less, while a common speculator would be glad of twenty-five or fifty per cent. The Federal Government allows no credit, takes no "*trade*," receives nothing but gold and silver, and asks just the same for bad land as for good. What is this but speculation—speculation upon the greatest scale—speculation upon the most merciless principle—speculation injurious to the States, to the People, and to the Federal Government? and with all these facts staring them in the face, I am astonished at the inconsistency of those who urge the objection.

THIRD OBJECTION—*The creation of Monopolies.*

The repeaters of this objection, Mr. President, are fifty years in arrear of the intelligence of the age. They are ignorant of the fact, (or at least, of its consequences,) that, since the era of our Independence, the law of entails and of primogeniture, has been abolished. The abolition of these laws has deprived monopolies of land of their odious feature—the capacity of being perpetuated. A great landed estate can no longer descend, from generation to generation, in the right line of heirs male. It is to no purpose that the ancestor may possess himself of some hundred thousand acres. Land is no longer protected from execution. It goes with as little ceremony as a *chattel-interest* upon a writ of *fieri facias*. If it escapes the debts of the ancestor, it has the improvidence of the heir, and the statute of distributions to encounter. Creditors, brothers and sisters, all come in for their portions. In the second or third generation it is gone—scattered, as a pyramid of sand is blown away by the wind of the desert. Look at the facts, look at Virgina, the Carolinas, Pennsylvania, Maryland, and all those States which once were colonies of the British Crown. What were they in the beginning, but royal grants to the favorites of the Kings and Queens of England? grants as far surpassing in extent those of William the Conqueror to his Lords and Barons, as this continent surpasses in magnitude the island of Great Britain. And, what are they now? Dukedoms and Earldoms? The inheritance of ancient families? with innumerable tenants, and enormous rents? No, Mr. President: These principalities are all broken up and subdivided, covered by independent planters and farmers, instead of a lord and his tenants; and the heir of the first proprietor lost and gone, his name forgotten; and such will be the end of all monopolies, where the law of entails is not in force to protect them against creditors, and the law of primogeniture in force to prevent their division among brothers and sisters. So well is this understood, that an estate, or patrimony, in wild land, is now considered a burthen and plague to the possessor. It yields him no rent, produces no crop, rises nothing in value, consumes his ready money in taxes and law suits, harasses him with the infidelity of agents, and, after all, is sold to pay his own debts or those of his heir. Land is only valuable now for cultivation, and none but cultivators will buy it. A prudent man will only buy a farm for himself, and another for each of his children; and an imprudent one, that buys much more, will soon repent of his folly, and speedily divest himself, or become divested, of his unprofitable speculation. And so ends the objection to monopolies; a formidable thing, I admit, when capable of being perpetuated, but, a phrase without signification, a sound without sense, an objection without reason, since the era of the abolition of the law of entails and of primogeniture.

FOURTH OBJECTION—*Injury to former purchasers.*

The proper consideration of this objection requires the former purchasers to be looked at in two classes; the cultivators and the speculators. The cultivators are deemed in every Government to be a meritorious class of citizens, and worthy of the peculiar care of legislation. Speculators have not been so considered. If the interest of either has to give way, that of the speculators should yield: for, besides being the least meritorious class, they are also the least numerous; and the interest of the minority must yield to the majority: for it is not the *many* who are to be sacrificed to the *few*. But I am of opinion that there will be no conflict of interest between these classes of purchasers, under any conceivable operation of this bill. I presume that there are no

speculators left to gain or lose by any law that we can pass. The explosion of the banks, the fall in the price of real estate, and the vast quantities of land come, and coming into market, have put an end to their hopes and fears. The game is up with them, and we may go on to legislate for the cultivators, as if speculators had never existed. I will then confine my remarks to them, and I am free to declare, that I can see no right that they have to complain. If they bought at two dollars per acre, they bought when paper money was more than twice or thrice as plenty as silver is now. They got first choices, and have had the benefit of their purchases for several years. Besides, they will not be excluded from the benefit of the new law which may pass. They may buy more land at reduced prices, and probably will find a great advantage in the opportunity thus afforded them of adding to the size of their farms, and providing homes for their children. The compact settlement of his neighborhood will be another advantage to him, in the aid and facilities it will afford to the opening of roads, erection of bridges, supporting schools, mills, and churches, and bearing the burthens of the county levies. In fact the farmers, whether former purchasers or not, are the identical persons to be benefitted by the operation of the proposed law, and the most anxious part of the community for its passage. I have traversed the country far and wide since the first introduction of this bill, and know their voice to be loud and unanimous in its favor. It is not *they* who make the objection; but others who have their own views to accomplish, and who wish to delude as many as possible into the ranks of opposition.

FIFTH OBJECTION—*Better to wait for the rise.*

This, Mr. President, is the argument which dazzled the imaginations of the People, and defeated the policy of Washington, about five-and-thirty years ago. But thirty-five years has given us some experience. It has shewn that we have twice paid the principal of the public debt, in annual interest, while waiting for this rise, which has not yet taken place, and seems now to be further off than ever. It has shewn that the present system is impracticable; that it never can be executed, at least by postdiluvian men of three score and ten. It would require *Methusalems* to execute it: for, after fifty years of trial, the system has scarcely made an impression on the mass of the public lands, and is now torpid and stagnant under its increasing incapacity to get along. I have drawn up a table to show how much has been sold, how much has been surveyed and unsold, and what is the total number of acres in each State and Territory. The rule of three, with a due allowance for increasing slowness, arising out of the increasing worthlessness of the refuse lands, will then give a tolerable idea, calculated by ages and centuries, of the final conclusion of the sales under the operation of the present system.

States and Territories.	Quan. surveyed and sold.	Quan. surveyed and unsold.	Whole quantity of land in the State or Territory.
Ohio - - -	7,488,359	7,734,769	26,000,000
Indiana - -	3,227,093	10,453,456	21,760,000
Illinois - -	1,403,482	19,684,186	39,000,000
Missouri - -	1,017,095	17,957,157	38,400,000
Alabama - -	3,685,244	18,612,650	32,512,000
Mississippi - -	1,198,969	6,015,182	29,024,000
Louisiana - -	153,277	2,679,186	30,540,000
Michigan - -	146,320	4,669,890	17,280,000
Arkansas - -	26,321	7,229,514	38,000,000
Florida - -	- -	- -	30,000,000

Ohio, the most convenient to the sources of emigration, has only got rid of seven millions of acres in a period of fifty years. Fifty years to get rid of seven millions, comprising all that is good: now, how long will it take her to get rid of the remaining seven, consisting exclusively of inferior and refuse land? Surely one hundred and fifty years will not be too short a calculation. What, then, will be the fate of Indiana, Illinois, Missouri, Louisiana, Alabama, and Mississippi? Only one, two, and three millions, have been sold in each of these States, and from twenty to thirty odd millions remain to be sold in them. In the mean time, the sales diminish; we sell less and less every year; a feeling of stagnation pervades the whole landed system, and announces the approach of a total paralysis. Still the opponents of this bill, deaf to the voice of time, blind to the evidence of facts, dead to the feeling of experience, repeat to us the old exploded calculations of the funding-system men, of the year '90. They repeat to us the old story of billions and trillions to be gained by sticking to the minimum, and waiting for the rise. I would ask, Mr. President, if these calculators know the present value of improved land in the old and in the new States? I have put myself to some trouble to learn it; and the results shows me, that the average in Virginia, according to the assessment of 1817, was only $4 83, and in Ohio, according to the assessment of 1825, was only $2 49; and this including, in both cases, all the buildings and improvements. This being the fact, what should be the average value, after the public sales are over, of the wild land in the new States? I presume that no man, acquainted with the subject, would make it as high now as General Hamilton did in the year '90. I am certain that I would not; and I am equally certain that there are large districts in Virginia, with all the improvements upon them, assessed, some below, and some not much above, the estimate of General Hamilton. I have taken the trouble to make a table of some of these districts, for the better information of the Senate.

THE TABLE.

Counties.	Number of Acres.	Average value.
Tyler,	935,817	68 cents.
Tazewell,	894,324	33 do.
Scott,	609,644	44 do.
Russell,	1,268,271	24 do.
Randolph,	1,636,301	23 do.
Patrick,	707,138	71 do.
Lewis,	694,573	56 do.
Lee,	1,810,857	18 do.
Kenhawa,	2,990,566	34 do.
Giles,	720,133	48 do.
Grayson,	274,717	27 do.

It will not do, Mr. President, for gentlemen who come from the great cities, to estimate the wild lands of the West, according to the standard of their own fields and gardens. They must listen to those who come from the West, and have a personal knowledge of what they say. If they do not, they will make this Union a curse to those whose interests are legislated upon by members of Congress from far distant States, ignorant of facts themselves, on account of that distance, and deaf to the voice of those who can state the truth. They must listen to those who speak the *general voice of the West*, backed, as I am, by memorials from four States, and supported by numerous Senators and Representatives. I speak the voice of seven States and three Territories, Mr. President, when I denounce this doctrine of waiting for the rise, as a policy false in itself—fraught with injustice to these States—involving a breach of the cession acts; a breach of the compact between the Federal Government and the new States; a breach of the Constitution; a policy injurious

to the public revenue; injurious to the public property in the new States; injurious to the old States, and destructive of the sovereignty and independence of the new ones. These, sir, are not a string of phrases, repeated without consideration, but each a text, upon which a commentary of facts, reasons, and consequences, might be delivered, each as long as the speech which I am now addressing to you. But I will not attempt this commentary. Time forbids it. I will merely indicate the facts which sustain my positions.

I say then that the policy of holding up the lands at an arbitrary *minimum*, and waiting for a rise in the price, is a policy intrinsically false; and I prove it by a reference to the elementary principles of political economy; those principles which forbid a Government to make merchandise of its soil; which forbid it to turn landlord; hold tenants; reserve large tracts of ground in the wilderness state; enact a code of forest law, and maintain a body of officers in pay and authority, to protect its timber, grass, and soil.

I say it is a policy fraught with injustice to the new States; and I prove it by referring to the table of unsold land in the States of Ohio, Indiana, Illinois, Missouri, Louisiana, Alabama, and Mississippi; covering from one-third to nineteen-twentieths of their soil, paying no tax, helping to open no roads, build no bridges, dig no canals, support no schools, locked up from agriculture, and as useless to the People as so many royal parks in the Kingdoms of Europe.

I say it is a policy involving a breach of the cession acts, and I prove it by referring to the terms of these cessions. Here they are:

The cession act of Virginia.

"*Be it enacted by the General Assembly*, That it shall and may be lawful for the Delegates of this State, to the Congress of the United States, and they are hereby authorized and impowered, to convey, transfer, &c. to the United States, in Congress assembled, for the benefit of said States, all the right, title, claim, &c. which this State has, as well to the jurisdiction, as soil, to the Territory, situate Northwest of the Ohio river, and within the chartered limits of Virginia, upon condition, &c. that the Territory, so ceded, shall be formed into Republican States, not less than three, nor more than five in number, with the same rights of sovereignty, freedom, and independence, as the other States; and that all the land within the Territory, so ceded, and not disposed of in bounties, &c. shall be considered as a common fund, for the use and benefit of such of the United States as have become, or shall become members of the Confederation, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever."

[*The cession act of Georgia, ceding the Southwestern Territory, being in the same words.*]

Such are the terms of the cessions. The lands "*to be disposed of*," and not to be held up indefinitely; to be disposed of for the "*common benefit*" of all the States, and not reserved for the use of the Federal Government. Yet they have already been held up fifty years; and, under the present mode of selling, must be held up for centuries to come.

I say that this policy involves a breach of the articles of compact between the new States and the Federal Government; and I prove it by referring to the article by which those States agree not to exercise the right of taxation over the public lands until they are sold; which clearly implies that they are to be sold, and absolves the States from the observance of the article, if its terms or spirit is not complied with.

I say that this policy involves a breach of the Constitution; and prove it by referring to that equality of sovereign rights which the Constitution guarantees among all the States, and which is not enjoyed in the new States, on account of the Federal dominion over their soil, and which the continuance of this policy will increase and protract.

I say it is a policy injurious to the public revenue; and prove it by referring to 136,000,000 of dollars paid in interest upon the public debt, while waiting for that rise in the price of land which this policy anticipates, and which has not yet began. Once in every 16 years the principal of the public debt is sunk in interest: it stands to reason, then, that the land will go just as far in the payment of that debt if sold for twenty-five cents now, as it will do if sold for fifty cents at the end of sixteen years; or at one dollar in thirty-two years; or two dollars in sixty-four years; or four dollars in one hundred and twenty-eight; and so on, as far as the calculation may be carried.

I say it is injurious to the public property in the new States; and prove it by pointing to the continued destruction of the public timber, and which all the penal laws, and troops of the Federal Government, and all its tribe of forest officers, are unable to prevent.

I say it is a policy injurious to the old States; and prove it by pointing to the enormous taxes which they are now paying, through the Custom-houses, to raise money to meet the interest and a fraction of the principal of the public debt, after having given land enough for that object to pay the debt, if faithfully and judiciously applied to that purpose.

I say it is a policy destructive to the sovereignty and independence of the new States; and prove it by recurring to the fact that they are not "*equal*" to the old States; that they have not the attributes of sovereignty, the right of taxation, of eminent domain, and of primary disposition of the soil; that the Federal Government exercises jurisdiction over the soil and persons of their citizens: denouncing fine, imprisonment, and military chastisement, against those who may cut a stick, or dig a hole, or lift a stone, from Federal ground; and, to sum all up in one degrading word, by showing that the new States are the *tenants* of the Federal Government.

Connected with this policy of holding up the lands for the rise, is the system of reserving from sale the land that is supposed to contain lead ore, salt water, and iron ore. These the Federal Government has reserved to itself, and has proposed to derive a great revenue from the rents! Officers are actually engaged in this business of renting and leasing, and, according to reports, have organized a body of about two thousand tenants in the State of Missouri! Mr. President, I must be permitted to borrow the language of *Edmund Burke*, to do justice to the folly of such a system. It was the fate of Burke to attack, and to explode, that system in England; and I trust that his sound political wisdom will not be less availing in the American Senate, than it was in the British House of Commons. He brought in a bill to alienate the Crown Lands, and supported it in a speech replete with patriotism, and wise maxims of political economy. Listen to what he says.

"A landed estate is certainly the very worst which the Crown can possess. * * * All minute and dispersed possessions—possessions that are often of indeterminate value, and which require a continued personal attendance—are of a nature more proper for private management than for public administration. They are fitter for the care of a frugal land steward, than of an office in the State. * * * If it be objected that these lands, at present, will sell at a low market; this is answered, by shewing that money is at a high price. The one balances the other. Lands sell at the current rate, and nothing can sell for more. But be the price what it may, a great object is always answered, whenever any property is transferred from lands

which are not fit for that property, to those that are. The buyer and the seller must mutually profit by such a bargain; and, what rarely happens in matters of revenue, the relief of the subject will go hand in hand with the profit of the Exchequer. * * * The revenue to be derived from the sale of the forest lands will not be so considerable as many have imagined; and I conceive it would be unwise to screw it up to the utmost, or even to suffer bidders to enhance, according to their eagerness, the purchase of objects, wherein the expense of that purchase may weaken the capital to be employed in their cultivation. * * * The principal revenue which I propose to draw from these uncultivated wastes, is to spring from the improvement and population of the kingdom; events infinitely more advantageous to the revenues of the crown than the rents of the best landed estate which it can hold. * * * It is thus I would dispose of the unprofitable landed estates of the crown: *throw them into the mass of private property*: by which they will come, through the course of circulation, and through the political secretions of the State, into well regulated revenue. * * * Thus would fall an expensive agency, with all the influence which attends it."

Such were the sentiments of Mr. Burke, and they produced their effect. The King himself, at the ensuing session, recommended the alienation of the crown lands; and the Parliament acted in conformity to his message. The forests and mines, which had been nothing but a source of patronage to the King, and of vexation to the People, were thrown into the mass of private property; an expensive agency and many oppressive laws were got rid of; the lands and mines became infinitely more productive; and, by increasing the wealth and population of the country, increased, at the same time, the annual receipts into the public Treasury. So far from fixing an arbitrary *minimum*, and holding up for the rise; so far from screwing up purchases to the highest bid; Mr. Burke, the King, and the British Parliament, thought it wise to prevent them from bidding eagerly against one another, and that it was better for the buyers and the kingdom that their money should be reserved for the improvement and cultivation of the land which they might purchase.

I do trust and believe, Mr. President, that the Executive of this free Government will not be second to George the Third in patriotism, nor an American Congress prove itself inferior to a British Parliament in political wisdom. I do trust and believe that this whole system of holding up land for the rise, endeavoring to make revenue out of the soil of the country, leasing and renting lead mines, salt springs, and iron banks, with all its train of penal laws and civil and military agents, will be condemned and abolished. I trust that the President himself will give the subject a place in his next message, and lend the aid of his recommendation to the success of so great an object. The mining operations, especially, should fix the attention of the Congress. They are a reproach to the age in which we live. National mining is condemned by every dictate of prudence, by every maxim of political economy, and by the voice of experience in every age and country. And yet we are engaged in that business. This splendid Federal Government, created for great *national* purposes, has gone to work among the lead mines of Upper Louisiana, to give us a second edition, no doubt, of the celebrated "*Mississippi Scheme*" of JOHN LAW. For that scheme was nothing more nor less than a project of making money out of the same identical mines. Yes, Mr. President, upon the same identical theatre, among the same holes and pits, dug by *John Law's* men in 1720; among the cinders, ashes, broken picks, and mouldering furnaces, of that celebrated projector, is our Federal Government now at work; and, that no circumstance should be wanting to complete the folly of such an undertaking, the task of extracting "*revenue*" from these operations, is confided, not to the *Treasury*, but to the *War* Department.

Salines and salt springs are subjected to the same system—reserved from sale, and leased for the purpose of raising revenue. But I flatter myself that I see the end of this branch of the system. The debate which took place a few weeks ago on the bill to repeal the existing duty upon salt, is every word of it applicable to the bill which I have introduced for the sale of the reserved salt springs. I claim the benefit of it accordingly, and shall expect the support of all the advocates for the repeal of that tax, whenever the bill for the sale of the salines shall be put to the vote.

The policy of the Federal Government with respect to lead and salt, is known to the Senate, because they are reserved from sale by law; but I have mentioned iron ore as an article also reserved; and this, I presume, is news to the Senate, for this has not been done by law. It is an act of Federal Executive authority, asserted and enforced by a proclamation which I will read.

The Proclamation.

"I, JOHN QUINCY ADAMS, President of the United "States, do hereby proclaim and make known, that a "public sale will be held at the Land Office, at Jackson, "in the district of Cape Girardeau, in the State of Mis- "souri, on the first Monday in June next, for the disposal "of certain sections of land, situate in townships number- "ed thirty-five, thirty-six, and thirty-seven, of ranges "numbered five, six, and seven, West of the fifth princi- "pal meridian line, to wit: the alternate sections in each "township, numbered one, three, five, seven, nine, ele- "ven, thirteen, fifteen, seventeen, nineteen, twenty-one, "twenty-three, twenty-five, twenty-seven, twenty-nine, "thirty-one, thirty-three, and thirty-five.

"The lands above designated, abound in FERRUGINOUS "APPEARANCES, and are known to contain MINES OF IRON "ORE."

By this proclamation, Mr. President, thirty-six thousand acres of land, exhibiting signs of iron ore, are reserved from sale, and from the use of the People in whose country God has placed it for their especial use and benefit. Surely a more odious reservation (that of salt alone excepted) was never attempted in any country. Iron is a metal more valuable to man than any that the bowels of the earth contains. It is the article without which bread itself cannot be raised. Odious as is the reservation itself, it is rendered still more so by the mode of effecting it. It is done by selling and retaining the alternate sections; a mile square sold to a citizen, and a mile square retained by the Federal Government; and so throughout three townships, comprising 72,000 acres. The intention of the scheme is to get the reserved sections increased in value by the cultivation and improvement of those which are contiguous to them. This, sir, is the quintescence of the speculating principle. It proceeds upon the ground of appropriating to the Federal Government the fruits of the People's labor, without contributing any thing in aid of that labor. The owners of the sections which are sold, are to be at all the labor of improving the country; making roads and bridges; supporting schools, mills, and churches; and the Federal owner of the reserved sections is to have the benefit of all this improvement without expending a cent, or striking a stroke, and while injuring the neighborhood by keeping its settlements weak, thin, and dispersed, by the intervention of so many uninhabited tracts of land.

SIXTH OBJECTION—*Pledged to the payment of the Public Debt.*

This objection applies only to the *donation* principle contained in the bill. It implies that the Federal Government has no power to make donations of the public

land, a supposition which is contradicted by the nature of the pledge itself, and by the practice of the Government for fifty years.

The pledge here alluded to was not made by the donors of the land. It was *intended* by them that the ceded lands should be applied to the payment of the public debt; but they made no other stipulation with Congress in reference to their use, but that they "should be disposed of for the common benefit." The pledge in question was made long after the cession, and made by the influence of the same interest in Congress which funded the public debt, doubled the price of land, and established the system of paying annual interest until the land should rise to four and eight dollars per acre. Still it was not a pledge of the *lands*, but only of the *nett proceeds of the sales;* and, each succeeding Congress has felt itself at liberty to make gratuitous donations of the land to any extent that it pleased. Look to the statute book; its pages are filled with these donations, from the year 1785 down to the present session.

[Mr. B. here enumerated many of these donations. The bounty lands to the officers and soldiers of the Revolution; 100,000 acres in the year '87, to actual settlers in Ohio; 24,000 acres to the French of Galliopolis; donations to the Nova Scotia and Canada Refugees; 6,000,000 of acres to the soldiers of the late war; 90,000 to French settlers in Alabama; donations to States for seats of Government; to counties for county court-houses; to States for schools and colleges; 24,000 acres to General Lafayette; 24,000 to the Asylum of the Deaf and Dumb in Connecticut; 24,000, at the present session, to the like Asylum in Kentucky.]

Mr. B. continued: These, Mr. President, are only a few instances, by way of example. I think it probable that an accurate examination would show that the United States have given away nearly as much as they have sold; and we all know that we are running down the road of donations at present, with a rapidity which threatens to arrive at the end of the land, by a shorter process than the present system of selling would indicate. This is proof enough of the fallacy of the objection; a fallacious objection, indeed, which would permit the Government to make princely donations to foreigners and refugees, and deny it the capacity of making small donations to its own citizens!

The principle, then, of donations which the bill contains, is entirely free from legal objection, and resolves itself into a question of mere expediency. Is it, then, expedient that Congress should make the donations which the bill contemplates? And, first, what is the amount and value of these proposed gifts? Eighty acres of refuse land, Mr. President, land which remains unsold after the district has been five times picked over, and reduced to the price of twenty-five cents per acre, and which price nobody will give! Far from considering such donations as too great for this Government to make, I feel ashamed of their smallness and insignificance. If I could have followed the suggestions of my own judgment, I should have indicated double the quantity, one hundred and sixty acres, to be taken immediately after the public sales; and I trust that an amendment to that effect will yet succeed. But even the donations contemplated by the bill, as it now stands, would be the means of saving many families from want and vice, and converting many idle citizens into useful members of society. Eighty acres, even of indifferent land, would furnish a home to many that are houseless. If some ten, twenty, or thirty acres, could be found upon it, fit for cultivation, it would make a little farm, on which a small family, a widow with her orphan children, or a young man just married, could subsist in comfort and independence.

[Mr. B. here gave an example of what might be accomplished by industry and economy, and a little home to live at. It was the case of "*Granny White.*" At the age of sixty, she had been left a widow in one of the counties in the tide-water region of North Carolina. Her poverty was so extreme, that when she went to the County Court to get a couple of little orphan grand children bound to her, the Justices refused to let her have them, because she could not give security to keep them off the parish. This compelled her to remove; and she set off with the two little boys, upon a journey of eight or nine hundred miles, to what was then called "*the Cumberland Settlement.*" Arrived in the neighborhood of Nashville, a generous hearted Irishman let her have a corner of his land on her own terms, a nominal price and indefinite credit. It was fifty acres in extent, and comprised the two faces of a pair of confronting hills, whose precipitous declivities lacked a few degrees, and but a few, of mathematical perpendicularity. Mr. B. said he knew it well, for he had seen the old lady's pumpkins propped and supported with stakes, to prevent their ponderous weight from tearing up the vine, and rolling to the bottom of the hills. There was just room at their base for a road to run between, and not room for a house, to get a level place for which, a part of the hill had to be dug away. Yet, from this hopeless beginning, with the advantage of a little piece of ground that was her own, this aged widow, and two little grand children, of eight or nine years old, advanced herself to comparative wealth: money, slaves, horses, cattle, and her fields extended into the valley below, and her orphan grand children raised up to honor and independence, were the fruits of economy and industry, and a noble illustration of the advantage of *giving land to the poor.* But the Federal Government would have demanded sixty-two dollars and fifty cents for that land, cash in hand, and old Granny White and her grand children might have lived in misery and sunk into vice, before the opponents of this bill would have taken less.]

It is to no purpose, Mr. President, said Mr. B. to tell me that eighty acres of land costs but $100. I answer that there are innumerable families in this Union who never saw, and never will see the day, when they can pay down that sum. I answer further, that eighty acres of refuse land is not worth $100. That is the price of a first rate tract, and a tract that is only one-half, one third, or one-fourth part fit for cultivation, is only worth the one-half, the one-third, or the one-fourth part of that sum.

It is to the poor alone that these refuse tracts are desirable; a man of property would not waste his time upon them even if he was paid for doing so. Here then is the peculiar injustice of fixing a *minimum* price of $1 25. It operates upon the poor, not upon the rich. It enables the man that has $100, to get a good quarter section; but the man that has but $25, cannot buy at all; for he cannot pay the $100 for a tract which is all good, and the Government will not make an equitable graduation of price, and take $25 for a tract which is three parts bad, and one part good. It wants a dollar and a quarter all round, which would bring the good land to five dollars per acre. But I discard as contemptible, and unworthy of the Government, the policy of gleaning the public lands all over; gleaning of every kind is forbid, whether it applies to the "*sheaf,*" "*the grape,*" "*the olive,*" or "*the corners of the land.*" I repudiate it as a policy abhorred of God and man, condemned by common sense, by patriotism, and by the conduct of all People, in all ages and nations. I contend that the Earth is the gift of God to man. *I go for donations; and contend that no country under the sun was ever paid for in gold and silver before it could be settled and cultivated.* Have we not seen these States settled by donations, and sales at nominal prices? Was not Kentucky, Tennessee, and one-third of Ohio, settled in the same way? Were not Upper and Lower Louisiana and the two Floridas settled by gratuitous donations from the Kings of Spain—donations which

the Federal Government has labored for five and twenty years to appropriate to itself? Are not the lands of Canada given at this moment to any that will come and take them? And was not £30,000 sterling (about $135,000,) appropriated last Spring by the British Parliament to defray the expenses of emigrants moving to that province? Look at Texas and Mexico. See land given there in any quantity to any that will come and take it. See our citizens abandoning this land of Liberty, and going there to receive the bounty of a foreign Government, and tell me why it is that those who are afraid of emigration to the West, are not also afraid of emigration to Canada, Texas, and Mexico? In the West Indies, and all over South America, it is the same thing. Here is a decree of the Republic of Colombia, dated June, 1823, for the gratuitous distribution of six millions of acres among emigrants from Europe and America.

The Decree.

"The Senate and House of Representatives of the Republic of Colombia, united in Congress, considering—

"1. That a population, numerous and proportionate to the territory of a State, is the basis of its prosperity and true greatness:

"2d. That the fertility of the soil, the salubrity of the climate, the extensive unappropriated lands, and the free institutions of the Republic, permit and require a numerous emigration of useful and laboring strangers, who, by improving their own fortunes, may augment the revenues of the nation, have decreed:

"That foreigners emigrating to Colombia, shall receive gratuitous donations of land, in parcels of 200 fanegas, (about 400 acres,) to each family.

"That it may be chosen in the maritime, the middle, or the mountainous districts, in the regions favorable to production of sugar, coffee, cocoa, indigo, rice, cotton, wheat, barley, rye, and all the varieties of fruits, both of tropical and high latitudes.

"That five years' cultivation shall entitle a foreigner to naturalization.

"That one million of dollars be appropriated in aid of agriculture, to be distributed, in loans, to industrious farmers."

Such, Mr. President, is the conduct of the free Republics of the South. I say Republics: for it is the same in all of them, and it would be tedious and monotonous to repeat their numerous decrees. In fact, throughout the New World, from Hudson's Bay to Cape Horn, (with the single exception of these United States,) land, the gift of God to man, is also the gift of the Government to its citizens. Nor is this wise policy confined to the New World. It prevails even in Asia; and the present age has seen—we ourselves have seen—published in the capital of the European world, the proclamation of the King of Persia, inviting Christians to go to Persia and receive gifts of land—first rate, not refuse—with a total exemption from taxes, and the free enjoyment of their religion. Here is the proclamation: listen to it.

The Proclamation.

"Mirza Mahomed Saul, Ambassador to England, in the name, and by the authority of Abbys Mirza, King of Persia, offers to those who shall emigrate to Persia, gratuitous grants of land, good for the production of wheat, barley, rice, cotton, and fruits, free from taxes or contributions of any kind, and with the free enjoyment of their religion; THE KING'S OBJECT BEING TO IMPROVE HIS COUNTRY.

"London, July 8th, 1823."

"*To improve his country—the King's object being to improve his country!*" What a noble object! What a lesson of political wisdom to be read, from the despotic regions of Asia, to the American Senate! And how was land disposed of in that country which had the peculiar care of God? It was *given*, Mr. President, not *sold*. "*God gave the Earth to the inhabitants thereof.*" The promised land was *given* to the children of Israel, not autioneered, with a *minimum* of $1 25 per acre. Land was then the gift of God to man, and to woman also; for the daughters of *Manasseh* were allowed to inherit, and to share in the bounty of the Giver of all Good.

I have said, Mr. President, that this wretched system brings advantage to nobody; neither to the Federal Government, the State Governments, the People of the States, nor to the most efficient and laborious of the officers who administer it. I have said, that, while consuming the unheard-of proportion of 33⅓ *per cent.* in the expenses of collection, a majority of the Registers and Receivers would be starved out of service if they had to live upon their compensation; and here is the proof, extracted from a document which lies upon your table. It applies to the year 1824.

STATEMENT of Commissions accruing to the Registers and Receivers in a majority of the Districts in the Western States, on the Sales of the Public Lands, at the rate of one per centum, and a limitation against exceeding $3,000 per annum.

STATE.	DISTRICT.	RECEIVER.	REGISTER.
Ohio,	Marietta	$111 49	$142 09
	Chillicothe,	214 00	250 00
	Cincinnati,	443 40	421 41
	Piqua,	23 86	30 19
Indiana,	Vincennes,	243 23	223 22
	Fort Wayne,	10 63	13 42
Illinois,	Kaskaskia,	13 01	32 64
	Shawneetown,	46 40	50 02
	Edwardsville,	169 22	74 80
	Vandalia,	10 52	9 67
	Palestine,	56 17	149 20
Missouri,	St. Louis,	325 46	157 28
	Franklin,	240 18	300 72
	Jackson,	184 10	199 71
	Lexington,	11 97	150 48
Alabama,	Huntsville,	nothing	nothing
	Sparta,	60 00	60 00
	Cahaba,	210 00	120 00
	Tuscaloosa,	105 00	143 00
Mississippi,	Augusta,	2 97	nothing
	St. Stephens,	338 00	313 00
Louisiana,	New Orleans,	18 67	115 51
	Opelousas,	41 17	54 34
	Ouachita,	10 27	3 75

I have now finished, Mr. President, the view which I proposed to take of the acquisition and administration of the public lands. I have confined myself chiefly to facts, leaving conclusions to the judgment of the Senate. In the rapid view which I have taken of this great subject, it has been clearly shewn that the lands were ceded to the Federal Government by a few of the States, for the known and admitted object of paying off the public debt; and that, instead of paying this debt, this great fund has been so mismanaged, that in no one year have the sales yielded one-half, seldom one-fourth, and latterly, not one-fifth part of the annual interest of that debt. The fatal policy of waiting for the rise, has cost us more than the lands themselves are worth, or could ever be sold for. It has cost us 136 millions of dollars in interest, leaving the principal of the public debt as large as ever. The public lands have yielded but twenty-six millions of dollars in fifty years, and are now annually yielding less and

less. In all probability it will require an hundred years, under the operation of the present system, to draw twenty-six millions more from them. The expense of administering the system is enormous, amounting fully to thirty-three and a third per centum. With this enormous expense of collection, the most numerous and efficient class of the land officers, the Registers and Receivers, get an inadequate and most insignificant compensation. The document upon our table, shews that the commissions of two-thirds of them for the year 1824, were less than $200 each; many are shewn to be less than $100, and several which did not amount to $50. With such compensation the best of the officers must quit the service, and let their offices fall into hands less trust-worthy. In the mean while, the lands are dribbled away upon a thousand objects, foreign to the intention of the States which ceded them. These States are again recurred to to raise money for the same object for which the lands were ceded; and they are heavily taxed, through the Custom-houses, to raise ten millions per annum, in addition to the current expenses of the Government, to meet the annual interest, and a fraction of the public debt. The knavery and delusion in which the present mode of selling lands had its origin, stands detected and exposed: the necessity of a radical change, is demonstrated and admitted. The advantage of returning to the principles of 1790; the advantage of prompt sales at present value; a speedy discharge of the public debt; and the wisdom and justice of passing the lands cheaply and easily into the hands of the People; are measures which can no longer admit of two opinions. Theory and experience combine to demand their fulfilment; and the bill which I have introduced is intended to accomplish them. I do not say that it presents the best mode of disposing of the public lands; I do not even say that I cannot present a better. But I will say that it contained *all* that I hoped for when it was introduced; and *less* than I hope for now. A great change in the public mind has lately taken place on this subject, and is continuing to take place; and I am of opinion that a plan will be adopted still more consonant to the rights of the new States and to the interest of the Public Treasury. The present system is indefensible and insupportable. Its continuance is impossible. The old and the new States will unite to put it down; all the friends to State rights will unite against it. The new States are tenants to the Federal Government; their citizens subject to be treated as trespassers (within their own counties) by the Federal Government—dragged before a Federal Judiciary, as true to the Federal Government as the needle is to the pole—and punished for cutting a stick. Even military force may be an accompaniment, or substitute, of Federal Judicial process. Then these States are liable to be exhausted by an incessant drain of money, and, in the sufferance of this evil, Kentucky and Tennessee are joined with the rest: for they are to furnish emigrants to the others, and money to pay for the public lands. The Western States now pay a million of dollars per annum to the Customhouse at New Orleans; they pay, besides, a heavy proportion of the customs in Philadelphia, New York, Baltimore, and Boston. Then they are subject to the operation of thirty land offices, each a vortex for the absorption of dollars. Will the Congress attempt to continue this system? Is there a Senator present who will say that he will hold up the public lands until they rise to $1 25 per acre—until 300 millions of dollars are received for the 240 millions of acres which the new States and Territories contain? Sir, reflect upon it! Think of the enormity of the sum, the smallness of the population, their remoteness from commerce, the scarcity of gold and silver among them, and the many restrictions under which they are laid by the policy of this Government. Three hundred millions of dollars! And have you no commiseration for the People on whom you intend to levy it? Have you less feeling for the People of the West than for the inhabitants of France and of India? I say, France and India, because the public feeling has been put to the test with respect to both. The Allies imposed upon France, in the year 1815, seven hundred and fifty millions of francs, ($150,000,000,) and the public voice was every where raised against the enormity of the imposition. Yet France had a population of thirty millions, was rich in gold and silver, and bloated with the spoil of conquered Europe. The page of history has given immortality to the sufferings of Indostan, ravaged by *Nadir Shah*, about the middle of the last century; yet that remorseless conqueror brought off but eighty millions sterling: a sum, great to be sure, but comparatively light and trifling, to be taken from the wealth and population of the Mogul Empire, to what three hundred millions of dollars would be, taken from the Western States and Territories. Still the French and the Hindoos had another advantage over our brethren of the West. Their sufferings, though violent, were brief and transient. They lasted but for a few years, and for a few campaigns. The invasions to which they were subjected, were tempests which spent their force, subsided, and left the desolated countries to recover in peace. But the meditated levy upon the West is to last for ages and centuries. At the rate of a million a year, it will take three hundred years to complete it; and, during all that time, nine States (for Kentucky and Tennessee are to furnish most of the money;) during all that time, nine States and three Territories are to suffer a drain which would exhaust the mines of Mexico and Peru.

Yet it is only a part of the population of these States which is to furnish this great sum—a single class in society are to be called upon for it, and that class the one which contributes most to the support of the Government, receives the fewest favors from it, and handles the least money. I speak, Mr. President, of the agricultural class. What gives this Government two and twenty millions of revenue per annum? Duties on imports. And what brings in imports? Exports. And on what are they founded? On sixty-six millions of dollars worth of cotton, tobacco, flour, rice, beef, pork, and other productions of agriculture. Surely a wise and paternal Government would cherish, not kill, the goose which lays such golden eggs. Surely the maxims of Edmund Burke ought to prevail; instead of screwing up such bountiful furnishers of revenue to the highest possible price for the land which they are going to cultivate, more for the support of Government than themselves; instead of compelling them to expend in the *purchase*, the money which should be devoted to its *improvement*; surely a Republican Government, with hundreds of millions of acres, which it can neither sell nor use, would gratuitously bestow upon every citizen that would work it, as much land as he would take. But such are not the intentions of the opponents of this bill. True to the maxim of "*penny wise and pound fool sh*," they adhere to the project of making revenue out of land. They stick to the *minimum* of $1 25, and look to the farmers and planters to pay it. I say to the farmers and planters: for merchants and tradesmen do not deal in land. It is the farmers of the West who are looked to for these three hundred millions of dollars, and are required to pay it down in advance. No credit for them. Credit is reserved for the importing merchants. Farmers cannot be trusted, although the Government retains the land for security until the last dollar is paid, with a clause of forfeiture, both of land and money, for non-payment, even in the last instalment; and has, at this moment, many such forfeits in hand, which, with the blessing of God, I will endeavor to make it disgorge at the next session. No, Sir, farmers cannot be trusted, like importing merchants; although one of these merchants, a great importer at Philadelphia,

has defrauded the Treasury of eight hundred thousand dollars since the day that I laid this bill upon your table. But it is not enough that farmers must produce the exports which bring in the imports which furnish the Government with revenue, and that these exports must be raised from the ground which is paid for in advance; even this ground is not to be sold for its fair price—*is not to be sold for a price adapted to its quality*—but is to be subjected to an odious and arbitrary *minimum*, which puts all qualities, good and bad, at one uniform rate. If a farmer wants a quarter section, adjoining his farm, either for the sake of the timber it bears, or for a stone quarry upon it, or for a spring of good water, which is running away, or for some ten, twenty, or fifty acres of good land which it contains, and is ready to pay down the actual value of this quarter section, it is in vain that he offers the money, and applies to the Federal Government, for it. The Government has but one price, and is in no necessity to sell. It pays no taxes, and levies as much money as it pleases upon the labor of the farmers, and upon the tools they work with, through the tariff of duties in the Customhouse. This frightful picture, Mr. President, seems to be incapable of aggravation. Imagination, indeed, could add nothing to it. Fancy could color it no higher. But look to the reality, and the climax continues to rise. Iron is an article of indispensable necessity to the farmer; he cannot work the ground without it. Well, there is iron ore in the Western Country—in Missouri, especially, upon the Federal lands—and surely the Federal Government, which exacts so much of farmers, will place this indispensable article in their hands upon the easiest terms. Not so the fact. The learned eye of this Administration has made discovery of these "*ferruginous appearances*," and, straightway, the iron ore is locked up from the People's use. The President's proclamation for the reservation of iron ore "*is broad upon the face*" of the West, and I will undertake to say, that it is the first instance in the history of the human race, in which the People of a country have been interdicted by their own Government from the use of the iron which God had placed among them.

But the Government wants money, wants gold and silver, and there is an article in the West, in Missouri, at all events, that will enable the farmers to get gold to pay for the land. That article is certainly at their service! Not so the fact, Mr. President. Mines are too precious for the People. The Federal Government is apprehensive, like the pedagogue King, James the First, that the citizens will become too rich—"*that the subject will vax more rich than His Majesty*"—if he should become the owner of lead mines. These, then, are to be reserved, not to be put under the care of a frugal land steward, according to the idea of Mr. Burke, but to be placed in the hands of a military subaltern, governed by "*instructions*," in open breach of the laws and Constitution of the country.

So much for lead and iron. Now for salt. There is salt in Missouri, enough to furnish an Empire. It is an article of prime necessity to farmers. Their families cannot be subsisted without it. Even beef and pork, unless preserved in salt, cannot be converted into money to buy the Federal land. Beyond all doubt, then, the farmers of Missouri have the use of the salt in their own country. Pardon me, Mr. President, this article also is the subject of reservation; seized upon by the great Federal Landlord, and locked up from the use of the tenants. They may look to foreign countries, to Liverpool, St. Ubes, and Turk's Island, for a supply of this indispensable article, loaded with a tax of twenty cents per bushel, while innumerable streams of salt water are running away in the country, and wasting themselves in creeks and rivers. "*There is a mystery in salt*," Mr. President. There is a virtue in it which commands the strongest affections of the human heart, whether for love or for hatred. Both sacred and profane history are full of examples. You have heard them cited by the Senators from Virginia and North Carolina, (Messrs. RANDOLPH and MACON.) The children of Israel refused to bear arms against the "*Great King*," because he let them have "*salt from the pits*" free of tax. The peasants of Dalecarlia refused to join Gustavus Vasa against the King of Denmark, because he had rendered them the same favor. The Mahrattas would not fire upon the troops of the East India Company, because "*they had eat the Company's salt.*" On the other hand, the bitterest hatred is engendered against the Power which deprives its subjects of salt, or heavily taxes it. The "*gabelle*" of the old French Monarchy, was an efficient cause in producing the Revolution in France. The tax of fifteen shillings sterling the bushel, which the English People now pay on salt, which costs sixpence, is the most odious and oppressive of all the taxes imposed in a country in which the system of taxation is perfected to its ultimate point of oppression. Still the French and the English get the salt of their own country by submitting to the regulations and exactions of the Government; but, in Missouri, the salt springs are reserved from sale; the People would be subject to fine and imprisonment, and military execution, if they presumed to boil the water that is running away: and thus the inhabitants of the country, in addition to the loss of domestic consumption, are deprived of the advantage of carrying on a great trade in salt with the neighboring States.

But surely these follies and impositions must have an end. Iron, lead, and salt, must cease to be objects of Governmental monopoly. Land must cease to be treated as an object of revenue. What is sold, must be sold quickly, and at prices adapted to its quality. The refuse should be given to the poor. Gleaning is abhorred of God and man. The Holy Scriptures abound with injunctions against it. We are forbid, "*to reap the field twice over*"—"*to beat the boughs of the olive a second time*"—"*to pick the vines again*"—or, "*to make clean riddance throughout the corners of the land.*" These are commandments of Divine origin, eternal in duration, and universal in their application. They apply to Governments, as well as to individuals; to *land*, as well as to the *fruits* of the land. And shall this Government be exempt from their operation? Shall it have no eyes to see, no ears to hear, no heart to feel, no bowels of compassion to yearn over the misfortunes of the naked and houseless? Shall it continue to sell to the last acre? Shall it go on to make "*clean riddance*" through all the corners of the land? Shall it leave not one "*sheaf*" in the field, not one "*grape*" on the vine," not one "*olive*" on the bough? Shall it stand a solitary exception in the annals of the world? Shall *it*, alone, be the *seller* of what every other nation *gives!* Throughout the globe, in all ages, and among all nations, *land*, the gift of God to man, has been the subject of gratuitous donation. We may open the page of ancient or of modern history—we may look to the examples of Kingdoms or of Republics—we may go to Christians, Jews, or Mahometans—we may take in the extremes of Time, and embrace the entire circumference of the globe—we may traverse this continent, from Hudson's Bay to Tierra del Fuego—we may descend to the antipodes, to the Persians, whose feet stand opposed to our own—we may go the thrones of Darius and Artaxerxes, to the successors of Tamas Kouli Khan—and every where (save in these United States,) we shall find LAND, the gift of God to man, bestowed by the Governors of the earth, according to his bountiful intentions, upon those who will work it. But I owe it to my country to vindicate its reputation from the odium of this solitary exception. I owe it to the present generation to tell, that the present land system grew up in unhappy times—times when the funding-system-men were lords of the ascendant—when

two and six-pence, by a vote of Congress, was changed into twenty shillings—when three millions of actual debt was converted into five and twenty millions! But the time has gone by for these things to be done, or endured. The day has passed by when speculators in soldiers' certificates are to be the masters of legislation. Selfish calculations can no longer intrude into this Chamber. I address myself to Senators who look to the interests of the States from which they come, and to the welfare of the Confederation, of which they are the Council. I address myself to men who have heads to think, hearts to feel, minds to will, and constitutional power to act. From such I will not despair of success: for I know the minds of many. I know that the principles of this bill, under some modification, will soon prevail; that the public lands will soon either be transferred, upon equitable terms, to the States in which they lie, or divided into classes; the first to be sold out for the payment of the public debt; the second to be given to the States for the promotion of education, the construction of roads and canals, and for gratuitous distribution among the poor. I address myself to Senators who I know to be intent on great objects—upon the release of the new States from their condition of tenants to the Federal Government—on the payment of the public debt—and on the revision of the tariff: a revision to be made, not for the purpose of addition, but of reduction; for the reduction of one half—the reduction of the ten millions now absorbed in the sinking fund: a revision which will give to the Legislator the grateful task of lifting the duties from necessaries, and leaving them upon luxuries, and upon articles which conflict with the pursuits of our own industry.

Mr. BARTON rose, and said: In this remnant of an afternoon, at this protracted period of the session, with such a mass of business, in which so many citizens are interested, still to be acted upon, I will not enter into the discussion of the bill before the Senate, especially as it is the avowed intention of my colleague, and of the Senators, not to act upon this bill at the present session of Congress. But, said Mr. B. it is my intention to make a brief reply to that part of my colleague's speech that does not relate to any business before the Senate, to which he has indulged in such extraordinary and unnecessary denunciations of the Administration of the General Government, both past and present, especially to that part of the speech respecting the reservations of Salines and Lead Mines, by the Government of the United States, and to the administration of the laws in relation to them, by the Executive branch of this Government.

True, these subjects are not before the Senate at present; but the speech having been originally prepared to cover this ground, has been accordingly delivered. I should have deemed it more fair, however, if the speech, confessedly prepared after the study of many months, and evidently the product of much labor, had been ushered upon us, at an earlier period, and not held back until the hurried scene of a closing session of Congress, as if by design to prevent reply, and then sent forth among the People, with certain long reports never called up for consideration, unanswered.

The Committee on Public Lands agreed to report the bill to authorize the sale of the reserved Salt Springs of the United States in Missouri, to be passed, if the Senate should think proper, deeming it wholly unnecessary to continue the laws reserving them from sale as other lands.

After all the declamations which the Senate has just heard about the mysterious virtues, and the indispensable necessity of salt to man, and about the heartless tyranny of making such reservations by the United States, the fact is that the United States, in their compact with Missouri, have granted her twelve of the best Salt Springs in the State, to be selected by herself: and the remaining ones are not worth being distinguished from the mass of the public lands.

The want of salt can never be felt, in Missouri on account of the monopoly of Government; but may be rendered as plenty and cheap as the wood in our forests or the grass in our prairies, whenever the People of that country shall find an inducement to manufacture that article. The country abounds in salt waters, (some of them, my colleague has told you, large enough to turn mills) and Heaven has given us much better security for the article than the bill upon this subject can do.

With regard to the other bill, not before the Senate, which forms a part of the subject of the speech, to authorize the sale of the United States' reserved Lead Mines, the committee entertained a different opinion of the propriety of throwing them into market at the present time, with the present information of their situation and probable value, possessed by the People of the United States, their common owners, and instructed me to move the indefinite postponement of that bill, when it should be taken up for consideration. I concurred with the committee in that opinion. What is the situation of the People of the new Western States? Are they prepared to enter the market to purchase the Lead Mines of Missouri? Every man knows that those People are immersed in debt, contracted in the purchase, and the over-purchase of the public lands.

From the year 1820 to the present session, applications have been made by them for relief from those embarrassments. That relief has been granted by that Government which we have just heard denounced for its grinding, heartless tyranny, with a lenity and kindness more characteristic of an indulgent parent, than of an unfeeling tyrant. Are those People, to whom we have extended relief and remission at this very session, now prepared to compete with the money holders and speculators, in the purchase of the lead mines? The inevitable consequence of such a competition must be that the mines would be monopolized by a few companies of moneyed speculators, while the body of the country are borne down by the debts contracted for the lands they live on—debts enhanced upon them by the former cupidity of those same moneyed speculators. Were the interests of Missouri alone to be considered, it is surely not the time to urge upon the United States the sale of the lead mines.

But we have a higher duty to perform, and a larger object to consider, than the supposed local advantage of the few People of the United States, who now inhabit Missouri.

Those mines are the common property of all these United States: all are equally interested in them, and equally entitled to full and fair information of their situation, value, and whatever else may conduce to a fair and equal disposition of them. They were purchased with the money of all; and the small number of the common owners who have since migrated to the Mississippi, are not alone to be consulted; and, if they were, the inevitable consequence of bringing the mines into market, at present, would be to throw them into the hands of a few United States' officers, and other money-holders—especially holders of public money—to the exclusion of the great body of the People of that country. It will be time enough to sell our lead mines hereafter.

These reservations, however, have been made, by my colleague, the subject of the most unqualified denunciation of the Federal Government of the United States, and the pretext for a most disingenuous attempt to disaffect the People of Missouri towards the Executive Administration of that Government, both past and present.

I declare, it is my solemn conviction, sir, that, whatever of excitement exists in Missouri, or among the People of the West, either upon the subject of our public land sys-

tem, or of the reservations of our mines and salines, did not originate there among the People themselves, but originated here, where most other popular excitements in the United States are got up of late years, in these halls, when they are degraded into, what we have heard so much of at this session, a mere "electioneering stump," from which to harangue and mislead the public mind, to promote the views of the declaimer.

I too, Mr. President, deprecate the idea of the United States ultimately holding and leasing out, to a band of tenantry, the great mineral district in Missouri.

That is neither their interest nor their intention. I too believe it is as unwise in a Republic as in a Monarchy, for the Government to engage in those schemes of money-making, which should be left to individual enterprise.

The proposition to sell those mines was heretofore before the Senate, and they thought then, as the Committee think now, that a more general circulation of information respecting these mining districts should first be had; otherwise, instead of inviting population, industry, and capital, to the country, the mines would fall into the hands of a comparative few, who would be unable to work them to the advantage of the public; and they would lie almost as unknown and unproductive as they were under the Provincial Government of Spain.

At a former session, I submitted a proposition to inquire into the expediency of selling the lead mines; but it was evident that the Senate thought more general information respecting them an indispensable pre-requisite to any legislation upon the subject, and I submitted to that known opinion.

Within a few years past, the two last Administrations have turned their attention to the subject, and much information has been obtained. We have already a valuable report from the Agent employed by the United States, in the mineral districts of Illinois and Missouri; and, I presume, the information contained in that report, has been duly circulated by the members of Congress among their constituents. More will be obtained and circulated. And I venture to predict that, by the time the People of the new Western States shall have disembarrassed themselves, and prepared to enter the market, the United States will have obtained such information as to enable them to dispose of their lead mines with equal justice to all concerned.

But the State of Missouri has been depicted by my colleague as groaning under a kind of military despotism, because the two last Administrations have employed a scientific gentleman, who happens to be an officer in our little army, and served the country through the last war, to explore those mining Districts, and give to our citizens incipient leases, subject to ratification by the President of the United States! This is pronounced an unconstitutional usurpation of power, in violation of the rights and sovereignty of the State. Now, the whole matter is simply this: By an act of Congress, of the year 1807, the President is authorized to lease lead mines. That law received a practical construction soon after its adoption, and has been carried into execution, occasionally, by every Administration since that time. No man can suppose that the Chief Magistrate of our country is bound, under that law, to go in person to Illinois and Missouri—explore the public mineral lands, make contracts with the miners for working them, and execute the necessary writings for those purposes. An agency of some kind must be employed between the President and the lessees. Under a former Administration, the Recorder of Land Titles, at St. Louis, was so employed.

Such having been the known construction and practice, and years having elapsed without any alteration, amendment, or repeal of the law, the late President Monroe, or the proper Department under him, deemed it a duty to put that law into execution, upon application for such leases, and, accordingly, employed the present Agent in that service.

The present Executive has had no other agency in the leasing of the public lead mines, than to continue a system which he found in operation when he came into office.

Although I do not expect much pecuniary advantage to the United States from these leases, yet I do anticipate much advantage from the information to be obtained by the Agent. It will give satisfaction to the other States upon the subject of the mines, and it is manifest that they deem that an indispensable pre-requisite to a final disposition of them.

The reservations of salines and lead mines having been made by law, I cannot comprehend how that should be a cause of censure of the Executive Officers of our Government. If the law be wrong, repeal it, and not denounce the department bound to observe and execute it, so long as it shall remain in force. If the law be doubtful or defective, explain or amend it, and not attempt to rouse the feelings of the West against our Government, no matter who may compose the Executive Department for the time being.

So long as the act of 1807, with the practical construction of it by the General Government, shall remain, so long will each successive Administration feel bound to grant leases to any qualified citizen who may apply, whatever may be thought of the wisdom of the law.

The most singular and far-sought topic of denunciation of the present Administration, which my colleague has discovered, is the late proclamation of the President, for the sale of lands, in June next, at Jackson, in the Cape Girardeau District, in Missouri, which my colleague has read to the Senate.

That is a district abounding in iron ore of the best quality. There is a chain of little mountains, perhaps a hundred feet above the surrounding country, running between the waters of St. Francois and those of the Merrimack rivers, full of this ore. One section of these mountains, popularly denominated "The Iron Mountain," is almost a solid mass of ore, yielding about seventy-five per cent. of iron. There is iron enough in that district to pave it, if men and capital were there to manufacture the ore. The President has thought proper not to place all this district in the market at the same time; but, in the exercise of the discretion given him by law, has reserved from immediate sale a number of alternate sections; and this is denounced as an usurpation of power—a reservation without law!

I do not stand here, Mr. President, to defend the Administration; nor do I believe it stands in any need of being propped up. I do not know who has the honor of being the author of the proclamation in question, whether the President, the Secretary of the Treasury, or the Commissioner of the General Land Office; but I will not pay so poor a compliment to the common sense and common candor of the People of Missouri, as to suppose that they can either misunderstand or disapprove of so judicious an exercise of the discretion given by our laws to our Executive, with regard to the *time when* any particular portion of the public lands, authorized to be sold, shall be exposed to sale. The exercise of this legal discretion has been represented on this floor as a new class of reservations, as absolute as those made by our laws, effected by the usurpation of power.

I possess, sir, no information, from either of the officers mentioned, of the reason for this manner of selling the lands to which the proclamation applies; but it is the manifest interest of Missouri, and right of the other States owning this common property, that an opportunity should be given to their citizens who will hereafter migrate to that country, to become proprietors of that valuable ore, and manufacture. Let a portion of it become private property now, and its value be developed to the Union, and

let them have a portion of it within their reach, when they shall be tempted to migrate; and not put in the power of a few capitalists at once to select and monopolize the most valuable beds of ore, and the timber, coal, and water power, necessary to its manufacture.

This course, I believe sir, to be the combined interest of all; and this, I think it reasonable to presume, was one of the motives of the Executive in this exercise of a discretion which we have thought proper to vest in him by law.

My colleague has made the extraordinary declarations to this Senate, that the miseries of the West were owing to the mal-administration of the Government of the Union—that the Western Banks were broken down by the partiality and favor of our General Government towards the Banks in the Atlantic States; and in the extravagance of his criminations he has compared the operation of the Federal Administration upon the West, to the operation of a steam engine crushing the human body, and still moving on, insensible of the misery it inflicts on the victim, and regardless of the agony of his "wife, children, and friends." Such, sir, are not the feelings of the West. That portion of the Union has certainly felt the common pressures of the times; but the General Government has gone far to alleviate their sufferings, has almost forgiven their debts, and generously saved them from their own extravagance and folly. The West certainly has felt the privations of a new country; but they are substantially rich, procuring all the necessaries of life with much less labor than their brethren of the Atlantic States do.

I will speak for the People of Missouri. They are not disaffected towards the Government of the Union; and no one acquainted with my colleague will suppose I mean *him*, when I say, if we had among us a man endowed by nature with all the great qualities necessary to constitute a successful TRAITOR—even he could not disaffect the population of Missouri towards the Government of the United States.

In conclusion, Mr. President, I will observe that hereafter, should a suitable opportunity be presented, I will attempt to show that this bill "to graduate the price of public lands," or, in other words, to destroy, by indirect means, the sound and salutary land system of the United States, under which such States as Ohio have sprung into existence within our own recollection, with scarcely a dispute about any man's title to his home, is a compound of electioneering and speculation. At this late hour of the day and of the session, with such a mass of bills before the Senate, upon which the right of so many depend, I will not follow the example set me, by inflicting upon this honorable body a studied, popularity-hunting, Senate-distressing harangue.

On motion of Mr. BARTON, the bill was then laid on the table.

WEDNESDAY, MAY 17, 1826.

On motion of Mr. HARRISON, the Senate took up the bill giving further compensation to the officers commanding companies in the Military service of the United States.

Messrs. HARRISON and SMITH severally spoke in support of the bill; urging that the pay of the Captains in the Army was much less, in proportion to the duty performed, than that of any other grade. Of late, additional duties had been imposed on them, of a most laborious character, and it was just, considering all the circumstances of the case, to allow them an additional compensation.

Mr. CHANDLER observed that this bill would produce much discussion, for which there was now no time, and, therefore, moved to lay it on the table; which was carried—ayes 14, noes 13.

The bill "authorizing the Washington Library Company to raise a sum of money by lottery, for the erection of a building for the Library," was taken up, and, on the question, Shall this bill be engrossed for a third reading? it was decided in the negative.

So the bill was rejected.

PENITENTIARY FOR THE DISTRICT.

The Senate then took up the bill "to provide for erecting a Penitentiary in the District of Columbia, and for other purposes."

Considerable debate ensued on this bill, which was supported by Messrs. EATON, CHAMBERS, ROWAN, and WOODBURY, and opposed by Messrs. RANDOLPH, HOLMES, CHANDLER, HAYNE, and MACON.

Mr. RANDOLPH moved to lay the bill on the table; which was decided in the negative—ayes 10, noes 18.

Mr. CHANDLER then moved to strike out all that part which has reference to a Penitentiary. The motion did not prevail.

The question was then taken on ordering the bill to a third reading, and was decided in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Barton, Bouligny, Chambers, Chase, Dickerson, Eaton, Edwards, Findlay, Harrison, Hendricks, Johnston, of Lou. Kane, Lloyd, Marks, Noble, Pickens, Rowan, Ruggles, Sanford, Smith, White, Woodbury—22.

NAYS.—Messrs. Benton, Branch, Chandler, Harper, Hayne, Holmes, Macon, Randolph, Robbins, Tazewell, Williams—11.

WASHINGTON CANAL.

The Senate then took up the bill to extend the width of the Washington Canal.

The amendment proposed by the Senate, making it the duty of the Company, within five years from the passage of the act, to cause the bed of the Canal, through its whole length to the Eastern Branch, to be so constructed as to contain one foot of water at least, at ordinary low tide, was concurred in.

Mr. EATON moved to strike out the second section, which authorizes the collection of wharfage, as being an unjustifiable tax on the community.

Some discussion ensued, in which Messrs. EATON, HENDRICKS, CHANDLER, HOLMES, MARKS, LLOYD, KNIGHT, TAZEWELL, and SMITH, took part.

Mr. HAYNE moved so to modify the section as to authorize the collection of wharfage on the wharves, but not on the banks.

But, on motion of Mr. MARKS, the bill was, for the present, laid on the table.

THURSDAY, MAY 18, 1826.

Mr. RANDOLPH, from the Select Committee appointed to take into consideration the present arrangement of the Senate Chamber, and report such provisions as they shall deem requisite for the accommodation of the Senate, and the order of its proceedings, made a report, accompanied by the following resolutions:

Resolved, That ——— dollars be appropriated, out of any moneys in the Treasury, not otherwise appropriated, to the construction, under the direction and control of the Vice President, or President of the Senate, of suitable and convenient accommodation for the use of the Senate, and that a proper officer be appointed to attend and take charge of the same.

Resolved, That an estimate of the expense thereof be laid before the Senate at their next session.

Resolved, That no person be admitted, as of right, to the floor of the Senate, except members of the House of Representatives, ex-members of both Houses, the President, Heads of Departments, and Judges of the Supreme and inferior Courts of the United States, unless introduced by the Vice President, who shall issue his written order therefor.

Resolved, That the officers of the House be responsible to the Vice President, or President of the Senate, for the discharge of their respective duties; and that, with the exception of the Secretary, they be summarily removed from office for any neglect of duty.

Resolved, That the room be arranged under the direction of the Vice President, or President of the Senate, so as to enable him to keep order more effectually in the lobby and in the gallery; and that ——— dollars be appropriated for that object, out of any moneys in the Treasury, not otherwise appropriated, to be expended under the direction of the Vice President, or President of the Senate.

Mr. RANDOLPH moved the immediate consideration of the resolutions; but, as they embraced an appropriation of money, by the rules they required three readings. They were accordingly twice read, but the third reading requiring unanimous consent, and it being objected to, they were not read the third time this day.

Mr. RANDOLPH then said he would content himself with making a motion which *could* be considered. The motion I am about to submit, (said Mr. RANDOLPH,) arose out of a fact of which I have personal cognizance. I have just travelled from Richmond to this place in the mail coach—I should rather say, in the mail stage. I will do the contractor the justice to say—and it is now going on forty years since I have been in the habit of travelling that road—I have travelled it ever since the year 1787, when I was first sent to school abroad—I have never seen such fine teams, such good carriages, in my life, as on that road. I don't know that I ever saw such good ones on any road; they surpass the English teams a great way. The contractor has done every thing that man could do, to accelerate the mail, yet the Southern mail might be brought, by very ordinary horses, faster than it is brought, and for this reason: The contractor cannot be omnipresent. His coachmen or drivers, while they affect immence diligence at the houses of change and offices, to impose on the innkeepers, lest they should report unfavorably to their masters, loiter on the road, not only by driving slow, but by making unnecessary stoppages and waste of time. Instead of the mail arriving at the landing at Potomac Creek by noon, they don't get there till sun set, and then they delay, and drive slow, and stop, that they may not get there before the boat. With all this delay, the mail arrives in this place by midnight, or a little after. Then, sir, this is a country where the laborer is worthy of his hire, but the hire is not worthy of the laborer. The mail lies snug and slumbering till after sunrise, and five or six hours after the mail arrives, the letters are given for distribution. The consequence is, that the great Southern mail, which might arrive with ease at six or seven in the afternoon, does not come here, and is not distributed to us till eight o'clock, even to us who go to the post office, or send for our letters. The result is, that the Northern mail does not go off till after sunrise, and the Southern mail leaves this place for Baltimore, at a time when it ought to be in Baltimore, and when it might be without any inconvenience, except to the Postmasters, who would have to rise at midnight to change the mail, and to the drivers, who would not have quite so much time for delay on the road, whether with their cups, or in any other way. Therefore, I move—

"That the Postmaster General be instructed to inquire into the practicability of accelerating the Southern mail in its passage to Washington, so as that the mail shall be delivered and opened immediately on its arrival; and, also, that unnecessary delay in the speed of the mail coach on the road be retrenched."

I do not (said Mr. R.) make the inquiry general; sufficient for the day is the evil thereof. If any gentleman wishes to accelerate any other mail, and is in possession of knowledge relating to the subject, let him vote for it.

I shall subjoin another resolution, and state the reasons why I submit it. I do not expect it will be acted on at the present session at all. It is the duty of the Post Office Department to look into it, and I state, *meo periculo*, that there are, in the Post Office in this place, great and wanton abuses. I state it on the evidence of as high and honorable a man as breathes, who shall, when necessary, be brought forward to substantiate this fact. I have no hesitation in saying, that I have long had my suspicions of this department—I have no hesitation in saying I had suspicions on one occasion, and particularly, as the Senator from New York knows, when they were not guilty, when the presumptive evidence was strong against them. I made it my business to search into the matter; I found they were not guilty, and I made the amende honorable—the amende dishonorable I never make—never—never. I had strong suspicions of malversation in that, the most profitable office under this Government. Having these well-grounded suspicions, I determined to lay a plan, to see whether or not I could succeed in detecting them: I prevailed upon a gentleman, who had no idea of my object, to take a letter for me to the Post Office, and insist on its being post marked: for, though we pay two cents for every package to the Postmaster for the express purpose of post marking free letters, inasmuch as he has no commission on the postage of free letters, yet the practice, *under the Constitution*, is to save themselves the trouble of post marking letters. I found, early in the session, that my letters—not letters, mere enclosures—to the public printer at Richmond, always arrived just two days too late. There was something so remarkable in this, that, at last, I complained of it. I went to carry a particular package to the office, addressed to the first merchant in the city of Richmond. The young man who took the letter told me, that, since I had complained, they had post marked my letters, and he did post mark that. Subsequently to this, I sent another package, by a friend, a gentleman who is as pure, as honest, as virtuous, and who keeps himself as free and unspotted from the world as any man that breathes. He handed in the letter, and they took it. It was about the time, you recollect well, when I read a certain letter on this floor. At this moment, I thought my movements were watched by the *espionage* and police here; for if you will have diplomatic Presidents, you will have diplomatic workmen, come from Europe, with all the lessons they have learned to practice them here. He said the letter must be post marked. Some one said, I have received no letter from you. My friend said, it is a letter which was not put into the pigeon hole; it was given to another clerk. He asked, where was it to go? My friend replied, as far South as Richmond. Then, sir, came the disclosure, which shewed they were mounting guard particularly for my letters. With a certain cast of the eye and a certain smile, this man, who had not seen the letter, nor received it, said, I know very well it is not for Richmond, it is for such a place, naming the post office, for which it was actually directed; and refused to post mark it. That begot a little alarm, whereupon they wrote me a note, stating that the mail did not go till Wednesday, and wanting to know whether they should retain my letter till the mail closed, or whether they should send it back to me.

I could state other grounds, but they are old. I have now a letter for Nashville. The Senator from Tennessee (Mr. EATON) knows I cannot trust the post office at Nashville, but I can trust him. I can trust the People of Nashville, but I cannot trust the Post Office Department; therefore I have entrusted my letter to him. My letters have been opened more than once—my letters by the Orleans mail were opened. I have a friend, a friend indeed, in my eye, (Mr. BENTON,) who has had the same game played on him. In other words, we are in the hands of people who shall be unmasked—unmasked. We shall

tear off the lion's hide, and hang a calf skin on the recreant limbs of some of them. I believe I am pretty well understood.

The second resolution offered by Mr. R. was in the following words:

"And that the Postmaster General cause an inquiry to be instituted into the conduct and management of the post office at Washington."

These resolutions (said Mr. R.) do not involve any appropriation of money. I therefore move for their immediate consideration.

Mr. BENTON said he should take this opportunity to state the fact, that his letters had been violated more than once. He had received yesterday a letter from Franklin, Kentucky, post marked May 7th, dated May 3d, from a gentleman of the name of Banks. [Mr. B. here read an affidavit and letter, showing that a letter sent by him, had purposely been opened by some one.] The opening had been done with a degree of dexterity, which, Mr. B. said, he could not rival. He had made experiments since yesterday, to open a letter with similar dexterity, and he could not do it;—the wafer had been divided most accurately, one half on the one side, and one half on the other: nothing was to be discovered that showed violence, except a small cut in the paper where the wafer was divided. Mr. B. said he would let this fact accompany the statement of the gentleman from Virginia.

The resolutions were then concurred in.

Mr. HOLMES rose and said, he thought it his duty, at this late stage of the session, to offer a resolution for consideration, not with the intention of its being acted on at the present session, but at an early period of the next session he should call the attention of the Senate to the subject, and seriously impress on their consideration its importance.

Mr. HOLMES then submitted the following resolution:

Resolved, That a committee be appointed to report such rules and regulations of the Senate as may be expedient—

1st. To require the President of the Senate to call a member to order, and to decide all questions of order, subject to appeal to the Senate.

2. To make further provision to prevent any member from interrupting a member speaking.

3. To provide that no member shall indulge in remarks, or in debate, previous to submitting a motion or resolution, until such member shall have read such motion or resolution in his place.

4. To make further provision to prevent members from speaking indecorously or disrespectfully of other members.

5. To prohibit any member from charging a member of the House of Representatives with a crime or offence.

6. To inquire whether it is proper that a member should charge any officer of the Government with an impeachable offence.

7. To inquire how far it is consistent with the dignity of the Senate to allow disrespectful language to a stranger invited into the Senate.

8. To inquire how far, and in what cases, it ought to be permitted to a member to speak disrespectfully of the dead.

9. To inquire whether, by the existing rules, a member has a right to retain a paper or document which he acknowledges to be in his possession, of a public character, or which he may have read in debate, and whether any further provision be necessary to obtain such paper or document when the Senate may deem it proper.

And that the committee report such rules and regulations on any or all of these inquiries, as, under existing circumstances, may be expedient.

Mr. RANDOLPH moved that it be considered now.

The PRESIDENT said, the rule was, that, when a member offered a resolution, if he did not desire its consideration, it would lie one day on the table.

Mr. HOLMES said, he had stated distinctly, he did not know that he should call his motion up during the present session, but that he should urge its consideration at an early period of the ensuing session.

Mr. RANDOLPH said, if it is in order, I should like to move some instructions to this committee, or to a committee, which I will try to read.

I move that it is inconsistent with the rights and privileges of the States to vest in the Vice President, or the President of the Senate, the power of calling a member of the Senate to order, whether subject to an appeal to the Senate, or not.

I move you, sir, that no further provision is necessary to prevent any member from interrupting a member speaking, because I never knew it to be done, except in the friendly manner in which it has been done between the gentleman from Kentucky and myself.

No further provision is necessary to prevent any member of the Senate from indulging in remarks in debate previous to submitting a motion or resolution, till such member shall have read such motion or resolution in his place, because such provisions would be inconsistent with one of the highest rights of this body, and introduce into this body a practice, under which has crept into other bodies, the rule that a majority shall have an imprimatur, a veto, on motions in the House. No further provision is necessary to prevent members speaking indiscreetly or disrespectfully of other members. To say any thing further on this subject, would be a libel on this body.

No further provision will be necessary for preventing any member from charging a member of the House of Representatives with crime or offence, for the best of all reasons, that he may be deputed, in his high, solemn, and sacred duty here, to charge a member of the House of Representatives, yea even the presiding officer of that House, with crime and offence, or any officer of the Government, from the highest to the lowest. To prevent that, is to put us prostrate at the footstool of power, where some hereafter may be disposed to fly to cover their disgrace.

It is unnecessary to inquire whether it is proper to prevent that any member should charge any officer in the Government with an impeachable offence. And why? Because it becomes necessary for us, when the other branch of the Government is negligent of its duty, to sound the alarm, and to show the People they are sleeping at their posts.

It is not necessary to inquire how far it is consistent with the dignity of the Senate to allow disrespectful language to a stranger invited into the Senate. This would apply, I suppose, to the case of the famous editor of the Boston Centinel. So far from feeling any disposition, when that person or any other person comes here, it is the *duty* of every Senator to put the stigma of reprobation on him, and through him on the Senator who introduced him.

Mr. LLOYD.—Do you apply that personally to me? I introduced Major Russell, and I am responsible to the Senate—I am responsible to you individually, if you please. I know nothing in the character of that gentleman that should prevent his being admitted into this assembly—he was, if he is not at this moment, a Senator in Massachusetts. I introduced him; and I repeat I am responsible to the Senate, to you individually—I shun no responsibility.

Mr. RANDOLPH.—You shall shun none to me, sir, when you owe it to me.

Mr. LLOYD.—I shall, because I will shun none.

Mr. KING, of Alabama, called to order.

The PRESIDENT required the Senator calling to order to reduce the exceptionable words to writing.

Mr. KING said it was not necessary to reduce the words to writing.

Mr. RANDOLPH.—I should have called to order myself.

The PRESIDENT.—The gentleman from Virginia will take his seat until the Chair decides. The words must be taken down. The Chair directs the Senator from Alabama to reduce the words to writing.

Mr. KING.—I cannot reduce them to writing, for the reason assigned. It was only necessary to check the gentlemen when they were giving way to effervescence of feeling.

The PRESIDENT.—The gentleman from Alabama will take his seat.

Mr. RANDOLPH.—Am I at liberty to go on? The disorder consisted in the interruption of me. I allowed it through the comity and courtesy that ought to be shown to every member on this floor. I allowed it because of the character of the interruption on the part of the gentleman from Massachusetts. The words of the gentleman from Massachusetts cannot be misunderstood; they cannot be misapprehended—they are technical—they demand no other reply than that I have given to the gentleman, and which, when he shall be permitted to use that language to me here, I will give to him, or to any man on earth, here or elsewhere.

Mr. LLOYD rose.

The PRESIDENT asked if the gentleman from Massachusetts made any call to order.

Mr. LLOYD said, No. He wished to inquire whether one Senator had a right to rise and state the conduct of another, without that Senator having a right to reply instanter?

The PRESIDENT said he regretted exceedingly the occurrence had taken place. The Chair had no authority but what was vested in the Chair by the rule of the Senate itself. What said the rule of the Senate? If a member be called to order for words spoken, the exceptionable words shall immediately be taken down in writing, that the President may be better enabled to judge of the matter. The Chair had no power beyond the rules of the Senate. It would stand in the light of a usurper, were it to attempt to exercise such a power; it was too high a power for the Chair. The Senator calling to order must comply. If the Senator from Massachusetts, or the Senator from Alabama, choose to comply with the rule, the gentleman from Virginia would remain in his seat till the words were reduced to writing. If either of the gentlemen declined it, the gentleman from Virginia might proceed.

Mr. RANDOLPH resumed. I should have to file a cross bill myself in that case; there were words I would have reduced to writing; words that are technical among men of honor. It is unnecessary to inquire how far, and in what cases, a Senator ought to be permitted to speak disrespectfully of the dead. I shall take the liberty of speaking disrespectfully of Nero, Domitian, and the rest of the host of worthies, though they be dead, when I see fit.

It is unnecessary to inquire whether, by the existing rules, a member has a right to retain a paper or documents he acknowledges to be in his possession, of a public character, which he may have read in debate, and whether any further proceedings be necessary to obtain such paper or documents, when the Senate deem it proper. I should have taken no notice of this string of resolutions, but I am compelled to go to Baltimore in the course of the day; the carriage is at the door which is to carry me away. It is a matter of notoriety, and but for my duty here, to be discharged towards the Senate, in relation to the Committee, and the resolution I have submitted, I should have been at Baltimore. I shall go there with the leave of the Senate; I shall pursue my course unchanged; but I say, sir, there is an insinuation in the last resolution, which is rebutted by my resolution, and properly rebutted. I say no such fact exists. I deny it most peremptorily. Mr. R. having taken his seat—

The PRESIDENT rose, and expressed his deep regret that any occurrence had taken place in this body, calculated to destroy its harmony. The Chair, he said, would never assume any power not vested in it, but would ever show firmness in exercising those powers that were vested in the Chair. The rule was most explicit as to words spoken; the Chair could not make it more plain; it would be unworthy to occupy the seat which it held, if it could observe any other rule than that prescribed by the Senate itself. Those rules had guided the Chair, and it would apply them rigidly to every one as far as its power extended.

Mr. RANDOLPH.—And I shall submit cheerfully, because I always submit to justice and order.

The resolutions offered by Mr. RANDOLPH having been read, he said, let them lie on the table till next session, when I shall say a word or two about them.

The resolutions were then laid on the table.

PENITENTIARY FOR THE DISTRICT.

The bill to provide for the erection of a Penitentiary in the District of Columbia, and for other purposes, was read a third time.

On the question, Shall this bill pass? It was decided in the affirmative, by yeas and nays, 22 to 13.

YEAS.—Messrs. Barton, Bouligny, Chase, Dickerson, Eaton, Edwards, Harrison, Hendricks, Johnston, of Lou. Kane, Knight, Lloyd, Marks, Pickens, Reed, Rowan, Ruggles, Sanford, Seymour, Smith, White, Woodbury—22.

NAYS.—Messrs. Bell, Branch, Chandler, Clayton, Harper, Hayne, Holmes, King, Macon, Robbins, Tazewell, Van Buren, Williams—13.

PUBLIC LANDS.

Mr. JOHNSTON, of Louisiana, submitted the following resolution:

Resolved, That the Secretary of the Treasury be directed to lay before this House, at the next session, a statement of the quantity of public land, in the State of Louisiana, and the State of Mississippi, distinguished into first, second, and third rate qualities, accompanied by a general estimate of the proportion of pine hills, swamp, prairie, and other lands fit for the cultivation of sugar and cotton; with such plans and topographical and descriptive remarks as he may deem proper to a full explanation of the subject

Some information being asked for, as to the object of this resolution, and as to the expense and difficulty of obtaining the information required—

Mr. JOHNSTON said, his object in offering the resolution, was, to obtain information relative to the quality of the public lands in Louisiana, in order to be able to exhibit, at the next session, a correct view of the interest which the Government had in the soil of that State. It would appear satisfactorily to Congress, that nine-tenths of the lands might be surrendered at once to the local Government without any sacrifice; nay, that it would be wise to do so. The other tenth being adapted to cultivation of sugar and cotton, might be surveyed and sold at once upon such terms as Congress might devise, if they should determine not to cede them to the State. This resolution connected itself with the bill introduced by the gentleman from Missouri, (Mr. BENTON) relative to graduating the price of the Public Lands. That bill would in all probability lead to some decisive course on the part of the Government as regarded the public lands. Various views were entertained on this subject, and different plans had been proposed. Some had proposed that they should be given to the States; others, that the price which they were held should be changed; and others again, that they should be graduated, and that the price should be diminished, after they had been exposed to public sale. Hitherto, Mr. J. said, they had been unable to obtain from the General Government, after the most persevering ef-

forts, any decision on the large claims to land in Louisiana. They had been unable to obtain a survey of the public lands; they were unable, consequently, to bring them to market, or to hasten the settlement of the country, which Mr. J. said remained as it did 20 years ago, with the exception of the natural increase of its population. His object was to connect this resolution with the before-mentioned bill. There would be also, he understood, a proposition submitted, to ascertain whether Congress were disposed to surrender the lands to the States or not. Mr. J. said it was important for him, as the Representative of that State, to be able to lay an exact view of the subject before Congress, to direct their legislation.

An idea was prevalent that Louisiana contained much valuable land; hence arose the difficulty of procuring a decision on the claims which were set up to portions of them, and hence arose the difficulty in bringing them to market. The interest of the Government in these lands, Mr. J. said, was very inconsiderable, and he should be able to shew by the report, that the whole of the cultivable lands in that region (perhaps including Florida) would not be much more than sufficient to defray the expenses which the Government incurred in the present system of surveying and selling the lands. When, therefore, the information which he had called for, should be obtained, the Government would see the value of these lands, and would be able to decide upon the utility of holding them any longer, or whether it would not be better to surrender them at once. There were many political reasons why this Government should not hold any rights of property or jurisdiction over the soil; but, Mr. J. said, this Government was at too great a distance from the country governed, to govern it wisely or efficiently, either for the interest of this Government, or of that country.

There would be no difficulty at all in making the report; the country divides itself into four parts—the pine district, *the low lands, the prairie,* and cultivable land. They lie in three great districts, and it would almost be possible to ascertain them on the map; but there were surveyors on the spot, who were acquainted with all the localities, and who could make a good report on the subject. It was very important to have this report. Mr. J. hoped, therefore, the resolution would be concurred in.

Mr. KING objected to the resolution on the ground of the impossibility of effecting the object embraced by it. The Secretary of the Treasury had no possible means of obtaining the information called for. It would cost twenty thousand dollars to employ individuals to examine the country, and make such a report as was required by the resolution; and, even if it could be obtained, it was a question whether any good would be derived from it. It would have no effect on the bill to graduate the price of public lands. Mr. K. said he was not willing, therefore, to embarrass the Department, and to incur an expense in endeavoring to effect an object, which, if it were successful, could not be of any use. Mr. K. expressed his opinion that it would be more advantageous if the public lands were vested in the several States. It would be more beneficial to the country generally. The expenses of surveying, and other expenses, swallowed up the proceeds of the lands, while the States were drained of the little money they had. He was sufficiently acquainted with the nature of the public lands in the Southern States, to come to the conclusion that it was impracticable to get any correct information on the subject embraced by the resolution without very great expense.

Mr. VAN BUREN said, if the resolution contemplated a survey only, it might be a question whether the object would be worth it; but there was no objection to it—as it could be done without expense. The information called for by that resolution might be of essential advantage. The subject of the public lands was becoming daily more and more interesting, and would occupy much time in legislation. It extended the patronage of the Government over these States to a great extent; it subjected the States in which those lands were situated, to an unwise and unprofitable dependence on the Federal Government. Mr. V. B. said he should vote for every call on that subject, to enable them at some future day to act understandingly on it. No man could render the country a greater service than he who should devise some plan by which the United States might be relieved from the ownership of this property, by some equitable mode. He would vote for a proposition to vest the lands in the States in which they stood, on some just and equitable terms, as related to the other States of the Confederacy. He hoped that, after having full information on the subject, they would be able to effect that great object. He believed that if those lands were disposed of at once to the several States, it would be satisfactory to all. In the general view he was willing not only to vote, but he should be solicitous to get information on the subject of the public lands generally, though he should not be willing to encourage additional expense.

Mr. BARTON said he would vote for the resolution, because it would obtain useful information, to be used at the next session, or at some future period. As to the object in view, expressed by the gentleman from Louisiana, of adopting some plan of vesting the Western lands in the respective States in which they lie, Mr. B. said the most eligible general plan that had suggested itself to his mind, was to pursue the present system of selling the lands at reasonable prices, until all the best was sold, and then to grant to the respective States in which they are, the refuse land, to be disposed of by the State, at her pleasure.

He instanced the State of Ohio, being the eldest of the new States, where the present system had been in operation until all, or nearly all, the good lands were disposed of; and that State was probably ripe, or soon would be ripe, for such a measure as the one he had suggested. At most, a few years would render it perfectly safe to the interests of all, to transfer to Ohio all the remaining public lands within her limits. Let the same plan progress gradually through the younger States of the Union.

He said he thought the idea which had been held out to the Western People—and was so captivating—of the new States being ground and drained of their money by buying public lands, a most fallacious one. It seemed to him that the true view of this subject was to consider all the People of the United States as a body, and all the Western lands as a common stock among them, to be disposed of for their common benefit.

While these lands remain in a wilderness state, there is no money there to be drained off. The man must first put the money in his pocket in the East, and carry it to the West, before there will be any money there to be drained. If he chooses to go there and buy, well; he expends a part of the means he carried Westwardly for the land he buys, and it enters a common fund, to be expended either in the East or West, as the common exigencies of the Union may require. The East had as much cause to complain that the Western lands drained off their men and money.

His ideas, he said, might be crude upon this subject, but it appeared to him a great object for the United States to husband their lands, to a reasonable extent, and to retain in their own power the means of making freeholders of their citizens upon reasonable terms.

In that class of our People our great strength lay. Should the lands be even now given to the States, it was not impossible that most mischievous dispositions might be made, at some time or other, not so well calculated to increase the number of freeholders in the Union, as the gradual and reasonable disposition making now under the sound and uniform land system of the United States.

Mr. KING said he should not have troubled the Senate with any additional remarks on the subject, had he not believed that the gentleman from Missouri was incorrect in the view he had taken of it. That there was a considerable drain of the wealth of the country, where public lands sold, none, he believed, would doubt. At the time of the first settlement of the country, it was true, the emigrants had carried a portion of money for the purpose of obtaining the waste lands, and commencing the cultivation. That money was soon exhausted in the extraordinary expense attending the formation of new settlements. Then, emigration ceased. What were the means by which they were enabled to pay the rest of the money, for the land they had purchased, under the old credit system? The produce of their labor alone; and thus were they kept impoverished, and the products of their labor were thrown away. Mr. K. then referred to the State in which he lived, where, for years past, they had exported from 60 to 100,000 bales of cotton, and inquired where the proceeds were gone? He referred to one land office, where a very large sum of money had been received, which, Mr. K. contended, came out of the pockets of the inhabitants of the country, who had originally purchased small tracts, but had afterwards extended their purchases, and paid the money into the land office; and this money, Mr. K. said, went to the East to pay the pensioners and support the fortifications. And what must be the consequence of the money being thus constantly drained away, and never finding its way back? It must be ruin; they could not shut their eyes to it. Congress had passed relief laws; and why had they done so? Because of the load of debt on the People. It would be in the same spirit, with the same kind and indulgent disposition towards the People, that Congress would, at no distant day, take the subject into consideration, and get clear of the trouble of legislating on the subject of the public lands. If the General Government would give to the States what belonged to them, it would give a spur to industry, and tend to increase the population for the defence of the country. What was its situation now? There was but a sparse population, who were overwhelmed with debts which they could not meet. The object the Government had in view, was to benefit the Treasury; and if the land was parcelled out among the People, Mr. K. said, that object would be obtained: for the revenue arising from commerce would far exceed the proceeds of the lands. The remark of the gentleman from Missouri, had certainly surprised him, that the new States had no reason to complain on this subject, though the old States had.

Mr. JOHNSTON said, this was the first time since he had had the honor of a seat on this floor, that a resolution, calling for information, and which was deemed necessary for correct legislation, had been resisted. Mr. J. said, he came here from a great distance, without the benefit of any local information here, with regard to his State; and he had no means of procuring that information for correct legislation, but through the medium of these reports. To what this report might lead, he could not tell. He had in view measures which he deemed of great importance, in relation to that State, which he could not hope to carry into effect without this report. He could assure the Senate there could be no difficulty in obtaining the information; it could be laid before them in a week, without one dollar expense. He had himself examined the public offices, and the information could be furnished. The State of Louisiana was not like any other State. It was peculiarly marked by great divisions. All the public lands to the East of the Mississippi river, are *generally* of one quality—that on the West side, for the distance of thirty miles, is low or inundated, and beyond that are the prairies and the pine hills. All the good lands lie on the water courses or in the prairies. Mr. J. said, if this information could not have been obtained without difficulty and expense, he would not have called for it, but as the report could be drawn up in a week, from the information already in the possession of the Departments here, he did hope that no further objection would be made to the resolution. Some great measure will, before long, be adopted, with regard to the Public Lands. It will become necessary to restore the States to their just rights—as well as to deprive the General Government of the right of soil within the States. It is a very extensive system—of great expense and great inconvenience—and producing no results. We are yearly selling the best lands and exhausting the capital, and yet not obtaining a million for the Treasury—and much time is wasted in legislation. But if no great general principle could be adopted, he hoped, with the benefit of this information, to obtain either a general, or partial surrender of the soil to the State; or that the second quality of the lands may be reduced to fifty cents, and the balance given to those who will settle on them. He would shew that the Government had very little interest in the lands in Louisiana, and none worth retaining.

Mr. CHANDLER said, that, in regard to the sale of the land, and the profit the new States derived from it, he should state what he had been told on the authority of a gentleman from Alabama, relative to the manner in which the public lands were sold. The sale was opened with number one, which was put up first, whether good or bad. Seventeen persons had combined at the sale that they would not bid, one against the other, but would buy the land. A gentleman from Carolina bid on number one two dollars, somebody else bid two dollars twenty-five cents. It was a valuable tract of land, and the gentleman from South Carolina bid twenty dollars. This put them to a stand. They agreed not to bid against him, and having bought that section at twenty dollars, he bought in the whole township of fine land at two dollars, and they proceeded to bid for other land.

Mr. KING inquired where this transaction occurred, and expressed his doubts as to its correctness.

Mr. CHANDLER replied, it took place either in Alabama or Mississippi, he was not sure which.

The resolution was then agreed to.

On motion of Mr. TAZEWELL, leave of absence was granted to Mr. RANDOLPH for the residue of the session.

MR. MONROE'S ACCOUNTS.

On motion of Mr. WHITE, the Senate took up the bill for the relief of James Monroe, and the question being on the amendment proposed by the Committee of the Senate, to strike out the sum allowed by the bill from the House, and insert "$29,513, in full of all demands against the United States,"

Mr. WHITE (Chairman of the select committee to whom the bill had been referred) entered at large into the reasons which had induced the committee to propose the amendment.

Mr. HARRISON moved to amend the amendment, so as to include interest on the outfit from the time Mr. Monroe was employed on the mission in 1803, till the time the outfit was paid.

Considerable discussion ensued, in which Messrs. SMITH, CHANDLER, HARRISON, HOLMES, TAZEWELL, HAYNE, and MACON, took part; and Mr. HARRISON having withdrawn his proposition, the question was taken on agreeing to the amendment proposed by the select committee, and decided in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Benton, Berrien, Bouligny, Chambers, Chase, Eaton, Edwards, Findlay, Harper, Harrison, Hayne, Hendricks, Holmes, Johnston, of Lou. Kane,

Knight, Lloyd, Marks, Pickens, Rowan, Sanford, Seymour, Tazewell, Van Buren, White—25.

NAYS.—Messrs. Barton, Bell, Branch, Chandler, Clayton, Dickerson, King, Macon, Reed, Robbins, Ruggles, Smith, Williams, Woodbury—14.

The bill was then ordered to a third reading.

EVENING SESSION.

The bill from the House for the preservation and repair of the Cumberland Road, was read the first time, and on the question shall the bill be read a second time, a long discussion took place, in which Messrs. TAZEWELL, BENTON, HARRISON, SMITH, HENDRICKS, FINDLAY, MACON, KANE, BERRIEN, EATON, ROWAN, HOLMES, NOBLE, VAN BUREN, CHAMBERS, and WHITE, took part.

The question was decided in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Barton, Bouligny, Chambers, Chase, Eaton, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnston, of Lou. Kane, Knight, Lloyd, Marks, Noble, Reed, Robbins, Ruggles, Seymour, Smith, Thomas, Williams—23.

NAYS.—Messrs. Benton, Berrien, Branch, Chandler, Dickerson, Harper, Hayne, King, Macon, Rowan, Sanford, Tazewell, Van Buren, White, Woodbury—15.

FRIDAY, MAY 19, 1826.

The bill for the preservation and repair of the Cumberland road, was read a second time, and referred to the Committee on Roads and Canals.

Mr. FINDLAY submitted a resolution, which he wished referred to the same committee, which was, in substance, that the road should be ceded to the States through which it passed, on condition that they should keep the road in good order.

Mr. HENDRICKS objected to the resolution, urging that the State of Pennsylvania was hostile to the road, and might destroy that part of it which passed through that State, if she chose.

Mr. MARKS repelled the assertion, and said that Pennsylvania would take as much care of that road as she would of roads of her own construction.

Mr. EATON, to get clear of the discussion, which was likely to consume time, moved to lay the resolution on the table; which was carried.

WASHINGTON CANAL.

The Senate resumed the consideration of the bill from the House to extend the width of the Washington Canal.

The question was on the proposed amendment of Mr. HAYNE to the second section, by which the company would be allowed to collect wharfage on the wharves, but not on the banks.

Mr. HAYNE withdrew his motion, which was renewed by

Mr. CHAMBERS, and carried.

Mr. MARKS then moved to amend the section, so as to except public property from paying wharfage; which was carried.

The question was then taken on Mr. EATON'S motion to strike out the second section, which grants the right of imposing wharfage, and decided in the affirmative, by yeas and nays.

YEAS—Messrs. Benton, Berrien, Bouligny, Branch, Chandler, Dickerson, Eaton, Findlay, Harper, Hayne, Johnston, Lou. King, Lloyd, Macon, Sanford, Smith, Tazewell, Van Buren, White, Williams, Woodbury—21.

NAYS—Messrs. Chambers, Chase, Edwards, Hendricks, Marks, Noble, Reed, Seymour—8.

The bill was then ordered to a third reading.

CREEK TREATY.

On motion of Mr. VAN BUREN, the Senate proceeded to consider the report of the managers on the part of the Senate, at the conferrence on the disagreeing votes of the two Houses, on the amendment proposed by the Senate, to the bill making appropriations to carry into effect the Treaty concluded between the United States and the Creek Indians, ratified on the 22d of April, 1826.

The report having been read—

Mr. VAN BUREN said he should state the circumstances of this case, and the views of the Committee of Conference. A treaty was made in this city, in which it was stipulated, on the part of the United States, that $247,000, together with an annuity of $20,000 a year, and other considerations, should be paid to the Creeks, as a consideration for the extinguishment of their title to lands in the State of Georgia, which the United States, under the cession of 1802, were under obligations to extinguish. The bill from the other House to carry this treaty into effect, directed that the money should be paid and distributed among the chiefs and warriors. That bill came to the Senate, and a confidential communication was made to the Senate, from which it appeared that strong suspicions were entertained that a design existed on the part of the chiefs who made the treaty, to practice a fraud on the Creek nation, by dividing the money amongst themselves and associates. An amendment was proposed by the Senate, which provided for the payment of those moneys in the usual way, and the distribution of them in the usual manner, and in the usual proportion to which the Indians were entitled. That amendment was sent to the other House, who, unadvised as to the facts which were known to the Senate, refused to concur in it, and asked a conference. The conferees, on the part of the Senate, communicated their suspicions to the conferees on the part of the House, and asked them to unite in an application to the Department of War, for information on the subject. This was accordingly done, and the documents sent, in answer, were a letter from the Secretary of War, and a report by Mr. McKenney. From that report it appeared clear and satisfactory, that a design thus existed on the part of the Indians by whom the treaty was negotiated, to distribute of the $247,000 to be paid for the cession by the United States, $159,750 among themselves, and a few favorite chiefs at home, and three Cherokee chiefs who had no interest in the property. Ridge and Vann were to receive by the original treaty, $5000 each. By this agreement of the distribution of the money, each was to receive $15,000 more, making $20,000 for each. Ridge, the father of Ridge who is here, was to receive $10,000. The other $100,000 was to be distributed, $5000, and, in some instances, $10,000, to the chiefs who negotiated the treaty here—varying from one to ten thousand dollars each.

That this distribution would be a manifest fraud to the Creek nation, Mr. V. B. said, required no argument to elucidate. The conferees of both Houses were well satisfied that this design existed, and of the obligation on the part of the United States, so far as Congress could do so, to defeat so unworthy a scheme. They differed as to the means that Congress ought to use to carry it into effect. [Here Mr. V. B. stated the two modes of distribution proposed by the two Houses.]

The two questions, then, Mr. V. B. said, that presented themselves in this view of the subject, were, had Congress the right to go to the extent proposed in the amendment made by the Senate? and, if they had, was it essential that they should do so? With respect to the right, he was, at first, under some doubt in regard to it; but a more careful examination had removed those doubts, and had satisfied him that the amendment of the Senate

was warranted. The treaty directed that two hundred and forty-seven thousand dollars should be paid to the chiefs of the Creek nation, to be distributed among the chiefs and warriors of that nation. By the word chiefs, was it intended the chiefs in the nation, or the chiefs in the City of Washington? Those in this city say it was intended to be paid to them, and they ask of the Department of War that it should be paid to them in sums, counted out according to the distribution which had been stated. There was no difference on this subject between the conferees. They were of opinion that the money was to be paid to the chiefs of the nation in open council: that was the language of the treaty—the good sense of the treaty. The delegation who negotiated the treaty say it is to be paid to them; and that, in that view of the subject, they are warranted in the opinion expressed to them by the Secretary of War and the Superintendent of Indian Affairs. The conferees say, the intention of the treaty was, and its language imports, that this money should be distributed in the usual proportion, according to the just rights of the Indian warriors. There was nothing in the language of the treaty inconsistent with that idea. How ought the money to be distributed? Certainly on principles of justice amongst those Indians, according to their rights. What was asked on the part of the delegation? That it should be distributed among them for their personal advantage, and in conceded injustice to those they represented. They proposed to take one hundred and sixty thousand dollars, and to distribute it among themselves and the favored chiefs of the Cherokee nation. The simple statement of the pretence set up, was so against right and justice, that Mr. V. B. said, they were bound to presume that such could never have been the intention of our Government. It was unjust and fraudulent. The chiefs say they have a right to do it, and they would abide by the consequence; but it was conceded to be a corrupt design. What was the intention of our Government? If that construction was given to this treaty which was sought for by these chiefs, the conclusion would be, that this Government intended to countenance this fraud. The chiefs say such was the intention. Mr. V. B. said such could not have been the intention; and, as it could not be, the other conclusion is unavoidable. The intention was, that the money should be distributed according to the rights of the Indians constituting the Creek nation. It was fair and just, and not inconsistent with the language of the treaty. Such, Mr. V. B. said, would have been his view of the subject, if this had been a case between a civilized nation and this Government. But when their attention was turned to their rights over Indian property, the case stood upon a different principle. There had been great inconsistency amongst us as to the rights we had exercised over the Indians. At one time they depended on our mere will and pleasure; at another time we had treated them as an individual power. From the time of the formation of this Government, we had assumed the right to legislate, according to our will and pleasure, over their interests and property, so far as to protect them from fraud. On this principle, we had regulated all their trade. We had provided by law that they should not dispose of the lands they owned, unless in a specified form, and to the United States. We had gone further; by law, we had directed that the annuities due to them from us should be, without their consent, used to make remuneration for damages done by the Indians. These three points of legislation, Mr. V. B. said, covered the whole ground. What was the case now before the Senate? There was a fund of $247,000, belonging honestly to the Creek nation. It could not be denied, because it was for their lands. The fact was proved that there was an intention to defraud them of this money. It had been said that we had no right to provide by law to prevent an event of that description, by directing that the money should be thus distributed, according to the principles of justice. Mr. V. B. said it would be sheer squeamishness to hesitate now as to the power.

The amendment proposed by the Senate holds the Secretary of War responsible for this money to these Indians, according to their just rights. The amendment from the House supposes that may be effected, and this money paid, in open council of the chiefs, when summoned in the usual way. The conferees on the part of the Senate believed that measure would fall short of obtaining the desired end; that the amendment of the House did not go far enough, but, under the circumstances of the case, Congress should go farther, and see that the money was properly distributed. They ought to see that this money went actually into the hands of the different chiefs and warriors—then, if they chose to give it to the Cherokees, or to dispose of it in other ways, the United States would have done their duty.

Mr. V. B. said, in his judgment, the character of the Government was involved in this subject, and it would require, under the circumstances of this case, that they should take every step they could rightfully take, to exculpate themselves from having, in any degree or form, concurred in this fraud. The sentiment of the American People where he resided, was, and had been, highly excited on this subject; they had applauded, in the most ardent manner, the zeal manifested by the Government to preserve themselves pure in their negotiations with the Indians; and though he was satisfied—though he deemed it impossible to suppose for a moment that Government could have countenanced the practice of this fraud, yet there were circumstances in this case which required exculpation. Between the negotiation of the treaty and the negotiation of the supplementary article on which the treaty was finally adopted, all these circumstances were communicated to the Department of War by the two Cherokees. Mr. V. B. said it was not his purpose, because the necessity of the case did not require it, to say what the Secretary of War ought to have done, or to censure what he did do, when the information was given to him. He had known him many years, and there was not an honester man, or a man more devoted to his country, than that gentleman was. Mr. V. B. said it was not for him to have said what should have been the course of the President of the United States, if the information had been given to him on the subject. It could not fail to make a mortifying and most injurious impression on the minds of the People of this country, to find that no means whatever were taken for the suppression of this fraud. There was, and there ought to be, an excitement on the subject in the public mind. The members of the Senate had seen it. It had displayed itself strongly and strikingly on the point of this controversy between Georgia, the United States, and the Creeks. The settlement of that controversy was applauded from one end of the Union to the other. So far as the State of Georgia was concerned, she claimed that the title to all the Indian lands within her limits, should be extinguished by the United States, according to the obligation of the cession of 1802. This question had been settled—and how? Every thing that had been done, so far as Georgia was concerned, by the treaty of the Indian Springs, is believed to have been done by this treaty. Every foot of land is believed to have been ceded. It was the understanding of the delegation of the State of Georgia that this treaty extinguished the Indian title to all the land.

Mr. BERRIEN rose, and said, it was not the understanding of the Delegation of the State of Georgia, that this treaty ceded all the land. That fact had been stated to the Senate by himself in his place. In a certain event, it was rendered probable that the lines to which the additional article of the treaty extended, would embrace all the

land, but, according to the best information, it was his belief that the State of Georgia would lose one million of acres by the new treaty.

Mr. VAN BUREN resumed. It was stated to the Senate, when the treaty was under consideration, that the Indians were willing, and designed to cede to Georgia all their lands. The controversy had been settled—and how? According to his view of the subject, every thing, so far as the State of Georgia was concerned, by the treaty of the Indian Springs, had been done by this treaty, with the single addition of a little more money to be distributed among the chiefs. Mr. V. B. said, he had not a doubt in his mind, that the same application of these same means might, at any time, have settled the controversy. What was the subject that produced all this excitement? What was the objection to the treaty of the Indian Springs? It was made by an insufficient number of chiefs, and there was reason to suspect that undue influence had been exercised. That there was not a sufficient number of Chiefs, was a matter of contestation. On the subject of fraud, what were the evidences? On the face of the Treaty, the United States gave to M'Intosh an unreasonable amount of compensation. That was the length and breadth and depth of all the allegations of fraud. Compare that with the treaty which was now about to be carried into effect. It was stated in the report of the Superintendent of Indian Affairs, that, when the negogotiation was opened between the War Department and the Indians, to extinguish their title to the lands, they refused to give all their lands within the State of Georgia; they refused to go beyond the Chatahoochie. On being pressed, they said they were limited by their instructions, and could not go any farther. In the documents communicated to Congress, that fact was stated. The treaty had been finally made to settle this controversy, confessedly without power on the part of the Indians, to go as far as they had gone. Compare the Indian Springs treaty with that. The suspicion of undue influence in negotiating that treaty, Mr. V. B. said, was founded on the unreasonable reservation to M'Intosh. Before the present treaty was consummated, the fact was communicated to the Government that a contrivance was on foot to reserve to certain Chiefs a large portion of the money to be paid for these lands. The proof on this subject was as had been stated. Mr. V. B. said they must appear before the People of the country with this fact before them, that, under the eye of this Government, the treaty had been negotiated in fraud. He did not state the facts to impeach any one, but to show the Senate the high responsibility that rested on them, to go as far as possible to suppress the contemplated fraud, and entirely extinguish this plan, that the Government might be protected from any future imputation of having had any hand in it. It was in that view he had said, and would repeat, and with that remark dismiss the subject, that the honor of the nation was concerned. Mr. V. B. said he should not be willing to persist in the amendment of the Senate, to the loss of the bill; but would rather take the next best thing that offered, by taking the amendment of the House, but would wish first to make the attempt to induce the House to adopt the amendment of the Senate.

To bring the subject more distinctly before the Senate, Mr. V. B. then offered a resolution for the Senate to insist on its amendment.

Mr. HARRISON said the proposition of the House not only comported with the treaty, but it met the view of the Senate; the only difference between the two propositions was, that the one directed that the distributions should be made in the usual proportion to the chiefs and warriors; the other, that it should be made in the presence of the chiefs and warriors—in presence of the great council of the nation. When this subject was first before the Senate, and a confidential communication was made that such a fraud was in contemplation, he was anxious that every measure should be taken to obtain justice. Mr. H. said he thought there was no better way than that of paying the chiefs and warriors in presence of the assembled nation. The only error the Secretary of War had committed had arisen from his not being acquainted with the usual manner of conducting Indian business. Mr. H. said he regretted, after the declaration which the gentleman from New York (Mr. VAN BUREN) had made of his confidence in the integrity of that officer, that he should say that some stigma would remain on the Government unless something should be done to clear the Government of that stigma. Mr. H. could not conceive that such a thing was necessary. The People of the United States would accord with the opinion given by the gentleman from New York, in relation to the character of that officer, and the arrangement of this affair; and, though an error of judgment might be imputed to him, the nation would determine that it was an error of the head and not of the heart. No better mode could be devised to do justice to the individuals and to the Indian nation, than that proposed by the other House.

The government of the Indian tribes in this country, Mr. H. said, was not well understood. It is not the government of the chiefs—the chiefs are the diplomatic agents, authorized to make treaties, but the consequences of the treaty are always passed in review before the assembled nation, and the nation is present, in every instance, when the proceeds of the treaty are paid. This secures them from any possibility of imposition on the par of the Government, or of any collusion on the part of the chiefs. Mr. H. said he was not present during part of the time that the gentleman from New York was speaking. It might be possible he had misunderstood the object of the amendment proposed by the committee; but there could be no possibility of any error in this matter, if the proposition of the House were adopted; the terms of the treaty would be strictly complied with, and the nation would be satisfied; because, when the money was paid in the presence of the nation, there could be no fraud. Mr. H. objected to the term "usual proportion." It might have been the practice to distribute in particular proportion, but the distribution always took place in a full council of the Chiefs. If gentlemen could show there was any possibility that a fraud was likely to be committed in the course which had been pointed out by the House, or that there was any possibility of a stigma attaching to the Government in consequence of pursuing that course, he would accord with them. It appeared there was an injustice meditated; but by whom? Not by this Government. It was a matter of indifference to them to whom the money was paid. Their object was to comply with the stipulations of the treaty—to satisfy the State of Georgia and the Indians. That had been substantially done. In regard to the observation which had been made, of its compromitting the character of this Government, that they had made a treaty with the Indians extending the cessions of the Indians beyond what they knew the Indians were authorized to make, Mr. H. would say that such a thing was not uncommon, either with the Indians or diplomatists. If diplomatists entered into a negotiation which they were not strictly authorized to do by their Government, it was their own affair; and it depended afterwards on the acquiescence on the part of the Government who sent them. If the warriors and remaining chiefs would show to this Government that it was not their intention thus to extend the cession, then, Mr. H. said, much as he valued this treaty, and the good consequences arising from it, he thought the Government would be bound in honor to do that which they would do if they were treating with a civilized nation—to satisfy them for the farther

cession, or to expunge this part of the treaty. When the compensation was about to be given to the chiefs assembled, if they protested against that part of the treaty, Mr. H. said, as a man who valued the reputation of his country, he should be one of those who would declare that part of the treaty to be null and void, or rectify the error that had been committed. What could the Secretary of War do? On whom could he rely? He could resort to no book that could show him the power that was given to the Indian chiefs in matters of this kind. It varied amongst the Indians. Mr. H. concluded by expressing his opinion that it would be perfectly safe to follow the recommendation of the committee of the House of Representatives. The money would be paid to those who were authorized to receive it, and the mode in which it was to be paid, would be a sufficient guarantee that no fraud had been committed on them.

Mr. HOLMES said he should accede to the report of the Committee of Conference. They recommended that the committee should be instructed to insist on the amendment. If the proposition made was to recede from the amendment, it would be in order to propose an amendment. If the Senate were to recede from their amendment, and to propose nothing more, then the bill would go to the House as unamended, and they might pass it without any amendment at all. The Senate could act on the bill or on the report of the committee.

As regarded the two propositions for the distribution of the money, it would seem at first view that there were two objections to the mode pointed out in the amendment of the Senate. How was it to be ascertained what was the usual proportion in the nation? If that could be ascertained, it would seem to put it out of their power to make any other distribution. The amendment of the House gives them that power. Mr. H. said he thought the safest way would be to have the distribution made by the nation. Either the one or the other of the amendments ought to prevail, from the facts which had been disclosed. The better way would be to take the amendment of the House, and to pass the bill in that way. If the agent paid the money to the assembled nation, they would have it in their power to decide which way they pleased. It would gratify them more—it would please them better—that the money should be paid to the chiefs and warriors assembled. If they are willing to make such an iniquitous distribution of their property, we have no right to complain; but it is not probable that they will do so. It would be better, Mr. H. said, to have it made in such a way as would satisfy them, and, though he should vote for either amendment, he thought it would be better to recede.

Mr. BENTON said, that, after the explanation of the views of the committee of conference which had been given by the Senator from New York, (Mr. VAN BUREN) he would limit himself to a statement of facts on two or three points, on which references had been made to his personal knowledge.

The Secretary of War had referred to him, in his letter to the committee, as knowing the fact, that the Secretary had refused to give private gratuities to the Creek Chiefs to promote the success of the negotiation. The reference was correct. Mr. B. had himself recommended to the Secretary to do so; it was, however, about forty days after the treaty had been signed. He referred to a paper which fixed the date to the 9th or 10th of March, and the treaty had been signed in the month of January preceding. It was done at the time that Mr. B. had offered his services to procure the supplemental article to be adopted. The Secretary entirely condemned the practice of giving these gratuities. Mr. B. said he had recommended it, as the only way of treating with barbarians; that, if not gratified in this way, the chiefs would prolong the negotiation, at a great daily expense to the Government, until they got their gratuity in one way or other, or defeated the treaty altogether. He considered the practice to be sanctioned by the usage of the United States; he believed it to be common in all barbarous nations, and in many that were civilized, and referred to the article in the Federal Constitution against receiving "*presents*" from foreign Powers, as a proof that the Convention thought such a restriction to be necessary, even among ourselves.

Mr. B. also adverted, in answer to something which had been said in previous debates, to the part he had acted in getting the supplemental article adopted. What he had done was with the knowledge and consent of the Secretary. It amounted to nothing more than producing a conviction in the minds of the Creeks themselves, *that it would not be advantageous for them to hold any land in Georgia*; this being accomplished, the consideration was left to be adjusted by others. Not a word with respect to its amount had passed between Mr. B. and any one of the Creeks or Cherokees. They agreed, upon the representation of Mr. B., to give up *all* the land claimed by the Creeks in Georgia; but, when they came to reduce that agreement into the form of an article, a difficulty occurred; *the line between Georgia and Alabama had never been ascertained*; and the Indians were unwilling to agree to a line, the course and position of which was unknown to them, and which was to be fixed by a power over which they had no control, and which might run, they knew not how deep, into their country. They were willing to agree to the line where it was believed to be; and, accordingly, two points, named by a part of the delegation from Georgia, as those which would include all the land in Georgia, were agreed upon, and inserted in the supplemental article. It was intended to cede all; it was believed that all was ceded; the exact truth could not be known until the line was run. He considered the unwillingness of the Indians to agree to an unknown line as natural and reasonable; and, if any mistake had occurred, there was certainly no blame on either party. The Indians agreed to the points indicated by gentlemen from Georgia, and these gentlemen, to his personal knowledge, had expended great pains in consulting maps, and in referring to the knowledge of individuals to fix the points correctly.

The *time* at which Mr. B. had offered his services to aid this negotiation, had appeared to him to be eminently critical, and big with consequences which he was anxious to avert. It was after the committee had resolved to report against the new treaty, and before they had made the report to the Senate. The decision, whatsoever it might be, and the consequent discussions, criminations, and recriminations, were calculated to bring on a violent struggle in the Senate itself; between the Senate and the Executive; perhaps between the two Houses, (for a reference of the subject to both would have taken place) and between one or more States and the Federal Government. Mr. B. had concurred in the report against the new treaty, because it divested Georgia of vested rights; and, though objectionable in many other respects, he was willing, for the sake of peace, to ratify it, provided the vested rights of Georgia were not invaded. The supplemental article had relieved him upon this point. He thought that *Georgia* had no further cause of dissatisfaction with the treaty; it was *Alabama* that was injured by the loss of some millions of acres, which she had acquired under the treaty of 1825, and lost under that of 1826. Her case commanded his regrets and sympathy. She had lost the right of jurisdiction over a considerable extent of territory; and the advantages of settling, cultivating, and taxing the same, were postponed, but, he hoped, not indefinitely. But these were *consequential* advantages, resulting from an act which the Government was not *bound* to do, and, though the loss of them was an injury, yet this injury could not be considered as a violation of vested rights; but the circumstance certainly increased the strength of her claim to the

total extinction of the Indian titles within her limits; and, he trusted, would have its due effect upon the Government of the United States.

The third and last point on which Mr. B. thought references to his name had made it proper for him to give a statement, related to the circumstance which had induced the Senate to make the amendment which had become the subject of the conference between the two Houses. He had, himself, come to the knowledge of that circumstance in the last days of April, some weeks after the supplemental article had been ratified. He had deemed it to be his duty to communicate it to the Senate, and do it in a way that would avoid a groundless agitation of the public feeling, or unjust reflections upon any individual, white or red, if, peradventure, his information should turn out to have been untrue. He, therefore, communicated it to the Senate in secret session; and the effect of the information was immediately manifested in the unanimous determination of the Senate to adopt the amendment which was now under consideration. He deemed the amendment, or one that would effect the same object, to be called for by the circumstances of the case, and the relative state of the parties. It was apparent that a few Chiefs were to have an undue proportion of the money—they had realized what he had foretold to the Secretary; and it was certain that the knowledge of this, whenever it should be found out by the nation, would occasion disturbances, and, perhaps, bloodshed. He thought that the United States should prevent these consequences, by preventing the cause of them, and, for this purpose, he would concur in any amendment that would effect a fair distribution of the money, or any distribution that was agreeable to the nation in open Council.

Mr. TAZEWELL said it seemed to him that the question before them was a question of mere form. The proposition in which they were all agreed, was this: A deputation of the Creek nation had been accredited here, as the representatives of that nation to make a treaty, and that they had, amongst themselves, confederated to practise a gross fraud on those who sent them here. This fraud was known to the Government of the United States before the treaty was concluded, and, notwithstanding that fact, this treaty was concluded under that form of expression which might authorize the consummation of this fraud. In this state of things, intimation was given to the Senate of the existence of this fraud, and the probable consequences of it. Immediately that the bill came from the other House, making an appropriation to carry the treaty, on one side conceived in fraud, into effect, an amendment was proposed, on the part of the Senate, to prevent the consummation of this iniquitous scheme. This amendment was sent to the House; it was disagreed to there, and a committee of conference took place. The conferees on both sides were satisfied of the existence of this fraud, and of the consequences which would attach to the United States if it could not be prevented, and they recommended different modes of prevention, which should be adopted. The amendment proposed by the Senate is, that the sum of money to be paid to the Creek nation should be paid under the direction of the Secretary of War, to the Creek nation, in such proportion, according to the mode in which the annuities to the nation have been in the habit of being paid. This is an answer to the gentleman from Maine, who asked how they were to know in what proportion they were paid. There would be no difficulty on the subject. There is a fixed rule known to this Government and that nation—acquiesced in by that nation—and the Secretary of War, on his responsibility, is directed to carry that fixed rule into operation. On the part of the other House, it is proposed this sum should be paid to the Chiefs of the nation by a special agent, and that this special agent shall be under the direction of the Secretary of War, who is to direct the money to be paid in full council of the nation, to be convened on full notice for that purpose. Some gentlemen (Mr. T. said) were of opinion there was no difference between the two modes. He thought there was an important difference. In the one case, the responsibility rests on the Secretary of War, and whom he may choose; in the other, it is mandatory on him to appoint a special agent to carry it into execution. The Senate (Mr. T. said) put the responsibility where it ought to rest—on the Head of the Department—but the House proposed to have an intermediate one. The Senate referred to a fixed rule—the House did not. According to their proposition, all that was to be done was to convene the nation, pay the chiefs in presence of the nation, and the hands of the Government would be washed. The proposition of the Senate was more guarded, and, therefore, ought to be agreed to.

The gentleman from Ohio had said that it was unimportant to whom the money was paid. Mr. T. said it was of much importance to the United States to whom it was paid. It was important that it should be paid to those to whom the land belonged, in the proportion in which their annuities had been heretofore paid. If these Chiefs were paid, and the distribution was not effected, the moment the nation were informed of the fraud which had been committed on them by their own Chiefs here, and that this fraud was made known to the United States before the treaty was completed, and had not been guarded against by any act of Congress, an Indian war would most probably take place, and it would be difficult to avoid the consequences which naturally result from every Indian war. Therefore, to preserve harmony, we could not be too cautious in distributing the money.

Mr. T. said he could not consider any of these engagements entered into with the Indian tribes, bound us down in the same way as stipulations entered into by a civilized People. We made a treaty—it was law to them; and we agreed it should be law to us. It did not become a law by virtue of an exchanged assent, as among an enlightened People. We are nothing more than the guardians of these People. They had, Mr. T. said, manifested more skill in diplomacy than the United States. They had completed their affairs more dexterously than we had ours; and the time was not far distant when this thing would be disclosed to the world, that these two Cherokee boys sent here, had completed a treaty on better terms for the Creeks, and worse terms for the United States, than all the diplomatic functionaries employed. Our benevolence, our magnanimity, our justice, and any other good quality we might have, required that this fund should be distributed amongst them, according to what we considered to be the principles of justice. The nation owned the land; the money was to be in place of the land; that money, therefore, must go to those who owned the land. When we knew it was going into the hands of a set of People who had laid a plan by which they were to get forty thousand dollars exclusively to themselves, it was important that we should save this forty thousand dollars for the Creek nation, for whom it was intended, and to take care that the Cherokee, who had not ceded one inch of land, should not receive any part of that bounty which was intended for the neighboring nation. We had nothing to do with that affair, except to place the money in the hands of the Creek nation, and let them distribute it according to what they considered justice on their part towards the Cherokees.

In the printed document which was now before the Senate, Mr. T. said, there was matter of fact which appeared to justify a strong inference, that these Indians wished our Government to believe, or were themselves instructed, that they were not at liberty to cede one foot of land beyond the Chatahoochie; yet, by the supplementary article, they had made such a cession. He wished the Senate had more information on this subject. He should not pro-

pose any further call on the Department, when the session was drawing so near to a close; but he believed that, within the Department of War, there were, at this moment, documents to show that a treaty, very different from that which had been concluded, might have been concluded, and far more to the benefit of the United States.

It had been bruited abroad, Mr. T. said, for many months past, that this treaty of the Indian Springs was objected to, because it was negotiated in fraud. Though the Senate had not acted directly on that suggestion, that treaty had been dispensed with without a particle of proof of fraud, and this new treaty had been taken up; and the documents went to shew that it was signed by a large party to this treaty, with a full knowledge that the negotiators on one part were disposed to practice fraud on those that sent them here; and that this fact was made known to the Government of the United States. On this transaction, Mr. T. said, he should make no comment.

Mr. BRANCH said, that, while he would concur with the gentlemen from New York and Virginia, in any measure to detect fraud, he must dissent from the gentleman from Virginia in the latter part of his observations. That gentleman had said that the first treaty had been set aside without evidence of fraud. Mr. B. said it was not his purpose to enter into an investigation of this point; the reason why they had not that evidence, was because they refused to look at it; the evidence was most ample and abundant in the Department of War; but the Senate had shut their eyes on it. That evidence was taken by men high in the confidence of this country, for integrity, talent, and firmness—evidence which he should not descant upon, but which was to his mind conclusive. If any gentleman thought proper to refuse a call on the Department for it, the fault was his. Mr. B. said he should vote for any proposition which had for its object the detection of fraud, either in this treaty or any other. He was opposed to the treaty of the Indian Springs, because he believed it had been executed in fraud; and the circumstances hovering about this treaty were sufficiently strong to excite suspicion. He was willing it should be probed to the bottom.

Mr. BERRIEN next addressed the Senate. He said, I touch this subject with extreme reluctance. It throws me back upon recollection to which it is unpleasant to recur. It awakens feelings which I have no disposition to indulge. But, can I be silent? My colleague and faithful coadjutor in this cause, has been called away by the pressure of domestic calamity. I am the sole representative of Georgia on this floor. The Senate will expect from me, sir—what, with all possible respect for the Senate, is infinitely more important to me, the People of Georgia, my own immediate constituents to whom alone I acknowledge responsibility, they will expect from me, an expression of their feelings on this occasion. I obey.

You have arrived at the last scene in the present act of the great political drama of the Creek controversy. In its progress, you have seen two of the sovereign States of the American Confederation—especially, you have seen one of those States, which has always been faithful and forward in the discharge of her duties to this Union, driven to the wall, by the combined force of the Administration and its allies, consisting of a portion of the Creek nation, and certain Cherokee diplomatists. Hitherto, in the discussions before the Senate on this subject, I have imposed a restraint upon my own feelings under the influence of motives which have now ceased to operate. It was my first duty to obtain an acknowledgment, on this floor, of the rights of Georgia, repressing, for that purpose, even the story of her wrongs. It was my first duty, sir, and I have sacrificed to it every other consideration. As a motive to forbearance, it no longer exists. The rights of Georgia have been prostrated. The Senator from New York deceives himself, when he supposes that she has acquired all the land within her limits The Senate, too, acted under this impression in the ratification of the new treaty, and were deaf to my solicitation to amend that instrument by an article which should, in *express terms*, relinquish to Georgia the lands within her boundary. Gentlemen shrunk from an investigation of the treaty of the Indian Springs, and feared to alter the one submitted to them, lest, by its failure, that investigation might become necessary. Yes, sir: the rights of Georgia have been prostrated. They have fallen before the power of the Administration, and the fraud and the insolence of the savages whom they have sustained and cherished—of those savages, by whom the Administration have been made the conscious instruments of the fraud which they themselves have concerted against their own brethren of the forest. The Administration have been passive spectators of the insolence with which, in the official character they have given to them, those savages have bearded the Representatives of Georgia, even in the official journal of the Government. Why, then, should I be silent? I have the evidence of oppression and of fraud, and accumulated wrongs prompt to their exposure.

It was a duty scarcely less sacred to protect the friends and followers of that gallant Chieftain who had sealed with his blood his devotion to Georgia and to this Union. That also is finished. I invoke the testimony of no man to prove with what fidelity it has been performed. The hour of retribution has come. I will not imitate, I am incapable of imitating, the example of those who have foully calumniated a People whose honor is so justly dear to me; but, under the responsibility of my station—under my personal responsibility, if you will—I am free to speak, and I will speak, of the wrongs of Georgia. I shall be brief, for the occasion requires it; and my own feelings will prompt me to turn as quickly as I may from so disgusting a subject.

Sir, in the progress of that controversy, which has grown out of the treaty of the Indian Springs, the People of Georgia have been grossly and wantonly calumniated, and the acts of the Administration have assisted to give currency to these calumnies. Her Chief Magistrate has been traduced. The solemn act of her Legislature has been set at naught, by a rescript of the Federal Executive. A military force has been quartered on her borders, to coerce her to submission; and without a trial, without the privilege of being heard, without the semblance of evidence, she has been deprived of rights, secured to her by the solemn stipulations of treaty.

When, in obedience to the will of the Legislature of Georgia, her Chief Magistrate had communicated to the President his determination to survey the ceded Territory, his right to do so was admitted. It was declared by the President, that the act would be "wholly" on the responsibility of the Government of Georgia, and that "the Government of the United States would not be in any manner responsible for any consequences which might result from the measure." When his willingness to encounter this responsibility was announced, it was met by the declaration, that the President would "not permit the survey to be made," and he was referred to a Major General of the Army of the United States, and one thousand regulars. The trained bands of the Empire were to be employed to coerce him to submission. Why this paltering? Above all, sir, why this menace?

The highest judicial tribunal of the United States had long since decided the right of Georgia to grant and sell the lands, which she was about to survey. Independently then of any title acquired by the treaty of the Indian Springs, unless there is any one prepared to affirm that the right to grant does not involve the right to define the limits of the thing granted, the act which she was about to perform, was manifestly within her competency. When

this proposition, thus clear and simple in its principle, shall come to be understood by the People of the United States, by what term of reprobation sufficiently strong, will they designate the menace to employ the military force of this Union to prevent a sovereign State from the exercise of her unquestionable right?

To this lawless mandate, her Chief Magistrate submitted. Unable to repress the feelings, which had been excited by the contumely of the Government and its agents, he nevertheless respected the peace of the Union, and the tyranny was unresisted. The Senate will permit me to say a passing word of this calumniated individual—the friend and companion of my earlier years—whose name has been associated in the journals devoted to the Administration, with the epithets of madness and of treason. Sir, there is no man, however vindictive his feelings, however led astray by the reveries of a malevolent fancy, who, in the moment of retirement, communing with God and his own conscience, had the hardihood to avow to himself a belief of the calumnies which were uttered against the Chief Magistrate of Georgia. Love for his country—indignation against her oppressors—these are the qualities of the Patriot—these are the qualities which he has exhibited in this controversy.

The murder of that illustrious chieftain, who, through life, had manifested a generous, gallant devotion to the People of this Union, is another incident in this drama, on which that People will, ere long, affix the seal of their reprobation. It is one of those events which grew out of the countenance given by the Federal Government to the opposition to the treaty of the Indian Springs. It was naked murder. The shallow pretence of a law, and the judgment of a Council, was got up ex post facto. I appeal to those who are conversant with the laws and customs of the Indians, if such a law could have existed without the knowledge of the agent? I appeal to them to say, if Indian Councils are not always open? To those who know the character of the Council which was assembled before the death of McIntosh, how many friends he had in it, I appeal. Let them say, if it would not have been an act of madness for his intended murderers to have made known their object in that Council? Yes, sir, I repeat the declaration, it was naked murder. This gallant chieftain fell, like Alcibiades, by the hands of the midnight assassin; and, like the emissaries of the Persian Satrap, his assassins feared to come within the reach of his valiant arm.

The murder of McIntosh—the defamation of the Chief Magistrate of Georgia—the menace of military force to coerce her to submission—were followed by the traduction of two of her cherished citizens, employed as the agents of the General Government in negotiating the treaty—gentlemen, whose integrity will not shrink from a comparison with that of the proudest and loftiest of their accusers. Then the sympathies of the People of the Union were excited in behalf of "the children of the forest," who were represented as indignantly spurning the gold, which was offered to entice them from the graves of their fathers, and resolutely determined never to abandon them. The incidents of the plot, being thus prepared, the affair hastens to its consummation. A new treaty is negotiated here—*a pure and spotless treaty*. The rights of Georgia and of Alabama are sacrificed: the United States obtain a part of the lands, and pay double the amount stipulated by the old treaty; and those pure, and noble, and unsophisticated sons of the forest, having succeeded in imposing on the simplicity of this Government, next concert, under its eye, and with its knowledge, the means of defrauding their own constituents, the Chiefs and Warriors of the Creek Nation.

For their agency in exciting the Creeks to resist the former treaty, and in deluding this Government to annul it, *three Cherokees, Ridge, Vann, and the father of the former*, are to receive FORTY THOUSAND DOLLARS of the money stipulated to be paid by the United States to the chiefs of the *Creek* nation; and the Government, when informed of the projected fraud, deems itself powerless to avert it. Nay, when apprized by your amendment, that you had also detected it, that Government does not hesitate to interpose, by one of its high functionaries, to resist your proceeding; by a singular fatuity, thus giving its countenance and support to the commission of the fraud. Sir, I speak of what has passed before your eyes, even in this hall.

One-fifth of the whole purchase money is to be given to *three Cherokees*. TEN THOUSAND DOLLARS reward one of the heroes of Fort Mims—a boon which it so well becomes us to bestow. A few chosen favorites divide among themselves upwards of ONE HUNDRED AND FIFTY THOUSAND DOLLARS, leaving a pittance for distribution among the great body of the Chiefs and Warriors of the nation. But it is the price of blood—of the blood of McIntosh. Shall it not be freely distributed among those who shed it? And think you, the Chiefs and Warriors against whom this audacious fraud is meditated, will tamely acquiesce in it? Armed with this damning proof of the corruption of their adversaries, will the followers of McIntosh sleep? Sir, if one spark of his gallant spirit yet lingers among them, especially if it burns as it should burn in the bosom of that youthful chieftain, whose high prerogative it is to vindicate a father's memory, the name of the White Warrior of Muscogee will again become the terror of his foes.

But the Administration, though it condemns the fraud, thinks that we have no power to prevent its consummation. What, sir, have we no power to see that our own treaty is carried into effect? Have we no interest in doing so? Have we no power? We have stipulated for the payment of two hundred and forty-seven thousand dollars to the Chiefs of the Creek Nation, *to be distributed among the Chiefs and Warriors of that nation*. Is not the *distribution* part of the contract as well as the *payment?* We know that a few of those Chiefs, in fraudulent violation of the rights secured by that treaty, are about to appropriate this money to themselves. Are we powerless to prevent it? Nay, must we, too, suffer ourselves to be made the conscious instruments of its consummation? We have made a bargain with a savage tribe, which you chuse to dignify with the name of a treaty, concerning whom we legislate with their consent, or without it, as it seems good in our eyes. We know that some ten or twenty of them are about to cheat the remainder. We have the means in our hands, without which their corrupt purpose cannot be effected. Have we not the right to see that our own bargain is honestly fulfilled? Consistently with common honesty, can we put the consideration money of the contract into the hands of those, who we know are about to defraud the People who trusted them? Sir, the proposition is absurd.

But have we no interest in preventing this fraud? What, if the great body of the nation, disclaiming the validity of a treaty, the consideration money for which they have never received, and which you have paid with a knowledge of the fraud about to be practised on them, shall refuse its execution, will you not be in a worse dilemma, than that from which you have endeavored to escape, by annulling the treaty of the Indian Springs?

Will you say it is their own affair; that they have trusted these persons to negotiate the treaty, and therefore they are entitled to receive the money? The answer is plain. *They* trusted these men, believing them to be honest. Now *you* know them to be otherwise.

Will you shelter yourselves under the powers granted to the Delegation? and did you not dictate them? Was not the council convened by your order? Did you not require the appointment of the Delegation, draught their

commission, and direct its execution? Was it a free will offering of the Creek Nation? Was it not rather the act of these very men, who had excited the Creeks to resist the old treaty, and who, by means of this corrupt agreement, are now about to enjoy the fruits of their speculation on the simplicity of this Government?

Sir, you have the power, and it is your interest, and it is your duty to exercise it. You legislate for these People as you will—you assume a guardianship over all the Indian tribes, for the preservation of the public peace. This consideration alone is sufficient to authorize and to demand your interference. Suffer this fraud to be consummated—this corrupt distribution to be carried into effect, and the war-whoop will again be heard in the nation, and the tomahawk and the scalping knife will do their office.

It is another miserable suggestion, prominently put forth in the report, that the delegation individually agreed to the distribution. Yes, sir, *those who were to share the spoils, consented to the commission of the fraud.* But mark the progress of this affair; I refer to the report of the Superintendent. When Ridge was first asked if the members of the delegation were apprized of it, he answered "no; but Opothleyoholo and Charles Cornells knew it, and that was enough." Subsequently their assent was obtained—and how? Look to the agreement. Each member of the delegation, not otherwise provided for, was to receive FIVE THOUSAND DOLLARS. Who does not perceive that this was the price of their assent?

And was this intended fraud known to the Administration? Did they negotiate with men thus profligate and corrupt, knowing them to be so? And did they conceal their knowledge of the fact from the Senate, the constitutional advisers of the President? Leaving them to ratify in ignorance, a treaty which had been negotiated in fraud? I refer again to the report. Ridge presented their paper containing this fraudulent agreement, at the time of signing the first treaty, which was on the 24th of January last. The next day it was submitted to the Senate. Afterwards, on the 31st of March, the supplemental article was negotiated and also submitted; and, on the 21st of April, the treaty was ratified. From the 25th of January, then, until the 21st of April, this treaty being before the Senate, the Administration knew, and withheld from that body the knowledge of the fact, that the greater part of the money stipulated by that treaty, to be distributed among the Chiefs and Warriors of the nation, was to be fraudulently kept from them, and appropriated to some ten or twenty Chiefs. In this ignorance the Senate was suffered to ratify this treaty, which, with a knowledge of the fact, they would have spurned. Nay, more. When the Senate had detected the fraud, and guarded against it by the amendment under consideration, the Administration interfered to resist that amendment. The Senator from Missouri, influenced by a desire to terminate this unhappy controversy, in a mode consistent with the rights of Georgia, and least embarrassing to the General Government, suggested the propriety of presents to the Chiefs, as a means uniformly resorted to, in negotiating with savage tribes. This the Department "peremptorily refused;" and yet, at the moment of this refusal, knew, and had long known, the projected fraud, which has at length happily been brought to light. I make no comments on this statement; I present it on this floor to the American People: they will determine the character of the transaction.

But I will relieve the Senate, so far as I am concerned, from the further consideration of this disgusting subject. To me it is indifferent which of these amendments shall prevail. I believe that adopted by the Senate will be most efficient, and, as a member of the Committee of Conference, I have not felt authorized to yield an important principle, without its sanction. My chief object has been to expose the fraud, and thus to prevent its consummation, and that purpose has been fulfilled.

I leave to those who have directed this controversy, the cheering reflection, that they have trampled on the rights of Georgia, which they were bound to protect; and calumniated her citizens, their agents, whose honor it was their duty to guard: that they have imputed fraud to the old treaty, and have shrunk from the proof of it; and that the operations which have eventuated in that compact, which we are now called upon to consummate, were commenced in blood, and have terminated in corruption.

Mr. KING said he could not consent to give his vote without saying one word. When this matter was brought before Congress, at an early period of the session, they were taught to believe, from all the documents submitted to the Committee on Indian Affairs, that great exertions had been used to bring about an accommodation, and to save them from the necessity of going into an examination of the old treaty which was said to be founded in fraud and corruption. The committee had taken the treaty submitted to them into examination, and came to the conclusion that, as it did not cede all the lands within the limits of Georgia, they could not constitutionally ratify it, and returned it to the Senate. A letter was addressed to the War Department, acquainting the Secretary of the disposition of the committee, and the course that would be adopted. It was in this state of things that the Chiefs were again assembled, and, though they had informed the War Department that, under no circumstances whatever, could they extend the limits beyond what they were extended by that treaty, yet, after great exertion, they brought out a supplementary treaty, which, we were told, embraced all the lands in Georgia. I stated distinctly, that, if any treaty was to be formed short of that of the Indian Springs, I protested against it. I asked that the whole matter might be submitted to Congress, and that they might determine on the fraud. The former treaty had been ratified; it became the supreme law of the land. Its adversaries say it is founded in fraud. Where is the evidence they have given us of it? They have given none. When they found it would be rejected, and that necessity forced on them to submit to it, or to produce the evidence, they got up this supplementary treaty, which they thought would do away the objections on constitutional grounds. I went further than the Secretary. I knew, from the disposition of the individuals, that there was a great desire to get clear of this investigation, and that they would go great lengths to effect it. I stated to him that, if the usual course was resorted to, and the proper means were adopted to conciliate the Chiefs, an arrangement might be made which would be satisfactory to all parties. He refused to resort even to the distribution of the common presents. He said it was bribery and corruption; it was base; he would have nothing to do with it, nor would he delegate the power to another. With a full knowledge of the most infamous frauds ever committed by a set of Indian Chiefs, he entered into a treaty. What was this money? It was a consideration for the land sold; to take from the nation at large—the People, who had a right to the occupancy of the lands—the amount that was equivalent to this land, and to put it into the hands of the rascally Chiefs, not of the Creeks only, but of the Cherokees, who came here to prevent, as far as any misrepresentation could prevent, any measures by which the treaty of the Indian Springs should be confirmed. What will be said of the Head of the Department, who spurned bribery and corruption, yet, with a knowledge of this fraud, brings forward this treaty, and does not give us this information? Is there a Senator, who, with a full knowledge of the fraud which has been attempted, and which is to be consummated, would not prefer the treaty of the Indian Springs, not

thus stained with fraud? The gentleman from Ohio says it is impossible that the Secretary of War should understand the powers given to these Chiefs. He had their instructions in his bureau; General Gaines brought them to him. They were to cede all the lands to the East of the Chatahoochie, and with discretion to go as much farther as they thought proper. Their power was ample, and the Secretary knew at the time that they possessed that power: and, therefore, that their assertion to the contrary was false. The constitutional question as regards Georgia, yet remains in force, and though it may not seem to apply to Alabama, I still think our rights were violated in annulling that treaty and adopting another. I wish I could devise any mode of getting that last treaty back again before the Senate, that it might be rejected, because it would defeat a villanous fraud. It would bring about an examination of the original treaty, which was greatly advantageous to the State of Alabama. It would not have been thus advantageous to individuals, nor would it have been found tinctured with fraud and corruption, as many gentlemen suppose. I have not had an opportunity of consulting with gentlemen in regard to the course which ought to be pursued where the ratification has not been made by the President, or I should have been induced to have placed a resolution on the table, asking the President to suspend the ratification of the treaty, if it has not yet been ratified. In that I fear I should fail. The distribution of the money is perfectly indifferent to me. It would, I think, be better it should be distributed through the medium of the agent; he is acquainted with the individuals in every town. If you distribute it through the medium of a special agent, in open council, there is and may be a way by which these fraudulent individuals may get possession of a portion of the money. I am disposed to deprive them of the whole. The agent, knowing the Chiefs and the towns, would distribute it so that it should be divided among all the Creeks. The very circumstance of your taking the distribution from him has a suspicious appearance, as if he was not to be trusted. I know he has rendered himself odious to this People, in consequence of his arraying himself against this fraud. I shall vote for insisting on the amendment of the Senate.

The question was then taken on Mr. HOLMES'S proposition to amend Mr. VAN BUREN'S resolution, and was decided in the affirmative, ayes 19, noes 16; and then the question was taken on agreeing to the resolution as amended, and carried.

Mr. HARRISON then, partly from some circumstances which arose out of the preceding debate, and partly from the quantity of business yet to be acted on, and the little prospect there was, considering the length of the debates, to act on it all by to-morrow night, offered a resolution proposing to extend the session to Thursday next; which, after some discussion between Messrs. HARRISON, HAYNE, BERRIEN, BENTON, BRANCH, CHANDLER, MACON, KING, and ROWAN, was concurred in, by yeas and nays, as follows:

YEAS—Messrs. Barton, Benton, Berrien, Bouligny, Branch, Chambers, Chase, Eaton, Findlay, Harrison, Hendricks, Johnston, Lou. King, Lloyd, Marks, Noble, Pickens, Reed, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Buren, Woodbury—26.

NAYS—Messrs. Bell, Chandler, Dickerson, Edwards, Harper, Hayne, Holmes, Kane, Knight, Macon, Rowan, Tazewell, White, Williams—14.

EVENING SESSION.

Mr. WHITE moved that the Senate *insist* on its amendment to the bill for the relief of James Monroe, disagreed to by the other House, and that a Committee of Conferrence be asked for. The motion was carried, and Messrs. WHITE, HAYNE, and TAZEWELL, were appointed managers on the part of the Senate.

The bill for the relief of Benedict Joseph Flaget, Bishop of Bardstown, in Kentucky, was briefly debated, and ordered to a third reading by yeas and nays, as follows:

YEAS—Messrs. Chambers, Chase, Eaton, Findlay, Harper, Harrison, Hayne, Hendricks, Holmes, Kane, Lloyd, Noble, Robbins, Rowan, Ruggles, Smith, Thomas, White—18.

NAYS—Messrs. Branch, Chandler, Edwards, King, Macon, Marks, Seymour, Tazewell, Woodbury—9.

SATURDAY, MAY 20, 1826.

Mr. BRANCH moved that the Senate reconsider their vote of yesterday, to prolong the session to Thursday next.

A debate of an hour's duration took place on this motion, in which Messrs. BRANCH, HOLMES, BELL, HARRISON, EDWARDS, CHANDLER, HENDRICKS and BENTON, took part:

The motion was decided in the negative, by yeas and nays:

YEAS.—Messrs. Bell, Branch, Chandler, Clayton, Edwards, Harper, Hayne, Holmes, Kane, Macon, Rowan, Tazewell, White, Williams—14.

NAYS.—Messrs. Barton, Benton, Chambers, Chase, Eaton, Findlay, Harrison, Hendricks, Johnston, of Lou. Lloyd, Marks, Noble, Pickens, Robbins, Sanford, Seymour, Smith, Thomas.—19.

Mr. TAZEWELL laid the following resolution on the table, but did not desire its consideration, and, on motion of Mr. WILLIAMS, it was ordered to be printed:

Resolved, That it is expedient for the United States to cede and surrender to the several States, within whose limits the same may be situated, all the right, title, and interest, of the United States, to any lands lying and being within the boundaries of such States, respectively, upon such terms and conditions as may be consistent with the due observance of the public faith, and with the general interest of the United States.

Mr. HENDRICKS moved to take up the bill for the preservation and repair of the Cumberland road. The motion was negatived—ayes 15, noes 16.

On motion of Mr. HAYNE, it was

Resolved, That the Secretary of the Navy be directed to report to this House, at the commencement of the next session of Congress, whether any difficulties have occurred in obtaining seamen for the Navy, the causes of such difficulties, and what measures may be necessary to remove them.

Resolved, That the President of the United States be requested to cause to be laid before this House, at the commencement of the next session, a detailed statement of the expenditures for the construction of the Cumberland road, showing the expense incurred per mile for each section of said road.

VINE AND OLIVE LANDS IN ALABAMA.

Mr. PICKENS submitted the following motion for consideration:

Resolved, That the Secretary of the Treasury be instructed to furnish to the Senate, at the next session of Congress, a copy of the contract made with the agent of the late emigrants from France, in pursuance of an act to set apart and dispose of certain public lands for the encouragement of the cultivation of the vine and olive; with a list of the names of the emigrants, and the allotments assigned them respectively; with a statement showing the allotments forfeited for nonperformance of the conditions in the contract: showing, also, the cases wherein the conditions have been performed, and the manner of such performance, by whom, and under what tenure or authority, (in the cases where others than the original allottees may be the occupants;) and that he, at the same time, communicate any other information in his possession,

affecting the titles derived under the act aforesaid, and the act supplemental thereto, with any circumstances which may furnish equitable grounds of relief from forfeiture, or otherwise.

Mr. CHANDLER asked for some information from the mover, in explanation of the objects of the resolution.

Mr. PICKENS said he supposed the resolution would be sufficiently explanatory of its object. He would, however, offer a few words. In the year 1817, after the last Revolution in France, an application was made by a number of emigrants, who had abandoned their country to seek a home here for a place of refuge, where they might congregate together, and be employed in their original occupation of cultivating the vine. The Congress of the United States, with great liberality, passed an act with most unexampled unanimity in their favor, and four townships of land were granted, and the Secretary of the Treasury was directed to contract with the agent, or agents, employed by those emigrants, for the cultivation of such vegetable productions as might be proper. The Secretary of the Treasury, in consequence of the authority of that act, made contracts with the agents of the emigrants, requiring certain conditions for the cultivation of the vine and olive at certain periods. The last condition of cultivation and improvement, expired on the 8th of January last.

It was understood, Mr. P. said, that the Secretary of the Treasury had it in contemplation, in the next recess of Congress, to send an agent to ascertain how far the fulfilment of the contract had taken place; and the object of the resolution was, that, while that information was collecting, he might collect all other that might be satisfactory to communicate to Congress. Some of those persons might not have fulfilled the contract, but yet might have equitable grounds on which to be reprieved from forfeiture. There were others against whom the forfeiture ought to be imposed; and, while this information was collecting, it would be an easy matter for the agent, by having his attention previously directed to it, to get ample information to report at the next session of Congress.

Mr. P. said, he thought it was a duty he owed to the Senate to state, that, while there were many persons who were *bona fide* emigrants from France, there were many others who had, some how or other, imposed themselves on the Treasury Department, who had never seen France, but who had emigrated from St. Domingo.

Mr. P. said, he hoped that when this matter should be finally considered by Congress, that some degree of liberality would be shown. There were some who had *bona fide* settled down, and had endeavored to fulfil the contract; many of them were good citizens, even though they were not recent emigrants, and that this error would therefore be overlooked. These were the reasons why he wished all the circumstances to be collected by the next session of Congress.

Mr. KING said, he did not wish to oppose the resolution offered by his colleague, but he would suggest that it was unnecessary, as all the information had been communicated to Congress at the last session. The Secretary of the Treasury, by a call from the Senate, communicated to Congress a list of all the persons who were entitled to land under the grant of the four Townships in Alabama. The names were there, and the quanitty of land granted to each. The only difference between that and the present resolution, was the attempt to distinguish between those who were actual emigrants from France and those who were not. That would probably be attended with considerable difficulty. Mr. K. said, he had called the attention of the Secretary of the Treasury to the subject: he had addressed a note to him reminding him that the first period had passed, and that the second period, for the cultivation of the vine, had arrived, and it was necessary, if they had not complied with the stipulations, to inquire about the forfeiture. Mr. K. said, he had informed the Secretary that there were many emigrants who had disposed of the property to individuals for a valuable consideration, and that it would probably become a matter for equitable consideration. The Secretary had assured him that an Agent should be appointed to collect all the information relative to the cultivation of the vine and olive up to January last, where the transfer had been made, by whom made, at what time, and other information. Mr. K. said, he made this statement to show his colleague that a portion of the information called for by his resolution, was already before the Senate, and that the residue would be attended to by the Secretary of the Treasury.

Mr. CHANDLER said, he was satisfied that the resolution was proper, and would only bring to the mind of the Secretary of the Treasury what had formerly been stated to him by the gentleman from Alabama.

Mr. PICKENS said, it was no doubt true, that part of the information might have been communicated, but if any thing more had been communicated, it must have been more than was within the power of the Secretary of the Treasury to communicate. His main object was, to collect all the facts in relation to the fulfilment of the contract, with such other circumstances as might operate in favor of the occupants, or otherwise, not confining the investigation to those who were recent emigrants. The act of 1822, Mr. P. said, had individualized the contract, by which any one individual could obtain a title. In consequence of this, it would be necessary to point out the particular allotments, and that connected with the other information, would be more complete.

The resolution was then agreed to.

The bill for the relief of the Florida Indians was taken up, and considered, as in Committee of the whole.

The question being on agreeing to the amendment proposed by the Senate, appropriating $30,000 for removing the said Indians to the country West of the Missouri and Territory of Arkansaw. After a brief explanation by Mr. BENTON, the amendment was concurred in, and the bill ordered to a third reading, and was subsequently PASSED.

Mr. CHAMBERS renewed the motion to take up the bill for the preservation and repair of the Cumberland road. The motion was negatived—ayes 15, noes 20.

The Senate proceeded to consider the amendment of the other House to the bill from the Senate "regulating process in the States admitted into the Union, since 1798."

A short discussion ensued between Messrs. HARRISON, KANE, ROWAN, and WHITE, in which the amendment was opposed as leaving Missouri, Mississippi, Indiana, Illinois, Alabama, and Tennessee, without any system of execution laws, in the Federal Courts.

Mr. KANE moved to amend the amendment of the House, by adopting the provisions of the original bill, in the States which had not been provided for by the amendment.

The amendment prevailed.

And then, on motion of Mr. JOHNSTON, of Lou. the bill was laid on the table.

Mr. WOODBURY then (about 4 o'clock) moved that the Senate take a recess until 6 o'clock; which, having been agreed to—

The VICE PRESIDENT rose and stated that it was his intention now, having reached the last business day of the session, by withdrawing from the chair, to give to the Senate the usual opportunity of appointing a President pro tempore. Before retiring, however, he would take the occasion to return his thanks for the support and courtesy which the Chair had uniformly received, and to congratulate the Senate on the great degree of talent and patriotism that had been evinced in the body during this long and laborious session.

The Senate then adjourned to 6 o'clock P. M.

EVENING SESSION.

The Senate, at 6 o'clock, assembled, and soon after, on motion of Mr. NOBLE, proceeded to elect a President pro tem.

The number of ballotings extended to seventeen, and were as follows:

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Macon,	13	13	14	15	17	16	16	16	16	16	19	19	19	19	20	20	21
Smith,	12	12	10	11	13	13	15	15	18	19	19	18	19	19	18	18	17
Harrison,	5	8	8	7	3	3	3	3	1	1							

These ballotings occupied about two hours. At first, and during several ballots, there were 37 Senators present; during the balloting the number increased to forty. The votes not enumerated were scattering for different gentlemen, who received one and two votes each—among these, however, Mr. VAN BUREN received, at one time, as many as four votes.

At the 13th ballot, the numbers were, SMITH 19 MACON 19, Scattering 2.

On proceeding to count the ballots the 14th time,

Mr. HARRISON said he had not voted.

The Secretary said he had given notice that, if all the gentlemen had voted, the ballots would be counted.

Mr. HARRISON walked up to the Secretary's table and deposited his vote with the other ballots.

Mr. TAZEWELL objected. The rule of the Senate was, that members should deposite their ballots in the ballot box.

Mr. BERRIEN moved that the vote of the gentleman from Ohio should be received.

Mr. TAZEWELL objected, till the proposition should first be put, that the Senate would rescind the aforesaid rule.

The Secretary said the vote of the gentleman from Ohio was now on the table, and could not be distinguished from others.

Mr. BRANCH moved that the ballots be destroyed; which was carried; and the balloting proceeded.

Mr. MACON having, on the 17th ballot, a majority of the whole number of votes, was declared duly elected President pro tempore, of the Senate, and was conducted to the chair by Mr. SMITH, when he delivered a short address, expressive of his thanks for the honor conferred on him, and the assurance that every exertion in his power would be used to despatch all the business as speedily as possible.

The Senate proceeded to consider the report of the Committee of Conference on the disagreeing vote of the two Houses, on the amendment proposed by the Senate to the bill "making appropriations to carry into effect the Creek treaty." The Committee of Conference recommend the adoption of the following provision to the bill, in lieu of the Senate's amendment:

"Both which sums shall be paid to the Chiefs of the Creek nation, to be divided among the Chiefs and Warriors of the said nation, the same to be done under the direction of the Secretary of War in the full council of the nation, to be summoned for that purpose."

Mr. BENTON moved that the Senate agree to the report; which was carried.

The Senate then took up the bill "making appropriations for the public buildings of Washington." [The amendments proposed by the Senate were, to increase the salary of the Commissioner of the Public Buildings to $2,000 a year, and to repeal any law authorizing him to employ a clerk; and appropriating $2,000 for carrying on a sculptural ornament for the Senate.] The 1st amendment was agreed to—ayes 17, noes 11. The 2d amendment was supported by Messrs. EATON and JOHNSTON, of Lou. and opposed by Messrs. SMITH, CHANDLER, and KING, and was finally rejected. The bill was then ordered to a third reading, and was subsequently read a third time, and PASSED.

CUMBERLAND ROAD.

Mr. HENDRICKS moved to take up for consideration the bill for the preservation and repair of the Cumberland road, and called for the yeas and nays on the question.

The motion was opposed by Messrs. BERRIEN, WOODBURY, and BENTON. It was supported by Messrs. HENDRICKS and HARRISON, who stated that, under the present circumstances, the friends of the bill would be content with that part of it which relates to the appropriation; (discarding the provision for toll gates.)

Mr. HENDRICKS withdrew his motion to take up the bill.

Mr. CHAMBERS then moved that the Senate re-consider their vote on the bill making appropriations for the public buildings in Washington, for the purpose of making an amendment to it, by adding a clause making an appropriation for the repair of the Cumberland Road.

Mr. BENTON said there were other bills which would come up in due course, to which the proposed amendment could be attached.

The motion to re-consider was decided in the negative—ayes 16, noes 17.

On motion of Mr. HARRISON, the Senate then took up the bill to authorize the surveying and making a road in the Territory of Arkansas.

Mr. CHAMBERS moved to add to this bill a section appropriating 45,000 dollars for the repair of the Cumberland Road.

Mr. EATON moved to lay the bill on the table, as being calculated to involve important principles; and which would give rise to much discussion.

Mr. CHAMBERS withdrew his motion, and the bill was then laid on the table.

On motion of Mr. KING, the Senate *insisted* on their amendment to the bill for the relief of the Florida Indians, but the Senate subsequently *receded* from it.

On motion of Mr. NOBLE, the Committee on Pensions were discharged from the further consideration of the bill from the other House for the relief of invalid pensioners; stating, as a reason, that the bill had been kept back in the other House until so late a day, that there was not time for the committee to investigate the great number of cases embraced by the bill, and that it could not, therefore, be acted on at the present session, having been received only two or three days since.

On motion of Mr. EATON, the Senate proceeded to re-consider the vote on the bill making appropriations for the public buildings in Washington; and Mr. CHAMBERS then offered the amendment relative to the Cumberland Road, which had been before offered and withdrawn.

Some discussion ensued, in which Messrs. EATON, CHAMBERS, CHANDLER, BERRIEN, EDWARDS, HAYNE, HARRISON, FINDLAY, and TAZEWELL, took part.

Mr. MARKS moved to amend the amendment by striking out $45,000 and inserting $30,000.

Mr. TAZEWELL inquired of the Chair whether the bill had not passed which the gentleman from Tennessee wished to re-consider? Was not the question which was now pending, whether the vote for passing the bill should be re-considered or not? And he wished to know, after a bill had passed a third reading, and the question for re-consideration coming on, whether an amendment could be offered to a bill that had passed?

The CHAIR decided that the bill now stood as it did on its third reading, and an amendment could not be offered—it could only be got at by recommitment.

Mr. CHAMBERS then moved to recommit the bill to the Committee on the District of Columbia, with instructions to report an amendment of 30,000 dollars for the repair of the Cumberland road.

Mr. HAYNE moved to lay the bill on the table; stating that the public buildings must suffer the fate of the Cumberland Road appropriation, if gentlemen would insist on

tacking the one to the other; and the motion was decided in the negative, by yeas and nays as follows:

YEAS.—Messrs. Berrien, Chandler, Harper, Hayne, Macon, Tazewell, White—7.

NAYS.—Messrs. Barton, Bouligny, Branch, Chambers, Chase, Dickerson, Eaton, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnston, of Lou. Kane, King, Lloyd, Marks, Noble, Robbins, Ruggles, Seymour, Smith, Thomas, Williams, Woodbury—25.

The question was then taken on the recommitment, and decided in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Barton, Bouligny, Chambers, Eaton, Findlay, Harrison, Hendricks, Holmes, Johnston, of Lou. Kane, Lloyd, Marks, Noble, Ruggles, Seymour, Smith, Thomas—17.

NAYS.—Messrs. Berrien, Branch, Chandler, Chase, Dickerson, Edwards, Harper, Hayne, King, Macon, Robbins, Tazewell, White, Woodbury—14.

The Committee, in a short time, reported the bill, with the aforesaid amendment.

Mr. TAZEWELL inquired whether the bill, having been already once read this day, could be again read?

The CHAIR decided that the recommitment took the third reading off, and that every thing that regarded the passage of the bill went for nothing when it was recommitted.

The question was then put on considering the report of the committee (proposing the Cumberland Road appropriation,) and was decided in the affirmative—ayes 17.

The question then was on agreeing to the amendment of the bill, reported by the committee.

After some discussion between Messrs. TAZEWELL, SMITH, HOLMES, CHANDLER, CHAMBERS, NOBLE, BERRIEN, and HARRISON—

Mr. WOODBURY offered an amendment to the amendment, "providing that a sum equal in amount to the said appropriation remains unexpended of the two per cent. fund;" which was decided in the negative, by yeas and nays, as follows:

YEAS.—Messrs. Berrien, Branch, Chandler, Dickerson, Edwards, Harper, Hayne, King, Macon, Rowan, Tazewell, White, Woodbury—13.

NAYS.—Messrs. Bouligny, Chambers, Chase, Eaton, Findlay, Harrison, Hendricks, Holmes, Johnston, of Lou. Kane, Lloyd, Marks, Noble, Ruggles, Seymour, Smith, Thomas—17.

The question was then taken on agreeing to the amendment reported by the committee, and was decided in the affirmative, by yeas and nays, 17 to 14.

And the bill was then ordered to a third reading, and subsequently PASSED, as amended, and sent to the House of Representatives for concurrence in the amendment.

The Senate then took up the bill "providing for quieting the purchasers of certain lands sold by the United States in Ohio"

Mr. HAYNE called for the reading of the report of the Senate; and Mr. BARTON called for the reading of the report of the other House.

Before the documents were gone through, it was found there was not a quorum present.

Mr. TAZEWELL then moved to adjourn, which was negatived—ayes 6, noes 14.

Mr. HOLMES moved a call of the Senate, which was not carried.

At 2 o'clock, Mr. BRANCH moved to adjourn, which was negatived—ayes 6, noes 13.

Mr. TAZEWELL renewed the motion to adjourn, and called for the yeas and nays. It was decided in the negative, as follows:

YEAS.—Messrs. Branch, Chandler, Lloyd, Macon, Tazewell, White, Woodbury—7.

NAYS.—Messrs. Barton, Chambers, Chase, Dickerson, Eaton, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnston, of Lou. Kane, Marks, Noble, Ruggles, Seymour—16.

At half past two o'clock, Mr. BRANCH again moved to adjourn; which was negatived—ayes 4, noes 9.

At 3 o'clock, Mr. EATON moved to adjourn—negatived, ayes 6, noes 14.

On motion of Mr. EDWARDS, the roll was called—when the following members were present:

Messrs. Barton, Branch, Chandler, Chase, Clayton, Dickerson, Eaton, Edwards, Findlay, Harrison, Hayne, Hendricks, Holmes, Johnston, of Lou. Kane, Lloyd, Macon, Marks, Noble, Robbins, Ruggles, Seymour, Tazewell, Woodbury—24.

At half past 3 o'clock, Mr. EATON moved a call of the House, which was carried; when a quorum appeared.

A message was received from the House of Representatives, announcing the disagreement of that House to the amendment of the Senate to the public buildings' bill (respecting the Cumberland Road.)

On motion of Mr. CHAMBERS, the Senate then receded from this amendment.

The Senate concurred in the joint resolution suspending the 18th joint rule, so far as the same relates to bills and resolutions which shall have this day passed the two Houses of Congress.

And then, at 4 o'clock on Sunday morning, the Senate adjourned.

MONDAY, MAY 22, 1826.

Mr. BENTON moved that the Senate proceed to the consideration of the resolutions he had offered some time since, to transfer the unfinished business to the next session of Congress.

The motion was decided in the affirmative, by yeas and nays, 17 to 13.

Mr. BRANCH then moved to lay the resolution on the table; which was negatived: yeas 13, nays 14.

The question was then taken on agreeing to the resolution, and decided in the negative, by yeas and nays, as follows:

YEAS—Messrs. Benton, Berrien, Chambers, Findlay, Harrison, Hendricks, Johnston, of La. Kane, Noble, Robbins, Rowan, Smith, Woodbury—13.

NAYS—Messrs. Barton, Branch, Chandler, Chase, Dickerson, Eaton, Edwards, Harper, Holmes, King, Macon, Ruggles, Sanford, Seymour, Tazewell, Thomas, Van Buren, Williams—18.

Mr. HARRISON rose, and moved that the Military Committee be discharged from the further consideration of the resolution directing an inquiry into the state of the public works at Old Point Comfort. Mr. H. said, as soon as the resolution had passed, the committee had taken the subject under their consideration, and summoned before it a person resident in the city, who was supposed capable of giving them the information required. It was soon found by the committee that there would not be time, before the close of the session, to obtain the testimony necessary to form a correct opinion. The testimony before them being *ex parte*, they did not deem it just to act upon it, without the attendance of the officers concerned in the construction of the work; and they could not come to any conclusion whatever on the testimony they had. They wished, therefore, to defer the inquiry to a future period, and asked to be discharged from the further consideration of the subject at this time. Mr. H. said, he thought it proper to observe, for himself, having no relation to the opinion of the committee, that, although he had deemed it necessary and proper, from the information he had obtained, to offer the resolution, he did it with a perfect confidence that no lapse of duty could be fixed on the officer who had the particular direction of the work, Colonel Gratiot. Mr. H. said he knew his fidelity and devotion to the public service, and was sure there must be some mistake in the information he had received. Still, he thought it was due to him, to the Administration of the Govern-

ment, as well as to the country itself, to institute the inquiry. He had the most perfect confidence, as far as Colonel Gratiot was concerned, that he had done his duty faithfully and correctly.

The committee were then discharged from the further consideration of the resolution.

The Senate concurred in the joint resolution suspending the 18th joint rule, this day, as far as it regarded the bill for compensating the Registers and Receivers of Land Offices, for extra services performed under the provisions of the act of the 18th March, 1821; and the bill to compensate the Receivers of Public Money, for transporting and depositing the same.

The Senate concurred in the first of the amendments made by the House to the last of the abovementioned bills, and disagreed to the second amendment. They also concurred in the amendment made to the first of the abovementioned bills.

On motion of Mr. SMITH, it was ordered, that the Secretary inform the House of Representatives that the Senate, having finished the Legislative business before them, are about to adjourn.

The Senate concurred in the joint resolution to wait on the President of the United States, with the information, that the two Houses, having concluded their Legislative business, were about to adjourn; and Messrs. SMITH and LLOYD were appointed the committee on the part of the Senate. Soon after,

Mr. SMITH reported, from the Joint Committee, that they had waited on the President of the United States, who informed them that he had no further communication to make.

The President of the Senate, pro tempore, made a short address, wishing the members of the Senate a safe return home, that they might find their families well, and that their days might be many.

And then the Senate adjourned.

[The following Speech of Mr. DICKERSON was accidentally omitted in its proper place.]

THURSDAY, MARCH 9, 1826.

FORTIFICATIONS OF THE UNITED STATES.

The bill "making appropriation for certain Fortifications of the United States," being under consideration; and Mr. SMITH, having moved to strike out the appropriation of seventeen thousand dollars for the purchase of land and the right of way on Throgg's Point, in Long Island Sound—In support of the motion,

Mr. DICKERSON observed: This little appropriation, for purchasing about fifty-two acres of land at Throgg's Neck, at the expense of 17,000 dollars, which appears so harmless, involves consequences of the utmost importance to the country. It is to lead to the expenditure of at least a million and a half of dollars, to defend the harbor of New York against the approach of such ships of war as would venture through the whirlpools of Hellgate.

It also involves the question, whether it will not be possible to check the rage for fortifications, which has already cost us many millions of dollars, and is to be attended with consequences much more to be dreaded than the loss of money.

If we are to construct the proposed fortifications at Throgg's Neck and Wilkins' Point, it will be utterly in vain to oppose the construction of others, however useless or expensive they may be.

Before we take this decisive step, it will be well to inquire what we have already done, and what it is proposed to do, upon the subject of fortifications. No one will deny, but that certain important points on our maritime frontier should be well fortified; but the system, if carried to excess, becomes ruinous to the country.

Ten millions of dollars will construct as many fortifications as we ought to garrison, in war or peace; and we should construct no fortifications that are not to be garrisoned, unless we mean them for our enemies. If we persevere in the plans adopted, our expenditures for fortifications will amount to four or five times that sum. Many members of Congress have viewed, with horror, the extravagant scheme of fortifying our frontiers, pursued, since the late war, with as much ardor as if the enemy was approaching us. They have considered more than half the expenditures for these fortifications, as money worse than thrown away. They have made opposition to the measure, but they have not been sustained by their constituents; but, on the contrary, have been held up as the enemies of useful institutions. They have been borne down by the popularity of our late Chief Magistrate, with whom this scheme was known to be a favorite measure.

That the late President very honestly believed that the prosperity of the country would be promoted by the adoption of his stupendous scheme of fortifications, cannot be doubted. His efforts have been well meant; but he has egregiously mistaken the interest of the country.

As our ample revenues have enabled us to construct these fortifications, without resort to direct taxes, the People at large seem to have given themselves but little trouble upon the subject, but seemed disposed to yield to the wishes of a popular President, who, at his first election, came into office by the general assent of the predominant party, and, at his second, by the assent of all parties. Indeed, his last election was nearly unanimous. It is not to be presumed, that the favorite measures of a President, thus elected, are to be opposed by his Cabinet, even if they had the disposition to do so, nor by the members of Congress, unless they are willing to render themselves unpopular.

An argument of the greatest force in favor of these fortifications, is, that they have been recommended and approved of by our scientific Engineers. But, it should be recollected that these Engineers are not consulted as to the policy of erecting them. The plan of completely fortifying our maritime frontier, was adopted before the arrival of the distinguished foreigner now belonging to our Engineer corps, and in whose science we justly place the most implicit confidence. Our Engineers are called upon to devise the plans necessary for carrying into execution the scheme adopted—and that upon the most magnificent scale. This they have done, in part, without regard to the resources, policy, or interest, of the country. These were not subjects for their consideration—but ought to be for the consideration of Congress.

These Engineers inform you, that a tunnel may be driven through the Allegany mountains—that the waters of the Youghiogeny, which ought to discharge themselves into the Gulf of Mexico, may be made to pass through this tunnel, supply canals on this side the mountains, and discharge themselves into the Chesapeake. They inform you what can be done, without saying what ought to be done. The decision upon that rests entirely with another body, who, alone, are responsible, so far as the United States are concerned.

The commencement of a new administration affords a favorable occasion for a new effort to check the rage for fortifications. It is not believed that the present Chief Magistrate is in favor of completing these fortifications, upon the magnificent scale of his predecessor—or, if he is, that his popularity is not so overwhelming as to carry the measure through; inasmuch as he has not been elected to his office unanimously, or by a majority approaching to unanimity.

When the plan of 1821 of our proposed fortifications was developed, by which we were to have, in addition to what we had last war, fortifications that would cost 18 millions of dollars, and require for garrisons, in time of

war, thirty-eight thousand men, I rejoiced, because I believed it would create an alarm throughout the country, which would have checked the immense expenditures contemplated—but I was mistaken: for this development took place precisely when it was ascertained that Mr. Monroe had been re-elected by an almost unanimous vote. So far from giving a check to the prosecution of the plan, it seems to have created a new impetus in its favor, by holding up to the People of most of the States a prospect of coming in for a due proportion of the expenditures for these establishments. The Southern States are to have a large proportion of these expenditures—Virginia and Maryland to be gratified with the immense sums to be laid out at Old Point Comfort and the Rip Raps. New York, by the proposed erection of forts, to the amount of five or six millions of dollars; the Eastern States to be provided for, but not so liberally; North Carolina, which never comes in for her proper share of public patronage, must be satisfied with two little forts, to cost two hundred thousand dollars. Pennsylvania is to have a very small dividend, and Jersey nothing at all: for I do not consider Fort Delaware as of the least importance to that State. It must be observed that the plan of fortifications of 1821 embraces but a part of the system—even Fort Fayette, and Fort Washington, are not included in it—nor does it include many other Forts which have been built in the United States, and which must be rebuilt or repaired at a very great expense, to make this system of fortification uniform and complete.

By the plan of 1821, the proposed fortifications, in addition to those previously erected for the defence of our maritime frontier, are divided into three classes, to be erected at three different periods, as the country may be able to bear the expense. Those of the first class to cost eight millions ten thousand and fifty-four dollars—to require for garrisons, in time of war, 20,305 men, and, in time of peace 2,540. The second class to cost $4,711,031, to require 8,615 men in war, and 1,030 in peace. The third class to cost $5,073,970, and to require 9,042 men in war, and 1,120 in peace. To cost, in all, $17,795,055—say $18,000,000. To require in war 37,962—say 38,000 men, and in peace 4,690—say 5,000. By a report accompanying the President's message, of the 6th December last, we find estimates of additional works for defence of Boston Harbor and Narragansett Bay—for rafts to obstruct the channel between Forts Monroe and Calhoun—Fort at Craney Island—Fort at New Port News—Fort at Naseway Shoal—Fort at Thomas Point, and Fort at Point Patience, not included in the estimates of 1821, to the amount of nearly two millions of dollars. So that this scheme of forts, of 1821, as enlarged by the additions of 1825, is to cost nearly twenty millions of dollars, by the estimates submitted, which are several millions of dollars under what will be the real cost of these works: and this does not include the Forts Fayette and Washington, completed since the late war, nor a great variety of forts erected previously to, and during, the late war—as Fort George, Fort Preble, Fort Constitution, Fort Sewell, Fort Independence, Fort Warren, Fort Wolcott, Fort Adams, Fort Trumbull, Fort Columbus, Fort Lewis, Fort Wood, Fort Mifflin, Fort McHenry, Fort Severn, Fort Pike, Fort Niagara, Fort Shelby, Fort Wayne, Fort Gratiot, Fort Howard, Fort Dearborn, Fort Harrison, Fort Nelson, Fort Norfolk, Fort Johnson, S. C. Fort Johnson, N. C. Fort Moultrie, Fort Scott, Fort Montgomery, Fort Crawford, (Alabama,) Fort Charlotte, Fort Hampton, Fort Osage, Fort Clarke, Fort Edwards, Fort Armstrong, and Fort Crawford, at Prairie du Chien. These forts are of so much importance that, in the year 1817, they were all military stations, commanded by the different officers of our Army, as appears by a report accompanying the President's message, of the 22d December, of that year. At that time, 4,460 men were stationed at those forts. Many of them will no doubt be finally abandoned, but many of them must be repaired and garrisoned, to give any thing like uniformity to the system, and will cost us several millions of dollars.

Accuracy, as to the expense of works of such magnitude, could not be expected. A man who builds knows that the estimates fall much below the actual cost. It is a matter of surprise that our engineers have been able to make their estimates with as near an approach to accuracy as they have; and yet I do not doubt those estimates will be found, in the average, twenty-five per cent. below what these fortifications will cost.

In the estimate of 1821, Old Point Comfort, now Fortress Monroe, was to cost	$ 816,814
By an estimate, accompanying the President's message, of 4th of March, 1824, this Fortress is to cost	1,259,792

A difference of $442,978 in this one work, which no doubt will be much increased before the work is completed.

The fort at the Rigolets, by estimate of 1821, to cost	$ 264,517
By that of 1824	314,597

A difference of fifty thousand dollars.

The fort at Chef Menteur, by estimate of 1821	260,517
By estimate of 1824	300,905

A difference of forty thousand dollars.

The fort at Pea Patch, by the estimate of 1821, to cost	258,000
By estimate in the President's Message of 6th December last,	469,767

A difference of $211,767; about 81 per cent.

The history of the Fort at this place, called Fort Delaware, may lead us to form some idea of what we may expect from other Forts, by the time they are completed. Fort Delaware was calculated, in the first place, to be built upon a very large scale—to mount 212 guns; this plan was afterwards much reduced: and by the estimate of 1821, the whole expense of constructing the fort was fixed at $258,000. The work was then so far advanced, that no more than $55,000 were asked to complete the same; and Congress, by act of 3d of March, 1821, appropriated this sum for Fort Delaware, and very wisely inserted in the law, that it was to complete the Fort. On the 7th May, 1822, however, to make it a little more complete, Congress voted a further appropriation of $20,000 for Fort Delaware. On the 3d March, 1823, they voted the further sum of $58,000 for this fort.

By a message of the President of the 4th March, 1824, it is stated that Fort Delaware was begun in 1817; that up to 30th September, 1823, it had cost $369,473; and that there was wanting to complete the same, $10,236, in all $379,709.

In 1824, it was discovered that Fort Delaware was so badly built, that its walls would fall, without the help of an enemy. To satisfy the public, Major Babcock, under whose superintendence the work was constructed, has been tried by a court martial, but not found guilty of any criminal neglect or ignorance.

On the 2d of March, 1825, a further appropriation is made for this fortification, of $71,679 50.

By the President's message, of 6th December last, it appears that Fort Delaware had cost, up to the 30th of September, 1825, $431,872 54; and that there would be wanted to finish the same, $37,895 20. In all, $469,767 74; which is 81 per cent. above the estimate of 1821; how much more will be wanted we are not yet informed.

All these circumstances and miscalculations can be explained satisfactorily, nor are they stated to throw any censure upon the Engineer Department, but to shew that this system of fortifications is to cost much more than would appear by the estimates submitted to us. At the

Pea Patch, it is proposed to build fortifications on the opposite shores, to cost $347,257, as by estimate of 1821; but it is also contemplated to have two Steam Batteries there, and field works on the Jersey and Delaware shore, not included in that estimate. Two miles below Fort Delaware, there is a good landing on the Jersey side at Elsenberg—and on the Delaware side at Port Penn. And if these are defended, there are other points not far below, where an enemy may land in both States.

The expenditures for fortifications, from 1794 to 1814, twenty years, amounted to $4,415,405

Since that time, the following appropriations have been made for Fortifications.

1814, March 19th,			$500,000
1815, March 3d,			400,000
1815, December 21st,			200,000
1816, April 29th,			838,000
1817, March 3d,			838,000
1819, February 15th,			500,000
1820, April 14th,			800,000
1821, March 3d,			202,000
1822, May 7th,			370,000
1823, March 3d,			518,000
1824, April 29th,			646,000
1825, March 2d,			802,972
The estimates of 1821, amounted to		17,795,055	
Money expended up to 30th September, 1825, upon the forts of the estimate of 1821		3,605,000	
To be expended under future appropriations		14,190,055	
To which, add for works contained in the statement of 6th December, 1825, not included in estimate of 1821,		1,953,067	16,145,123
			$27,185,500

If we add to this a proper allowance for under estimates on the fortifications still to be finished—for losses on contracts—for the guns and armaments for all these forts; and if we make allowance for the forts not mentioned in the estimates of 1821, but which must be rebuilt or repaired, our whole system of fortification will stand us in a sum not less than forty millions of dollars.

The men required for the forts mentioned in the plan of 1821, were, in time of war, 37,962; in peace, 4,690. For the Forts of Washington and Fayette, not mentioned in the plan of 1821, 1,600 men in time of war, and 200 in peace. For the forts mentioned in the estimate of 6th December, 1825, and not contained in the plan of 1821, 2,000 men in war, and 250 in peace. To these add the requisite number for garrisons of forts that were occupied in 1817, many of which must again be occupied, if we make our system of fortifications complete upon our present magnificent plan, and we shall find that 50,000 men at least will be wanted for our fortifications in time of war, and 8,000 in peace. We have but few men in garrisons on our maritime frontier now. Our troops are stationed where they will be wanted. Most of those required for the garrisons in time of peace, must be added to our present standing Army, as soon as our new forts shall be ready for their reception.

The first expense of all these forts, with their armaments, suppose them to cost 40 millions of dollars, the United States can bear. They can garrison these forts in time of peace—it will only require then to double our standing Army. But what are we to do in case of war? Our extensive and magnificent system of fortifications will then be our annoyance instead of defence. They must be well garrisoned, or they will fall into the hands of the enemy; if we have 50,000 men in garrisons, where are we to obtain men to fight in the field, at points not protected by the forts? If our men leave the forts, they will be taken by the enemy—if they do not, the country will be ravaged.

A large portion of our maritime fortifications must float; must move from place to place to meet the enemy. On land, our men must not be cooped up in forts, but must fight in the field.

The works that are commenced, must be finished, unless it be discovered that they can be of no use, as that on Dauphin Island, the guns of which could not reach the channel it was meant to protect, or unless they are discovered to be beyond the bounds of the United States, as that at Rouse's Point.

This fort was to mount 300 guns. How much it cost the United States, I do not know—but 200,000 dollars were asked for advancing the work—when it was discovered to be on the British Territory. This created great consternation at the time, but I consider it a fortunate circumstance, as otherwise we should have squandered nearly a million of dollars there. The British now own this fortification, but they have not had the folly to finish it, and probably never will have.

It is the direct and necessary tendency of this system of fortifications, to increase our standing Army. The author of the system must have calculated upon a large peace establishment, as a part of his system.

We find, in his letter, when Secretary of War, to Mr. Giles, of the 22d February, 1815, (published in the National Intelligencer of 13th January, 1821,) after comparing the situation of our country with that of other nations, he says, "from the view I have taken of the subject, I am of opinion that not less than 20,000 troops ought, for the present, to be retained in service." No more troops were wanted then than are wanted now; and, although Mr. Monroe has no fear of such a peace establishment, I fear it more than I do all the enemies of the United States.

We are now called upon for another appropriation, to the amount of nearly a million of dollars, for fortifications, one item of which is seventeen thousand dollars, for the purchase of fifty-two acres of ground, at Throgg's Neck, on East River. This is a very small item, but very important in its consequences. The object is to build a fort on this point, and one opposite to it, at Wilkins' Point, which, together, are to cost $928,000, and to require, for garrisons, in time of war, 2,876 men. This point is five or six miles East of Hellgate, which, itself, is a complete protection to the harbor of New York, on that side, against all the navy of the world. If we purchase these fifty-two acres, at the rate of 327 dollars per acre, except for a fortification, we waste the public money. It is said two or three acres of it are necessary for a light-house. Let that be purchased under the light-house bill—not under this. If we purchase Throgg's Point, we shall next be called upon to purchase Wilkins' Point, (which is opposite) probably at a much more extravagant rate. We are told that making this purchase is no pledge that the works are to be erected. A very different language will be heard when we shall be called upon for appropriations for these forts—the estimates for building which amount to nearly a million of dollars, but which, with their armaments, will cost nearly a million and a half of dollars. The Senator from Maryland (Gen. SMITH) has moved to strike out this item of the appropriation, and has shown, most conclusively, that, to build the contemplated forts at Throgg's Point and Wilkins' Point, will be to throw away our money; that if enemies' vessels should have the rashness to approach New York, through the whirlpools of Hellgate, a six-gun battery, which could be erected in four days, near Mr. Gracie's house, opposite these whirlpools, would effectually check them—and the experience of that

gentleman during the Revolution, as well as the late war, enables him to judge correctly upon this subject. Indeed, it is preposterous to fear that a fleet, sufficient to endanger the city of New York, would ever find its way through this passage. We are informed of some rare instances of vessels of war that have gone through—the very instances cited show that they were acts of desperation. When Sir James Wallace wished to pass this place, he was informed by his pilot that it would be an act of madness; that his ship would be lost: he clapt a pistol to the pilot's head, and told him to put his ship through, or he would blow his brains out—the pilot obeyed—the experiment succeeded. Other pilots, under similar circumstances, might make similar experiments. A man will attempt any thing, sooner than have his brains blown out. After all that has been done, and all that possibly can be done, by permanent fortifications at the Narrows, to secure the harbor of New York, ships of war will more easily pass there than through Hellgate, as it now is.

These forts can be of no importance to New York as a defence for their harbor; but they will be important to the country around them, as they will cause an expenditure of a million and a half of dollars there. But, New York ought to be satisfied with the expenditures which have taken place, and must take place, for the safety of their harbor, independent of Throgg's Neck and Wilkins' Point.

The forts built, and to be built, for the protection of New York, are, besides those at Throgg's Neck and Wilkins' Point—

Fort at New Utrecht Point to cost	$424,995
Fort Tompkins	485,988
Fort on Middle Ground	1,681,411
Fort on East Bank	1,681,411
Fort Fayette	318,375
	$4,592,180

Besides Fort Columbus, Fort Lewis, Fort Wood, &c. &c. The debtor States were permitted, under an act of Congress of 15th February, 1799, to appropriate the moneys which should have been paid into the United States' Treasury, to fortifying their harbors, under which New York expended $136,538. The importance of New York cannot be too highly estimated; but surely its interests have not been neglected.

When the gentlemen from that State urge us to embark in a measure, that will probably end in building there useless forts at Throgg's Neck and Wilkins' Point, they ask too much; and I hope the motion of the Senator from Maryland will prevail.

DEBATES, &c. IN THE HOUSE OF REPRESENTATIVES.

MONDAY, DECEMBER 5, 1825.

This being the day fixed for the meeting of the Nineteenth Congress, at its First Session, at 12 o'clock the roll of the House was called over by the Clerk, (MATTHEW ST. CLAIR CLARKE, Esq.) and it appeared that there were present 204 members, besides three Delegates from Territories.

The House then proceeded to the election of a Speaker; and, on the first balloting, there were,

For JOHN W. TAYLOR, of New York,	89 votes.
JOHN W. CAMPBELL, of Ohio,	41
LOUIS MCLANE, of Delaware,	36
ANDREW STEVENSON, of Virginia,	17
LEWIS CONDICT, of New Jersey,	6
Scattering,	5

Neither of the candidates having received the requisite number of votes to constitute an election, a second ballot was taken; when the votes stood as follows:

JOHN W. TAYLOR,	99
JOHN W. CAMPBELL,	42
LOUIS MCLANE,	44
ANDREW STEVENSON,	5
Scattering,	3

JOHN W. TAYLOR, having the constitutional number of votes, was accordingly announced to have been elected Speaker of the House, and was conducted by Mr. NEWTON (the Father of the House) to the Chair, whence he delivered the following address:

"GENTLEMEN: When I see around me so many Representatives whose virtues and talents adorn our country—whose services, at home and abroad, in the cabinet and in the field, in Halls of Legislation and Judicial tribunals, have largely contributed to our national prosperity—I am penetrated with gratitude for the favorable opinion which has recalled me to this distinguished station. My brief experience has served rather to assure me that its duties are arduous, than to create confidence in my ability to discharge them to your satisfaction. Every effort, however, of which I am capable, shall be faithfully directed to merit your support.

"In the complex questions frequently presented to the Chair for prompt decision, unerring accuracy is scarcely attainable. When mistakes occur, my best endeavors shall not be wanting to correct them, and to repair whatever injury they may have occasioned.

"With an anxious desire that your countenance and advice will not be withheld, and that the just expectations of your constituents may be fulfilled, in our Legislative labors, I enter upon the duties of this important trust."

The members having respectively taken the oath of office,

On motion of Mr. LATHROP, MATTHEW ST. CLAIR CLARKE, Esq. former Clerk of the House, was appointed Clerk for the present Congress; JOHN OSWALD DUNN, Sergeant-at-Arms; BENJAMIN BURCH, Doorkeeper; and OVERTON CARR, Assistant Doorkeeper.

These officers having been sworn,

The usual resolutions were adopted, continuing the Rules of Order adopted by the last Congress; appointing 12 o'clock as the stated hour of meeting, and directing the Clerk to furnish the members with newspapers.

A message was received from the Senate, that they were assembled, and ready to proceed to business; when,

Messrs. TRIMBLE and LATHROP were appointed a Committee of the House, to join such Committee as should be appointed for that purpose by the Senate, to wait upon the President of the United States, and inform him that a quorum of the two Houses were met, and ready to receive any communication he might have to make.

A farther message was received from the Senate, that they had appointed a similar committee, consisting of Messrs. SMITH and LLOYD, of Massachusetts.

And then the House adjourned.

TUESDAY, DECEMBER 6, 1825.

Mr. TRIMBLE, from the joint committee appointed to wait on the President of the United States, reported that the committee had performed the duty assigned them, and that the President had replied that, at 12 o'clock this day, he would send to each House a message in writing.

At twenty minutes past 12, the Message, (which will be found in the Appendix,) was brought in by the President's

Secretary, (Mr. JOHN ADAMS, jr.) and read at the Clerk's table. The reading occupied one hour. The message was accompanied by reports to the President from the Secretary of War, the Secretary of the Navy, and the Postmaster General, with other documents.

The message and reports were referred to the committee of the whole House on the state of the Union. Six thousand copies of the message, and six hundred copies of the reports, &c. were ordered to be printed.

WEDNESDAY, DECEMBER 7, 1825.

The Message of the President was this day taken up, and, without debate, the various branches of it were referred to different Standing and Select Committees. And then

The House adjourned over to Friday.

FRIDAY, DECEMBER 9, 1825.

Mr. HEMPHILL presented a petition of sundry Delegates from the States of Rhode Island, New York, New Jersey, Pennsylvania, and South Carolina, convened in the city of Philadelphia, praying that Congress would provide by law for settling the claims of the officers of the Revolutionary Army upon principles of justice and equity.

Mr. HEMPHILL moved that the memorial be referred to a select committee, and supported the motion on the ground that, as the President's Message did not refer to the case of the petitioners, none of the committees raised for the purpose of considering the Message, furnished an appropriate reference. The subject had been referred to a select committee in 1810, and again in 1819; the case of General Lafayette, too, which was of an analogous character, had been referred to a select committee. There was the same reason for such a reference in the present case.

Mr. McCOY opposed the reference. It was true, that the President's Message did not refer to the claim which was the subject of the memorial; but a resolution now lay on the table, which was offered by the gentleman from Maryland, (Mr. LITTLE,) which went to create a committee on the subject of Revolutionary Claims, and he therefore thought it would be better to let the memorial lie on the table till the pleasure of the House in relation to that resolution, should be known.

Mr. HEMPHILL contended, in reply, that the case of the memorial, and that provided for by the resolution, were entirely distinct.

Mr. WEBSTER called for the reading of the resolution which had been referred to, and it was read accordingly.

When, the question being put, the motion of Mr. HEMPHILL for a select committee was carried—Ayes 84, Noes 79—and the select committee for this purpose was ordered to consist of seven members.

Mr. CONDICT presented a memorial from two Revolutionary Officers in New Jersey, of a similar import to that from the officers met at Philadelphia; which was referred to the same committee.

Mr. M'DUFFIE offered for consideration the following resolutions; which were referred to a Committee of the Whole on the state of the Union:

"*Resolved*, That, for the purpose of electing the President and Vice President of the United States, the Constitution ought to be so amended that a uniform system of voting by Districts shall be established in all the States; and that the Constitution ought to be further amended in such manner as will prevent the election of the aforesaid officers from devolving upon the respective Houses of Congress.

"*Resolved*, That a Select Committee be appointed, with instructions to prepare and report a joint resolution embracing the aforesaid objects."

PRESIDENT'S MESSAGE.

Mr. SAWYER moved the following resolution:

Resolved, That so much of the President's Message as relates to the contribution of our share of mind, of labor, and expense, to the improvement of those parts of knowledge which lie beyond the reach of individual acquisition, and particularly to the exploration of the interior of our own territories, be referred to a Select Committee.

Mr. SAWYER observed, in introducing this motion, that the clause in the President's Message, to which it referred, (and which he read at length) seemed to have been entirely overlooked among the numerous references of the various parts of the Message to committees, and he presumed it had so happened through inadvertence.

Mr. LATHROP, feeling some doubt whether the clause referred to by the gentleman from North Carolina, was not included among the subjects already referred to one of the committees which had been appointed, thought it would be better to let the resolution lie on the table till this could be ascertained.

Mr. SAWYER, in reply, observed, that the resolution of the gentleman from Massachusetts, (Mr. LATHROP,) was quite a distinct one from his, as his was confined to a naval survey of the Northwest Coast, while that of Mr. S. was intended to authorize a geological survey of some of our unexplored territories. So convinced has been the Government of the utility of these surveys, that they have ordered two expeditions, under Major Long, for that object; which, in Mr. S's opinion, was not strictly legal, though the object being commendable, he perfectly excused them. But, as the President had seemed to apply for a more direct authority, he felt disposed to give it.

Mr. TRIMBLE said he had not the slightest wish to oppose the reference of the passage in question, but thought it manifest that the partition of the subject between two committees, would be attended with inconvenience. He thought it would be much more advisable to submit the clause in question to the same committee to which had been referred that part of the Message which has relation to a survey of the Northwest Coast. The same general principles applied to both measures; the main difference between them lying in this, that one respected the exterior, and the other the interior, of the country; and, since he was up, he would express his belief that the subject was, in fact, already referred to that committee. He, therefore, thought it would be proper to lay the resolution on the table; and he moved that it lie accordingly.

The motion was carried; and the resolution moved by Mr. SAWYER was ordered to lie on the table.

The House adjourned to Monday.

MONDAY, DECEMBER 12, 1825.

A resolution offered on Friday by Mr. INGHAM, calling on the President for information in relation to the trials by Court Martial of Commodore Stewart and of Lieutenant Sands, having been read—

Mr. MALLARY, inquired of the mover the reasons which rendered it expedient to call for this information: the trial of Commodore Stewart was over—he had been honorably acquitted, and he did not perceive any good end to be answered by calling up the subject afresh.

Mr. INGHAM observed, in reply, that he could assure the gentleman from Vermont, that the resolution he had offered had not been suggested by any unfriendly feelings towards Commodore Stewart, or any other person, but a great mass of heavy charges had been brought against the officer referred to, and circulated by the public press, without any thing of the result of the investigation being published, except the result of the trial. He had been told that there existed many important facts, and a great

body of testimony, in the case, which had never met the public eye. These documents, he felt assured, would be interesting in themselves, and were of great interest to the character of the accused. The affair had excited much interest throughout the country, and he was desirous of having it better understood.

Mr. MALLARY making no further opposition to the resolution, it was agreed to, *nem con.*

Mr. WICKLIFFE offered the following:

Resolved, That a law ought to pass repealing the 25th section of the act, entitled "An act to establish Judicial Courts of the United States;" and to prescribe the mode by which the questions referred to in the said section, when brought into judicial controversy in any of the Courts of the United States, may, upon the application of either party, be removed from the State Tribunals holding original jurisdiction thereof, to the Circuit or District Courts of the United States, at any time before a trial upon the merits.

Resolved, That the provisions of the 2d section of the act of Congress, entitled "An act for regulating the process in the Courts of the United States, and providing compensation for the officers of the said Courts, and for jurors and witnesses, do not confer upon the said Courts the power, by *rules and orders* of Court, to subject to execution and sale, on final process, property and estate of the defendant, which has not been made subject to execution by the laws of the United States, or of the laws of the State in which judgment was pronounced; which laws of the State, to be made applicable to Courts of the United States, must have been adopted by the Congress of the United States: And as that power has been claimed and exercised by some of the Courts of the United States,

Resolved, That a law ought to pass prescribing more specifically what processes ought to be used in said courts.

In offering these resolutions, Mr. W. said that it was not his intention, at this time, to press the discussion and decision of the subjects embraced by the resolution he had just submitted. He would only occupy so much of the time of the House as would be necessary, briefly to explain the objects which he designed to effect. He said, it would be recollected by a portion of the members of this House, that, during the first session of the last Congress, he had submitted to the consideration of the Committee on the Judiciary a resolution, nearly similar to the first resolution now presented; that Committee then thought it inexpedient to interfere with the subject, and he had not, therefore, pressed it farther at that time. He felt it his duty to present the propositions directly for the decision of the House, under a belief that, if sent to the Committee, as is usual, it might share the fate awarded to the former one. The 25th section of the act referred to was familiar, he presumed, to the members of the bar. It is that section which confers upon the Supreme Court the jurisdiction of revising the decisions of the Supreme Court of a State, in any of those cases wherein is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, *and the decision is against their validity*; or wherein is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws, of the United States, *and the decision is in favor of such their validity*; or wherein is drawn in question the construction of any clause of the Constitution, or of a treaty or statute of, or a commission held under the United States, and the decision is *against* the title, right, privilege, or exemption specially set up or claimed by either party. This section is one-sided in its provisions. It denies to one of the parties a right which it guaranties to the other. He who claimed the protection of the statute of his State, after having hazarded a contest in Courts of the State, if he were successful, was subject to be dragged before the Supreme Court of the nation; but if he were unsuccessful before the Tribunals of the State, he was denied the privilege of supervising that decision before the appellate Court of the nation. He did not wish to deny to the Courts of the nation the exercise of any of those constitutional powers which appertained to them, and the exercise of which was necessary to a sound administration of the General Government. He thought if the contest, in any of the cases enumerated, was commenced in the Courts of the State, they should end there. If, however, any litigant, in cases so peculiarly situated, was unwilling to risk and abide by the decisions of the State tribunals, he was willing, under proper modifications, to secure to him that right. This would prevent those unpleasant, not to say dangerous collisions, which have arisen, and might again arise, between the Courts of the nation and of a State. The second resolution invited the attention of Congress to the provisions of another statute pertaining to the Federal Judiciary. The power to pass a general execution law by Congress, is one of a very delicate character, and he had no wish to see it exercised. But, if he had rightfully considered and understood the effects and consequences of the decision of the Supreme Court in a recent case, (he alluded to the case of Wayman & Clark *vs.* Southard & Starr,) at least so far as they operated upon the State which he had the honor in part to represent, he would infinitely prefer the exercise of that power by Congress than leave it to the discretion of the Judges, to be exercised under the power of "making rules and orders;" under which power they have subjected real estate to sale in a mode different from that which it was thought expedient to do by the Legislature of the State in which the land was situated. Uniformity and stability were very desirable in all laws; and especially those which appertain to the administration of justice among the same People. He had said enough to invite the attention of the House to the objects embraced by the resolutions. He hoped that attention would be given the subject which its importance demanded. He would ask that the resolutions, for the present, lie on the table, and that they be printed.

The resolves were accordingly ordered to lie on the table, and be printed.

And then the House adjourned.

TUESDAY, DECEMBER 13, 1825.

The resolve offered yesterday by Mr. MILLER, calling for the papers on Lieut. Wolbert's Court Martial, having been again read,

Mr. MILLER, being asked the reason which induced him to offer the resolution, replied, that he wished to understand the cause of the dismissal of Lieut. Wolbert from the service. It appeared to him to have been a severe sentence. The person dismissed was known and acknowledged to have been a meritorious officer. He had many friends, and much solicitude was felt in his behalf. He had reason, moreover, to believe that this solicitude was not confined to the personal friends of Lieut. Wolbert, but that there were many members of this House who wished to know the reasons which had led to the dismissal of such a young man from the naval service of the country.

Mr. BARTLETT expressed a hope that it was not understood, as a matter of course, that all proceedings of all Courts Martial, in our naval and military service, were to be published by order of this House. For himself, he could perceive no reason why these proceeding should be revised by Congress, any more than the proceedings in Civil Courts, nor could he vote for it unless some special and satisfactory reason should be assigned. The House had called for the proceedings in another case,

because the person accused had been acquitted; now they were to do it because the accused person had been condemned. He could not see the propriety of such a call, unless some complaint was made of injustice in the proceedings, and he hoped the House would not incumber its table with useless documents.

Mr. MILLER, in reply, said, that the reason assigned by the gentleman from New Hampshire against the call, appeared to him to be the strongest that could be given in its favor. The gentleman would not call for these papers, because he does not know of any injustice in the proceedings, but how could any person know whether those proceedings were just or unjust, till the papers were laid before them? He believed they were not voluminous, and he knew that it would be highly gratifying to many to have a better understanding of the case.

Mr. TRIMBLE observed, that he would vote with as much pleasure for this call, as for any other, if he knew that the gentleman who made it proposed to take any step in consequence of receiving the papers. He had expressed no such intention; and, if his object was merely to get the papers here, and print a book, he, for one, should be opposed to it. He recollected that, when he came into this House, some years ago, it was held a decisive objection to any proposal of printing, if the mover did not intend to offer any proposition to the House upon the papers when printed. Whenever the mover made this avowal, the printing was always denied. He could not recollect a single instance of the contrary. Let gentlemen advert to the original rule on the subject of printing, and then let them look at the vast annual increase of expense which had arisen from this source, and they would be convinced that it was their duty to withhold their consent to motions of this kind, when nothing was intended to grow out of them.

The question being then taken on Mr. MILLER'S resolution, it was negatived without a division.

ROADS AND CANALS, &c. &c.

Mr. BAILEY offered the following resolutions:

Resolved, That the construction of Roads and Canals is highly important to the union, strength, and general prosperity of the United States.

Resolved, That, since the individual States of this Union have relinquished to the General Government the control of the most easy and efficient means of raising revenue, it is fit that a portion of the general revenue, if consistent with the Constitution, should be appropriated to this important object.

Resolved, That, while a large portion of the People and of their Representatives in Congress, believe such appropriations to be inconsistent with the Constitutional powers of Congress, an obstacle is presented to the accomplishment of the object, which, joined to the diversities of opinion always existing in relation to the expediency of specific measures, threatens to be deeply injurious, if not fatal, to that vigorous and full development of our resources, which the interests of the Union loudly demand.

Resolved, That a system which should leave to the several States the expenditure of money appropriated to this object by the United States, would ensure a more equal participation in the bounty by the several States, more economy in its disbursement, more freedom from sectional feelings, and injurious compromises in legislation, and more promptitude in commencing works of improvement, for the completion of which the several States would be secure of possessing the means.

Resolved, That the several States ought to have the power to expend money so appropriated, in improving river and coast navigation, and in promoting education, colonization, and the liberal and useful arts, whenever, in their opinion, its expenditure for these objects would be more useful than in constructing roads and canals.

Resolved, That Congress ought to have power to make surveys of coasts, rivers, and road and canal routes, to aid the States in selecting those objects of improvement which may most effectually contribute to the good of the whole.

Resolved, That Congress ought to have power to construct roads and canals, whenever they shall be wanted for urgent purposes of military, commercial, or mail communication.

Resolved, That Congress ought to have power to establish a National University, on a plan which shall secure to each State a just portion of its advantages.

Resolved, That Congress ought to have power to offer and distribute prizes for promoting agriculture, education, science, and the liberal and useful arts: thus, by a small annual expense, stimulating genius and industry to the greatest and most useful exertions: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following be proposed as an amendment to the Constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be a part of said Constitution:

"That Congress shall have power—

"To appropriate money for constructing roads and canals, for improving river and coast navigation, and for promoting education, colonization, and the liberal and useful arts; the money to be paid to such agents and for such of these objects as the States respectively, and Congress for the District of Columbia, shall, by law, direct, and in parts proportioned to their Constitutional census;

"To make surveys of coasts, rivers, and road and canal routes; to construct roads and canals for urgent purposes of military, commercial, or mail communication; to establish a National University, securing to each State a just portion of its advantages; and to offer and distribute prizes for promoting agriculture, education, science, and the liberal and useful arts."

These resolves having been read—

On motion of Mr. BAILEY, they were referred to a committee of the whole on the State of the Union, and were ordered to be printed.

Mr. WRIGHT offered the following resolution:

Resolved, That the Committee on Public Lands be instructed to inquire into the expediency of giving the consent of Congress, that any act or ordinance relative to the several States, as provides for exempting lands sold by the United States therein from taxation, for the period of five years, from and after the sale, may be revoked.

Mr. COOK expressed his entire approbation of the principle of the resolution just offered, but moved to amend it so as to include also the State of Illinois, the proposition being in substance the same with one which he had himself offered in behalf of that State at the last session of Congress.

Mr. WRIGHT replied, that he had no objection to the amendment proposed by the gentleman from Illinois, but saw no reason why, if extended at all, the proposition should not be extended alike to all the States; and if the gentleman would so modify his amendment, he would cheerfully consent to it.

Mr. COOK modified his amendment accordingly, and, in supporting it, observed, that the proposal was no more than one in behalf of which the State of Illinois had already memorialized Congress. It was a proposal to which, as he conceived, there ought to be, and indeed could be, no objection. The restriction which it is proposed to remove was laid upon the new States at a time when the public lands were disposed of on credit, and its object was to prevent the new settlers from being taxed, until they should have paid for their land. That state of things

had now ceased. The public lands were no longer sold on credit, but for cash; and the reason of the restriction having ceased, the restriction ought to cease with it. No good reason could be assigned why a citizen, who had paid for his land, who was living in comfort and safety upon it, and enjoying, in common with other citizens, the protection of the laws, should be exempted from contributing to the general expenses of the Government.

Mr. McCOY could not consent to the proposition, either in its original form or as now amended. Every settler on national domain would undoubtedly consider it as a matter of great importance to be exempted from taxation for five years, and the consideration doubtless operated as one among other motives which induced him to purchase the land of the United States. The General Government, when laying the new States under this restriction, had given to them an ample equivalent; and it could not be unknown to any Member of this House, to what an extent the land of non-residents in those States were every day sacrificed, even under the present restriction, before they could reach them. He hoped the resolution would not pass.

The question being taken on Mr. WRIGHT'S resolution, it was negatived without a division.

And then the House adjourned.

WEDNESDAY, DECEMBER 14, 1825.

This day was occupied entirely with motions for references of different subjects for inquiry to committees, which are severally agreed to as matters of course, and without debate.

THURSDAY, DECEMBER 15, 1825.

UNCLAIMED DIVIDENDS ON U. S. STOCK.

The following resolution, yesterday offered by Mr. LIVINGSTON, was taken up:

"*Resolved*, That the Secretary of the Treasury be directed to lay before this House a detailed account, containing the names of the several persons to whom the unclaimed dividends of the funded debt of the United States appear to be due; the amount due to each; the species of stock on which they have grown due; and the period since which the dividend has not been claimed. And that he also give a like detailed account of all such dividends as, having been unclaimed for three years or more, have afterwards been paid to any one appearing to represent the stockholder, or his representative, as attorney in fact; together with the name and residence of such attorney."

Mr. LIVINGSTON, on introducing the above resolution, observed that he had done so in consequence of a report made by the Secretary of the Treasury in answer to a call by this House, which directed him to state the gross amount only of the dividends referred to in the resolution. The report of that officer was in strict accordance with the terms of the call. It gave the gross amount only, and from that report, it appeared that the Treasurer of the United States had in his hands $226,845 89 of moneys belonging to individuals, but which remained unclaimed by those to whose credit it stood upon the books; and the simple question was, whether the Government will give to these individuals the knowledge of this fact, in order that they may ask for that which is their due. When, at the last session of Congress, he had presented this subject for consideration, he had done so in the unsuspecting assurance that it would meet with no opposition from any quarter. He had not conceived that opposition was possible. He had presumed that the first rules of probity, which govern nations, as they govern individuals, would, as a matter of course, induce the United States to tell the persons in whose name these sums stood, that their money was ready for them. To his infinite surprise he had since heard such objections as he never could have anticipated. It was most clear that the persons referred to must be ignorant of the rights which they possessed. This was evident from the fact that large sums had been suffered to lie useless and unemployed, some of them for very many years. And it appeared to him quite as clear that they ought to be apprized of their rights. This was the object of the resolution. His desire was, that, so soon as this report shall be received, it shall immediately be made public, for the benefit of all concerned, that every man may apply for, and receive, his due. Let it be remembered by the House, that the amounts thus to be published were not amounts of doubtful or unliquidated claims, but the amount of acknowleged and ascertained rights, and that the only effect to the Government would be, that it would cause it to restore property which it could not, with probity, retain. Yet, strange as it might appear, some gentlemen had urged objections to a measure thus palpably equitable. What were they? It had, in the first place, been urged, that, as these sums were unknown to the owners, there was no necessity of publishing them. That they were unknown to the owners is undoubtedly true. They must have been unknown, or they would have been demanded. But, it was said, if we publish to the world these names and sums, others besides the true owner will get the intelligence, powers of attorney will immediately be forged, the moneys will be drawn by those who have no right to them, and a general scene of fraud and speculation will infallibly ensue. This, perhaps, to a certain extent, might happen; but, which was worse—that the Government should keep money which does not belong to it, or that it should give the rightful owners at least a chance of receiving what was their own? Fraud! On whom? On those who do not know their rights—are not demanding them—and, in the present state of things, will never obtain them Such persons, surely, cannot be defrauded; for they cannot be more injured than they are, by keeping their money forever in the Treasury. They do not get it as it is, and they could but lose it in any case. No, sir, the fraud is, that we should be obliged to pay money which is not ours, and which we wish to keep. That is the fraud. But this danger of fraud, of which gentlemen speak, if it exist at all, has been greatly magnified, and, instead of being prevented, is greatly favored and increased by the present state of things. The existence of such an amount of unclaimed dividends cannot be an entire secret—that is impossible in the nature of things. The knowledge of it will exist somewhere; somebody will know what these amounts are, and to whose credit they stand. But where is this knowledge now? In the Branch Bank of this city. The President and Cashier of that Bank know it; all their clerks know it; and, through the indiscretion or carelessness of these clerks, a few of their friends probably know it. Now, sir, is fraud likely to be prevented by keeping that a secret among some ten or twenty persons, which ought to be known to all the world? If any powers of attorney are likely to be forged, are they not most likely to be so when the secret remains in a few hands? And is there, or can there be any better mode of preventing such frauds than by laying the whole case open to the knowledge of the whole community? Who is more interested in preventing frauds, or more able or more likely to prevent them, than the persons who are the true owners of these dividends? Who, asked Mr. L. are the persons who will receive the benefit, should this resolution be adopted? They are, almost without exception, the indigent and the unfortunate. For how has it happened, that these balances remain unclaimed? Some sudden accident has happened to the owner, occasioning his sudden death, or he has died at a distance from his home, and his friends do not know that he owned the stock. In other cases, a man may die insolvent; he may hold a large amount of stock which is unknown to his creditors, and,

which, for want of being known, has not been claimed, and, of course has never been divided among them. But, it is said, that if persons do not know that any such sum is due them, they are not injured by not obtaining it. It is true, that Shakspeare says—

"He that is robbed, not wanting what is stolen,
"*Let him not know it*, and he's not robbed at all."

And this may do very well when applied to that species of property of which the poet is speaking, but it will not do when applied to matters of money. The injury here is as real as if it were ever so well known. I know, therefore, of no objection to the measure proposed, which ought for a moment to weigh with a body like this, unless, indeed, there is one rule of honesty for a nation and another for individuals. What would you say, Mr. Speaker, should a man die with a bond of mine in his pocket, and I, being a very honest man, should leave his family in ignorance of the fact, and keep my money, because that family, though suffering, do not come to me and demand it? But the object of the resolution is not only to enable those who are entitled to these balances to come forward and obtain them, but also to detect frauds which may already have arisen from the knowledge of the balances being confined to a few. Here are balances which have stood, some of them, for twenty years, on the books of the Bank. May it not have occurred to some one to say to himself, "the owners have not demanded these balances for six, for eight, for ten years, and more—probably they are dead; cannot I forge a power of attorney and draw the money?" But, said Mr. L. it may be said, we are not guardians of the private purses of individuals: let them take care of that themselves: it is enough for us if we do our duty, and pay the money to those who legally demand it of us. Sir, this might do very well if we were not, or had not been, ourselves, the holders of the money. But we were the holders of it, and ought we not to know whether we paid it away to the rightful owners? No inconvenience—(I am ashamed to urge motives of inconvenience when the motives of honesty are so strong)—but there can accrue no inconvenience to us, from adopting the resolution. The money in question has not been appropriated to any other use—it has not gone to any other fund; it remains in the hands of the Treasurer, subject to the calls of the individuals who own it. But, to make the case still stronger, this sum of two hundred and twenty-six thousand dollars of dividend is not all the money which is due to them. In many instances not only the interest, but the principal also is due. Whose interest, Mr. L. asked, was it that he was advocating? That of the rich? No, sir, said he, the rich generally keep clear and correct accounts: correct, at least, on one side. Publish these balances, and my word for it, there will very few of them come into the pocket of rich men. No: the owner has died insolvent, or he has been overtaken by some sudden dispensation of Providence, which has deprived his family of the knowledge that he was possessed of this property. The fact of their ignorance, however it may have occurred, admits of no dispute. Did they know they might get the money by asking for it, they would have asked for it long before now. Some error has happened—some misfortune is in the case; and what, sir, are we doing? *Taking advantage of error and of misfortune.* We are doing injustice merely from the love of doing it: we are doing it merely because we are unwilling to do what would put an end to it: we are holding this property as if for the remote chance that the owners of it will one day be undiscoverable. Mr. Speaker, said Mr. L. if it was the Legislature of a State that I was addressing, I might be told that, as there are no heirs, no representatives of the owners to be found, the property escheats to the State. But there are no escheats here; grant that the owner had no heirs—he was either a citizen of one of the States, or a citizen of some foreign country; his property then belongs to that State, or to that foreign Government; so that, in no possible point of view in which the subject can be looked at, can I discover the slightest semblance of justice in our retaining it in our hands, and refusing to apprise the rightful claimants of its existence.

Mr. WICKLIFFE observed, that he recollected the gentleman's having, at the last session, offered a resolution similar to this, but that, after some discussion, the House refused to adopt it. He had now listened with interest to the arguments the gentleman had urged in support of it, and which were certainly entitled to consideration. He believed, however, that more mischief was likely to arise from the publication of this list of balances, than the gentleman was aware of. The amount of them struck him as very extraordinary, to have been suffered to remain thus long uncalled for. He rose, however, not directly to oppose the resolution of the gentleman from Louisiana, but merely to ask that it be permitted to lie on the table for a few days. He felt very sure that the publication would cause a vast scene of speculation through the country, by persons buying up the rights of unconscious owners, and, before the House consented to the call, he was desirous that farther time be allowed for reflection upon it. He then moved that it lie on the table; but withdrew the motion to give an opportunity for reply.

Mr. LIVINGSTON then observed, that he would consent, with all his heart, to the proposal of the gentleman from Kentucky, if it had been supported by a single new objection, or by any on which the House could not decide as well now as at any future time. The only objection he has mentioned is that which arises from the danger of fraud; but I put it to the gentleman from Kentucky, whether there is not as much danger of fraud, now, ? Where will be the difference to the owner? he does not get his money as it is, and, if defrauded of it at all, he would be no worse off. If he got his money by the present state of things, I confess the argument from the danger of fraud would be strong; but he does not get it, and if he never hears of his right he never will get it. I have always heard that the best and surest remedy against fraud was publicity: it is said that if this list is published, a villain may read the name of some man who resides at the other extremity of the Union —may forge his name—and thus get his money. But, may he not do the same thing now? Are not dividends paid every day to persons receiving by powers of attorney? But, if the whole of these balances were made public, and it was made a standing rule that all balances, after remaining unclaimed a stated time, should regularly be published, we should have the best security against fraud which the nature of the case admitted.

Mr. WICKLIFFE answered, that he was not satisfied by what had fallen from the gentleman from Louisiana. By pressing a decision on the resolution now, some injury might arise. None could possibly result from suffering it to lie for a few days upon the table, that gentlemen might have an opportunity of making up a more mature judgment on the subject. For himself, if obliged to vote now, he should certainly vote against the call, but not wishing to do so, he preferred renewing his motion to lay it upon the table.

The question being put on this motion, it was carried, and the resolution of Mr. LIVINGSTON was accordingly laid upon the table.

CASE OF COMMODORE PORTER.

The House then proceeded to the consideration of the following resolution, yesterday submitted by Mr. BUCHANAN:

"*Resolved*, That the Secretary of the Navy be directed to lay before this House the proceedings of the late Court

of Inquiry and Court Martial, in relation to the case of Commodore Porter."

Mr. STORRS rose, not to make any objection to the object of this proposition, but to suggest that, as the papers in this case had been already called for by the Senate, there was no occasion for a repetition of the call by this House, inasmuch as all information communicated to one House, and printed, was effectively communicated to both, each House reciprocating with the other copies of all its printed papers.

Mr. BUCHANAN said, he had no other motive in calling for the Proceedings in the case of Commodore Porter, than to give publicity to those Proceedings. Not conceiving, however, that the fact of reciprocation of copies of printed papers between the two Houses, obviated the propriety of this House calling, independently of the proceedings in the Senate, for any papers it desired to possess, Mr. B. still desired the question to be taken on the passage of this resolution. He understood that the documents which it embraced were already printed, and it could do no harm to shew, by the resolution, the disposition of the House to have them before it. If any objection existed to the object of the resolution, Mr. B. said he would, on its being stated, endeavor to answer it; but he did not deem it either correct or politic to anticipate objections to his proposition.

Mr. TRIMBLE said he should vote for the resolution at the gentleman's request, though he did not think its passage material, since the documents would come before the view of the House, whether it passed or not. He had risen on this occasion, to say, that, although he should never vote for a call for the Proceedings of any Court Martial on a subordinate officer, unless where some ulterior measures were contemplated to be founded on it; yet, where the officer tried by any Court, having been in command of a squadron, has been brought into contact with the officers or forces of other Governments, involving questions of international law, in which the country might be interested, he should make no objection to calling for the Proceedings of the Court. But his principal object was to suggest an amendment, to which he was sure his friend would make no objection. It would be recollected, by those who had attended to the progress of the trial of Commodore Porter, as given in the public prints, that some of the evidence offered, on one or both sides, was rejected. The object of his amendment was to elicit all the documents and correspondence connected with this case. He moved, therefore, to add to the resolution the words, "together, with all the documents and correspondence connected with this case."

Mr. BUCHANAN said, he did not perceive, himself, that this amendment was necessary. But it could certainly do no harm, and would make the resolution more comprehensive. He therefore accepted the amendment as a part of his motion, and agreed that it should form a part of the resolution.

Mr. WEBSTER inquired whether it was not usual, in calling on the President for copies of correspondence, to refer the matter to the exercise of a discretion on the part of the President, as to the propriety of making the communication asked for. To communicate correspondence, without reserve, might, in some cases, and possibly in this, be prejudicial to the public interest.

Mr. BUCHANAN said he was perfectly willing to assent to any amendment whatever of the resolution, which did not go to defeat its object.

Mr. WEBSTER suggested the propriety of letting the resolve lie on the table till to-morrow, to give time to ascertain whether the House would not receive the papers for which the resolution proposed to call, without passing the resolution.

Mr. BUCHANAN said he had no wish to press the resolution, but he could not see what objection there could be to acting on it now. The information called for by the Senate was for the Senate's use, and not for this House. The information ought to be regularly before the House, and Mr. B. therefore wished his motion, as it had been introduced, to pass. Why not pass it to-day? At the same time, as the gentleman from Massachusetts seemed to wish the postponement, Mr. B. said he would not press it on the House at present; but, if it were laid on the table, he should think it his duty to call up the resolution to-morrow, that the sense of the House might be taken upon it.

Mr. WEBSTER said he had no particular wish for its postponement. It had merely occurred to him that some inconvenience might arise from passing the resolve in its present shape: but he did not oppose the object of it.

Mr. REED then moved to lay the resolve on the table; and,

On the question being taken, it was ordered to lie on the table, by a vote of 95 to 73.

The bill making appropriation for the payment of the members and officers of the House of Representatives, and for the contingent expenses of both Houses, was returned by the Senate, with an amendment, inserting the words—"and Delegates from Territories."

Mr. McLANE, of Delaware, (Chairman of the Committee of Ways and Means,) with whom this bill originated, observed, that he did not intend to make any strenuous objection to the amendment proposed by the Senate, as he did not consider it as of very material importance. The alteration was, in truth, a little hypercritical. Previous to drawing this bill, he had taken pains to examine the phraseology used in the laws for this appropriation, since the beginning of the Government, and he had observed that the Delegates from the Territories had never been separately designated as such, but always included within the term "Members" of the House, until the famous law of 1818, which went to repeal that making compensation by salaries. These Delegates are authorized by law to take their seats upon the floor; their privileges are prescribed, but no provision is enacted for their compensation. They receive it only as "Members" of the House. The law of 1818, mentions them for the first time, when making appropriations for that purpose. He therefore considered the bill, in its original form, as proper and according to precedent. Still, however, he had no disposition to make any difficulty on the subject, or retard the passage of the bill; and he therefore hoped that the House would concur in the amendment proposed.

The question was then put, and the amendment was agreed to without opposition.

WESTERN ARMORY.

On motion of Mr. BLAIR, the House went into Committee of the Whole, Mr. LATHROP in the chair, and took up the Joint Resolution offered some days since, by Mr. BLAIR, in the following words:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States be authorized and required to procure the officers of the Engineer Department, who are now engaged in examing the route for a National Road from the City of Washington to New Orleans, to examine that part of the Western Waters which lie within East Tennessee, with a view to the selection of a site for an Armory on the Western Waters; and that report thereof be made to Congress during the present session."

Mr. BLAIR said that he had not intended to have said any thing in commendation of this measure; that the resolution on its face so clearly developed the reasonableness of the proposition, that he did not anticipate any objection to its adoption; but, from a disposition being manifested by some members of the committee to receive an explanation, he took pleasure in

affording any information which he might be able to impart. This resolution does not ask for an appropriation of money to fulfil its object, nor does it contemplate the least delay in the erection of the armory to which it has reference; its sole object is to obtain for a component part of the Western Waters, an equal participation in respectful examination with others which had been examined. It will be recollected that the act of 1821 authorized the survey of the Western Waters, with a view to the selection of a site for a National Armory. That act has not been carried into effect so far as relates to the section of country embraced in the resolution; notwithstanding a report has been made to Congress at its last session, designating the vicinity of Pittsburg as the most eligible site. Mr. B. said he did not pretend to a perfect knowledge of the whole Western Waters, so as either to applaud or censure the report alluded to; nor was he so conversant with such establishments as to speak with certainty as to what should be the primary inducements in their location. But, Mr. B. said, he did not hazard much when he said, that neither the examining board, nor the committee, were prepared to draw a just comparison between the site which was the object of preference, and one of the many within the scope of country embraced in the resolution. Mr. B. said that he did not wish to be understood as complaining of the selection, so far as the preparatory examinations had been made, although it might with propriety be inquired, whether Pittsburg was within the spirit of the law, when its contiguity to the Harper's Ferry establishment, compared with other parts of the Western Waters, wast aken into consideration; but that the great ground of complaint arose from the total disrespect which had been paid to a section of country about 250 miles in length, and embracing the whole width of the State—a section of country abounding with waterfalls, fuel, and iron ore, to a greater extent than almost any other; as an evidence of which, he would mention that, in the smallest county in Tennessee, there were at that time not less than sixteen iron establishments in successful operation; that in addition to other advantages, East Tennessee was pre-eminently blessed with climate, and the means of living. But, Mr. B. said, why should he speak of the advantages which were presented to view from the section of country under consideration, when the sole object of the resolution was, the ascertainment of that fact. Had a cotemporaneous examination of our claims have been made, with others, and the preference been withholden from us, he could assure the committee that the language of complaint would not have been heard; but what else than just complaint could have been expected, from a People ever jealous of their rights? This complaint I now feel it my duty, as one of their Representatives, to make, and, on their behalf, to call upon the proper authorities for redress. He was gratified to see that no other section of the Western Waters could be prejudiced, in extending this act of justice to East Tennessee, as no delay was asked for, nor was it intended that the object of the resolution could be fulfilled by those officers of the Board of Engineers, who were now engaged in examining the country between this City and New Orleans, with a view to the location of the contemplated National Road. This opportunity being now afforded, he could not indulge the idea, that a member of this committee would be disinclined to afford the general satisfaction which would result, should no higher object be attained. He would further add, that this early application had been made with a view to enable the President to forward the necessary instructions to those officers who were now in the West, so as to meet them on their return route, which would lead through the vicinity of the most prominent objects of inquiry. He hoped the resolution would be adopted without delay, as it must now be attended with despatch, or the object could not be accomplished.

Mr. MALLARY expressed a doubt whether the object desired by the gentleman from Tennessee could be effected without interfering with other objects already assigned to the charge of the Engineers. He was inclined to believe that the examination would occupy a considerable time, and he wished to be satisfied whether diverting the Board from the course which had been marked out to them by the War Department, for the purpose of this collateral examination, might not derange some of the plans of the Government, and thus injure the public service. If the gentleman who had moved the resolution could give him this certainty, he would willingly vote in favor of his proposition, as he thought that that gentleman had stated heavy claims on the notice of Government.

Mr. COCKE said, that, coming from the same section of country, he thought he should be able to satisfy the gentleman from Vermont as to what he had asked from his colleague. His fears, he could assure him, were groundless. The Engineers had been despatched from Washington to New Orleans to ascertain the practicability of a National Road to that place. As soon as they arrived there, their labors would be completed, and, on their return route, they would pass directly through that section of country where the examination is proposed to be made: and he would remark, in addition, that, from the spot where, if any where in that section, the National Armory would probably be located, there was water communication to every part of the Southern section of the United States; that the country abounded in minerals; iron ore was found in the greatest profusion—there were mountains of it; and the water power was equal to any upon the face of the earth. Yet this section of country had been omitted in the survey, and its inhabitants considered themselves not only neglected, but almost treated with contempt.

All they asked was to have an examination, and if they were not entitled to the preference, they would submit with cheerfulness. He hoped that there was no one that would attempt to oppose the measure, when informed of the fact that these Commissioners will, upon their return, come through this section of the country, and that they could examine the whole of it in eight or ten days.

Mr. STEVENSON, of Penn. observed, that it was with great reluctance he rose to address the Committee of the whole, consisting as it did of some of the most distinguished men of the country; but he felt impelled to say a few words upon the subject, with a view to bring fairly before the recollection of the Committee, what had taken place on this subject. By the act of the 3d of March, 1823, the President of the United States was directed to appoint Commissioners to make a survey of the Western Waters, with a view of fixing upon the most eligible site for an Armory. These Commissioners were accordingly appointed, and it would be seen, from their letter of instruction, dated the 26th of April, 1825, that the widest range was given them. [Here Mr. S. read a part of the letter of instructions.] Here, then, (continued Mr. S.) was a wide range indeed, embracing the whole Western Country, the whole of the Ohio and Mississippi Rivers, and their tributary waters. To execute this survey, three distinguished men were appointed, viz: Colonel McRee, Colonel Lee, Superintendent of the U. States Armory, at Springfield, and Major Talcott, of the Ordnance—men selected with care, who could have no previous commitment, and who were familiar with the nature of the subject referred to them. From such men, said Mr. S. a fair report might be expected—such an one as would enable the faithful Representatives of the People to make a location which would be beneficial to the whole nation, and not to any particular State or section of country. [Here Mr. S. quoted part of the report as published at the last session of Congress.] Now, Sir,

said he, here were three gentlemen, selected by the President of the United States, whose competency cannot be questioned, and who devoted ample time, and what some supposed more than sufficient, twenty-one months having been devoted to the work; who examined the whole Western Country, from Alabama to the western bounds of Pennsylvania, through Ohio and Tennessee, as would be seen by reference to the report. Shall we rest the interest of this nation, in this matter, upon the report made by these gentlemen, said Mr. S. or shall we still wait, and compare their report with that of two or three young men, who, though promising, are still but young? Can the report of these young gentlemen be depended upon, in preference to that obtained from such Commissioners as have already reported? If the object of the gentleman is to obtain *another* Armory, beside that already determined on, let him avow it. But, then, it cannot be said, we ought to wait until this examination is made, before we act upon the report which has been already made. I have made these few remarks, (said Mr. S.) with reference to what has been done, because I know that there are several new members, who are unacquainted with it, and who, perhaps, do not even know that a report has been made upon the subject. I intended to say but a few words, and, as it is now late, I conclude by moving that the Committee rise, report progress, and ask leave to sit again.

On request of Mr. BLAIR, Mr. S. withdrew his motion, to give that gentleman an opportunity to reply.

Mr. BLAIR observed, in reply, that there existed no difference between the honorable gentleman from Pennsylvania and himself, as to the letter of instructions: the whole difficulty lies in the fact, that those instructions were not obeyed. He readily admitted that, if the Commissioners had complied with the directions given them, and had, as they were instructed, examined the whole of the Western Waters, and then had decided as they have now done, no more would have been said. The House would never have been troubled with any complaint from his section of the country. But, when a large and important district of country was wholly passed over, it was not surprising that dissatisfaction, and that of a painful kind, should be felt and should be expressed.

Why were the Commissioners directed to embrace the whole of the Western Waters, if they were to be permitted to cut and carve for themselves, to take one section and leave another, at their own will and pleasure. The gentleman has spoken of the ability and experience of those Commissioners, and tells us that the present Engineers, though promising, are but young men. For himself, he was persuaded that he possessed a full guarantee in the known character and acquirements of the gentleman who presided over the Engineer Department, as to the capacity of those whom he wished to examine East Tennessee They had been trusted to report on the location of a great National Road, and, surely, if they were fit for that responsibility, they might very safely be trusted with the duty contemplated by his resolution. The work which they are employed upon, is one that, if adopted, will draw millions from the Treasury—are they unequal to the examination of a spot for an Armory? They are already on the spot, or soon will be. He wished no interference with duties already appointed by the Government; and if, when the Commissioners are informed of this resolution, they shall be occupied in previous duties, which cannot be interrupted, he was willing that the examination should be deferred to another season. The gentleman from Pennsylvania says, that Tennessee has been already examined. I aver, that this part of Tennessee has never been. It is true, there was a report, which embraced a part of the State; but that part was three hundred miles distant from the district contemplated by the resolution now offered. He hoped that the Committee would consent to the measure; no money was to be appropriated for it—nor would it retard the progress of the survey of the National Road; and it was worthy of regard, even should Pittsburg be allowed to have ever so strong claims.

Mr. MARABLE, observed, that it was not necessary to go into the details of this subject, or state the claims of the State he had the honor in part to represent, to a preference for this object; but when he heard a proposal to have the State examined, and yet to omit the whole of the lower portion of it, he must be expected to feel sensitive. He therefore should take the liberty of offering an amendment, which went to include that part of Tennessee which the gentleman had omitted —(and which he reduced to writing.)

Mr. COCKE, of Tenn. said, that he had an objection to the amendment. Has not, asked Mr. C., the district included in the amendment been examined already? It surely it has—and after examining it, the Commissioners determined that it was not a suitable place for the location of an Armory. Yet the gentleman now wishes another examination—hoping, as it would seem, that, by some turn of the die, he may succeed in accomplishing his object; but, had East Tennessee been examined as West Tennessee has been, and then rejected, not an objection should be heard from his lips on the subject. His object was, not to delay the decision, but only to have it made on fair grounds. Those who reside in West Tennessee have had their country examined by the most experienced Engineers—while we, who reside in East Tennessee, must be content with the examination of those whom the gentleman from Pennsylvania tells us are but young men. This, to be sure, is a great disadvantage; but we must submit to it. We still wish our country examined, and its claims fairly considered. If the amendment prevails, all the Western Country will immediately claim to be re-examined, since it all has as great a right as West Tennessee.

Mr. HAMILTON (Chairman of the Committee on Military Affairs,) then said that, as the subject had been referred to the Committee on Military Affairs, it might be expected that he should offer a brief view of the subject. The question now before the Committee, he apprehended to be, not where the Armory should be located, but whether this is the best mode of ascertaining where it is to be located. Now, on the very threshold of the subject, there appeared to him to be something incongruous and incompatible, in assigning to this examination a corps of Engineers already employed on the survey of a National Road. They have already a task assigned them by Government, and, in the midst of it, we superadd this difficult and delicate duty. But for such an object a special commission is requisite. The very argument of the honorable mover of the resolution, from the fact that this section of the country was not considered together with the rest, will certainly bear with double force, if the Board are employed to examine one specific portion of country only; they can form no comparison, and therefore can express no opinion; they may probably report that there is abundance of ore and of fuel, with some other advantages; but this establishes nothing as to the comparative merit of this spot and others. If this section of country has been omitted, it has probably happened because its general situation was known to the Commissioners, and they thought there were conclusive objections against its coming in for any competition. He tho't it would be highly inconvenient to give the corps a special commission for this examination, when they were already occupied by another and a greater object. Why would it not be best to make the examination and receive the report when Pittsburg and the other sites shall have been examined also? He should vote for the rising of the Committee.

Mr. STEWART now renewed the motion that the Committee rise, report progress, and ask leave to sit again.

The Committee then rose and reported, but, before it was decided whether they should have leave to sit again,

The House adjourned.

FRIDAY, DECEMBER 16, 1826.

EXPLORATION OF THE NORTHWEST COAST.

The following resolution, yesterday offered b Mr. BAYLIES, was taken up:

"*Resolved*, That the Secretary of the Navy be requested to inform this House whether the sloop of war Boston, about to be commissioned, might not be employed in exploring the Northwest Coast of America, its rivers and inlets, between the parallels of latitude 42 and 49 North, without detriment to the naval service of the United States; and whether the expense incurred in such service would exceed the ordinary expenses of such vessel while cruising. And, also, whether it would be practicable to transmit more cannon and more of the munitions of war in such vessel, than would be necessary for the use of the vessel."

Mr. SAWYER offered the following as an amendment, to be added to this resolve:

'And thence to proceed into Behring's Straits, and, if practicable, to continue her route into the Polar Seas, and through the openings of Prince Regent's Inlet, or Barrow's Strait, into Davis' or Hudson's Straits, thence, down said Straits, to some port in the United States.'

Mr. SAWYER said, that this amendment was predicated upon that part of the President's Message which relates to our contribution of mind, of labor, and expense, to the acquisition of knowledge, and has reference to those numerous voyages for the discovery of a Northwest passage to China, which have been fitted out of late years, particularly by England. In 1818, a ship was sent, under the directions of Captain Ross, who, for the first time, made the circuit of Baffin's Bay, and penetrated to 77 degrees North, which is two degrees beyond the place called Red Head, the highest point reached by the whalers. He not only enlarged the sphere of geographical science, so much as to render our maps of this section of the continent useless, and added many important facts and subjects to natural history, but led his adventurous countrymen through fields and mountains of ice, to new harbors of the whale, where full cargoes of oil are obtained in the shortest time. He invented the deep-sea clam, a machine which brings up large portions of soil from a depth of seven hundred fathoms. He was succeeded, in 1819, by Captain Parry, the fearless champion of science, who, in three successive voyages, has discovered no less than three different passages into the Polar Seas, and thence, through Behring's Straits, to the Pacific. In his first voyage, he discovered the opening which he named after his ships, the Fury and Hecla. In his second and third, he found those which he called Prince Regent's Inlet, and Barrow's Strait. It is but two months since he returned from his third voyage, which failed from the loss of one of his ships that was wrecked by a floe of ice, while passing through Barrow's Strait, with every appearance of success. In his second voyage, Captain Parry obtained the bounty of $10,000, granted by Parliament to the navigator who should reach the110th degree of West longitude. He also passed directly over the magnetic pole, in latitude about 74, and longitude 100 West, immediately after which his compasses, which before varied 128 degrees, 58 minutes, West, changed to 165 50 East, or, in other words, pointed nearly South. Captain Parry has enriched physical science by many valuable additions. Contemporaneous with these voyages, was a land expedition under Captain John Franklin, along the united British Fur Company's posts, down the Coppermine river, to the Polar Sea. He arrived in the Arctic Sea in August, 1820, and navigated it for several hundred miles in canoes, towards the Northeast. He discovered a group of Islands, which he named King George the Fourth's Archipelago. He is now performing another expedition in that direction, and contemplated meeting Captain Parry at some given latitude on the Polar Sea. In about latitude 64 degrees North, he passed the zenith of the Aurora Borealis, which, as he proceeded, appeared afterwards in the Southern portion of the heavens. He endeavored to ascertain whether this electric fluid emits any noise, as is alleged by the Indians and factors, but that remarkable quality remains to be proved. He made many observations on the intensity of magnetic force in different latitudes, from the oscillations of the needle, and on Meteorology, settled the latitude and longitude of all the remarkable places, immortalised his friends by giving their names to them, and brought home immense spoils from the Zoological, Botanical, and Mineralogical kingdoms. The enterprising King of Great Britain certainly deserves much praise for the lead he has taken, in conjunction with Russia and France, and the perseverance with which he has pursued those disinterested, hazardous, and expensive expeditions, for the common benefit. The time has come when this nation should likewise enter into this glorious career of discovery and human improvement. Are we forever to remain idle spectators of these splendid exertions to trace our own continent? Will none but kings enlist in the cause of science? I had as lief borrow their money without any intention of repaying it, as to borrow their knowledge, which they have been at such great pains to obtain. We ought to feel more pride and independence; we ought to feel that unhappiness which Alexander felt upon learning the conquests of his father Philip, for fear he would leave him nothing to conquer. These views of policy, however, being new to us, I cannot flatter myself that they will be met by a majority of this House, and I shall content myself by proving, that I am willing to go as far, if not farther, than the avowed friends of the President, in this part of his recommendation. Can it be pretended that a mere maritime reconnoissance of seven degrees of latitude, will be received as a discharge on our part of this debt to science, which the President justly pronounces sacred? The ship, according to this resolution, is to cruise between our acknowledged limits, which, from the Spanish boundary of 42 degrees, to the British of 49 degrees of North latitude, includes a space of only 420 miles. It is with a view of making a tender, on the part of my constituents, of their part of this debt, that I have offered this amendment.

Mr. BAYLIES observed, in reply, that if he could have had any apprehension that the simple resolution which he had offered yesterday, would have elicited such a history as had just been given by the gentleman from North Carolina, he certainly should not have offered it. But the President having, in his Message to Congress, recommended a survey of the Northwest Coast, it occurred to him that perhaps that object could be effected without any additional expense to the nation, by employing on that duty one of the sloops of war which were already in commission. He wished merely for an inquiry, whether one of those vessels might not be employed for this object, without detriment to other parts of the public service. But, if the amendment now offered was to be appended to the resolution, he hoped that his own motion, thus clogged, would not be adopted.

Mr. WHIPPLE observed, that one great objection to the amendment, arose from its proposing means

which were so inadequate to the object which the mover had in view. When the British nation resolved upon the exploring expedition, of which the gentleman from North Carolina had favored the House with such an elaborate account, they had commissioned two ships for the purpose. But the amendment proposes to send into those seas of ice and danger, a single sloop of war. Such a measure would be perfectly futile, and totally inadequate to the object proposed.

Mr. SAWYER replied, that if this voyage proposed by the gentleman from Massachusetts, was to be confined to our own coast on the Northwest, which, from the Spanish boundary of 42 degrees, to the British, of 49 degrees North, included a space of only 420 miles, the conclusion which would be drawn from the premises, laid down by the President, must be a most lame and impotent one. Such a discharge of this debt to science, which he admits we owe, would, in that case, be a very poor one. 'Tis true, the President does not conclude by recommending, in express terms, a voyage of circumnavigation; neither do I propose it, except as regards our own quarter of the globe. The hint he has given, however, is sufficient for the wise. As to the increased expenses which the continuation of the voyage would require, it would be too trifling to enter into the calculation with such an enlightened body as this, when weighed with the great importance of the object to be gained—the elevation of the national character in the estimation of the friends of science, at home and abroad. The whole additional expense would be the mere provisioning her for two years. The same compliment of men would answer as would be required to equip her in the first instance. He, however, did not possess any very sanguine anticipations of the success of his amendment; he did not feel very tenacious of it, inasmuch as he would show that he was willing to go as far as any personal friend of the President, in entering into the spirit of his message on that head.

The question being put on the amendment moved by Mr. SAWYER, it was rejected.

The question was then put on the original proposition of Mr. BAYLIES, and carried.

CASE OF COMMODORE PORTER.

On motion of Mr. BUCHANAN, the House took up (not without a number of negative voices) the resolution offered by him the day before yesterday, calling for the Proceedings of the Court Martial and the Court of Inquiry, recently held upon Commodore David Porter.

Mr. BUCHANAN said, that when he had the honor of submitting this resolution, he had supposed that it would pass, as a matter of course, and not a word be necessary to be said upon the subject. So firmly was he of that opinion, that he thought it needless to trespass on the attention of the House, to show any reasons for its passage. The unwillingness which had been shown to act upon it, made it his duty now to submit a few observations in reference to it; having done which, he should submit it to the pleasure of the House.

What, asked Mr. B. is the purport of this resolution? It proposes a call on the Secretary of the Navy, for a copy of the Proceedings of the late Court Martial and Court of Inquiry in the case of Commodore Porter. Is this, said he, a novel request? No; it is of a nature of others which have repeatedly met the approbation of this House. Within my own distinct recollection, three cases of this kind occurred during the last session of Congress, in which the calls were granted as matter of course, viz: in the case of Major Babcock, that of Lieutenant Weaver, and that of Lieutenant Conner. And, sir, *ought they not* to have been granted? The question is not now upon the printing of these documents—though, if it were, he believed he could satisfy the House of the propriety of their being printed, and that an objection to calling for information, because of the contingency, that it might, when obtained, be ordered to be printed, was an argument entitled to no weight at all—the question is, how are we, who want it, to obtain this information, but by availing ourselves of the authority of this House to obtain it? As to applying personally at the Department for it, Mr. B. said an individual member of this House had no more right to require information from any of the Departments, than any other individual. Was it proper, he asked, that members of this House should go, one after the other, to the Departments, and ask, each for himself, to see papers, and obtain information which concerns the welfare of the whole? Certainly not. The practice, therefore, has been, and he trusted would continue to be, when a member of this House, representing, as each member does, an important portion of this community, calls for a public paper, he shall have it by a vote of this House. It had been suggested yesterday, and with great deference he must say the suggestion was wholly out of order, that these papers had been called for by the Senate, and that, therefore, it was not necessary to call for them here. But, said he, is there any other mode in which the information could be properly in possession of this House, than by calling for it ourselves? Is the Head of a Department responsible to *us* if he do not send to the Senate *all* the documents in any case? Far be it from me to say, that the respectable Head of that Department would in any case withhold documents proper to be communicated—I have no such opinion of him; but, as an argument, this supposition may serve to show that this House ought itself to call for whatever papers it has occasion for.

It had also been suggested, that this House ought not to call for any documents on any Department of the Government, unless the Member moving the call will avow that he has a specific object in doing it. Now, Mr. B. said, it was obvious that a Member must see and know the contents of a document before he can judge whether or not it be proper to found any measure upon them. In the present case, Mr. B. said, he did not meditate any ulterior proceeding. He had called for these documents, and he had expected that they would have been granted as a matter of course, for the purpose of examining them critically for himself, and whether any ulterior proceeding was to be moved, or not, would depend on the aspect of the documents after they were submitted.

What, then, said Mr. B. is the nature of the question presented by this resolution? There is a gallant officer of our Navy, who has been tried by a Court Martial, and convicted—whether correctly or not, I do not wish to express an opinion; I cannot, until I see the documents, to enable me to form one. It is an unquestionable fact, that, in regard to that trial and its result, the country is divided in sentiment. The friends of this officer—an officer who has shed lustre on the character of our Navy; whose fame is such that our sister Republics vie with one another in offering him inducements to engage in their service—the friends of this officer come forward, and ask that the proceedings of the Courts in his case should be laid before the Representative tribunal. Is this an unreasonable request? Is it an argument against complying with such a request, that our *impoverished* and *embarrassed* Treasury may be called upon to defray the expense of printing these papers when received? There is, in this country, a tribunal higher than this—which reviews the proceeding of every other, and judges both the accuser and the accused according to their desert—the tribunal of PUBLIC OPINION. Is nothing due to that tribunal? Is it not due to the People that these papers should be laid before them? That, said Mr. B. is all that I ask; and if any one supposes that I had any view, in offering this resolution, but to obtain correct information for myself and others who desire it, they are entirely mistaken. And, Mr. B.

said, if he understood rightly, the expense of printing the papers, when received, need not be incurred in this case: for, so proper had the Secretary of the Navy considered it that the proceedings of the Court Martial should be made public, he had already caused them to be printed and held in readiness to be laid before Congress, if called for.

It had been suggested, yesterday, that this call for papers ought to have been addressed to the President of the United States, with a reservation to that officer of a discretion as to the propriety of communicating the papers called for.

Mr. B. said, on referring to the Journal of the last session, he found that, in the case of Major Babcock, the Secretary of War had been called upon to communicate the proceedings of the Court; so that there was nothing unusual in the form of the proceeding now proposed. Nor could he believe that there were any documents connected with the trial in the case of Commodore Porter that it would be improper to communicate to Congress. If the respectable gentleman from Massachusetts thought otherwise, however, he could move an amendment to that effect. Mr. B. concluded by remarking, that he would rather that this resolution should have passed without a word from him in relation to it, and he now submitted it entirely to the pleasure of the House.

The question was then taken on the passage of the resolution, and was decided, without a division, in the affirmative.

CONGRESS OF PANAMA.

Mr. HAMILTON offered the following resolution for consideration:

Resolved, That the President of the United States be requested to transmit to this House copies of all such documents, or parts of correspondence, (not incompatible with the public interest to be communicated,) relating to an invitation which has been extended to the Government of this country "by the Republics of Colombia, of Mexico, and of Central America, to join in the deliberations of a Congress to be held at the Isthmus of Panama," and which has induced him to signify to this House that "Ministers on the part of the United States will be commissioned to join in those deliberations."

RULES OF THE U. S. COURTS.

Mr. WICKLIFFE called up the resolutions he offered some days since, in relation to the rules of proceeding adopted by the Courts of the United States; and, having modified them by striking out one clause, moved that they be committed to a Committee of the Whole House.

Mr. WEBSTER asked for the reading of the resolutions, as modified; and, they being read, he rose again to propose, as he said, that a different direction should be given to the resolutions from what the honorable mover proposed. He did not know any usage that justified the reference of these resolutions, in the first instance, to a Committee of the Whole House. He spoke particularly in reference to the second resolution. That resolution professed to state facts, certainly not of general notoriety, and of which no evidence whatever had been furnished. If he understood it, it assumed, or asserted, that certain Courts of the United States had prescribed rules of practice, not warranted by law. But the House had no knowledge of any such rules, or of any rules, supposed or alleged to be of that character. The rules themselves are not produced. The House knows, at present, nothing about them; and it will know as little when it shall have resolved itself into a Committee of the Whole. The proper subjects for discussion, in Committee of the Whole, doubtless, are general propositions, or general measures, in regard to which no investigation, as to facts and as to particulars, may probably become necessary. But, in this case, if the House should go into Committee, is there any thing to direct its judgment on the question, whether any of the Courts, or which of them, have adopted rules of practice inconsistent with law, and the rights of the citizen? Must we not first see what those rules are? He certainly was willing that the subject should be fully investigated. He, of course, knew at present little or nothing of the case; what he wanted was to see, in its true and real colors, the thing that was complained of. For his part, he did not yield to every suggestion that able and upright magistrates had acted oppresively, or vexatiously, or in a manner which violated the rights of the citizen. He thought such suggestions ought not to be made, without showing the case and the proofs; or, at least, without some statement of the facts. If it were true that injustice had been done, he was most ready to join in a proper course of remedy. If there had been oppression or violation of right, surely every member of the House would be most anxious to afford redress. But, before the House proceeded farther, he wished to see the foundation of the charges. He wished to know what the rules complained of were. He requested them to be produced, and their illegality to be pointed out. At present, the House was proceeding altogether on a supposed state of facts. He repeated that, if it should turn out that there was any thing to complain of; if the Courts, as had been said, had usurped the powers of legislation; if the rights or the liberty of the citizen had been invaded; he hoped he should be found among the most zealous to administer the proper remedy. But he could not reconcile it to his sense of duty to proceed further on this subject, until the facts were better known. For these reasons, he moved that the resolutions be committed to the Committee on the Judiciary.

Mr. WICKLIFFE said, in reply, that, so far as he was personally concerned, he considered it a matter of little moment whether the resolutions passed through one of the standing committees, or went directly to the House. He had stated, on introducing the resolutions, the reasons which had induced him to desire an expression of the opinion of Congress, in respect to repealing the 25th section of the law referred to, and he need not repeat those reasons now. In regard to the second resolution, he owed it to himself to say, that he was not one of those who had engaged in a general tirade against the Courts of the United States. But he considered it his duty to those who had chosen him to be their Representative, to bring a subject, in which they were so deeply interested, before the notice of Congress. It was possible he might be mistaken as to the opinion he had formed respecting the character of the rules passed by those Courts, and, if so, he should be glad to be corrected. He had in his possession a copy of the rules, which he had always intended at a proper time to produce and submit to the House. If, however, it should be their pleasure to send the resolutions to the Committee which had been mentioned, he would cheerfully acquiesce, as he had the utmost confidence in both the ability and integrity of that enlightened Committee.

Mr. TRIMBLE said, that this was a question in which he felt some interest, and he concurred entirely in the views which had been taken by the gentleman from Massachusetts, as to the proper mode of reference of it. He had, he said, made some inquiries as to the Judiciary system, and particularly as to the early history of it; and he had learnt, whether correctly or not he could not say, that when, at the commencement of the Government, the subject was originally acted upon, it was found to be the most troublesome and vexatious matter before Congress. He feared that it would turn out to be the same now. With regard to executions issuing from the Courts of the United States, it appeared to him there were but two ways in which they could be regulated—the one, by adopting a general system of ex-

ecution laws; the other, by adopting, within each State, the system of that State. So far as related to a general system for this purpose, Mr. T. said he did not believe that this House, or any Congress, would very soon concur in one. In tracing out such a system, difficulties would grow up at every step. Whenever it should seriously engage in the discussion of such a project, the House would find that any system adapted to one portion of the country, would be very ill-suited to any other. That system, for example, which would suit the agriculturist would not suit the merchant; that which would suit the mercantile class East of the Alleghany, would not be found adapted to the Western trading interest. He made these remarks only to intimate what he considered as difficulties in the way of a decision of this question; and he was perfectly satisfied that the whole subject could not be left in better hands than those of the Committee on the Judiciary. He hoped, therefore, that these resolutions would not be committed to a Committee of the Whole, but to that committee in which the subject might be maturely considered, and presented for consideration in such a form as might enable the House to act upon it consequentially.

Mr. WICKLIFFE here withdrew his motion to refer the subject to a Committee of the Whole, consenting that it should go to the Judiciary Committee; and

The resolves were refered to the Judiciary Committee accordingly.

The question lying over from yesterday was, Whether the Committee of the Whole shall have leave to sit again on the joint resolution offered by Mr. BLAIR, in relation to a survey of the waters of East Tennessee; and, the question being put, leave was refused.

Mr. STEWART then moved that the resolution, with the amendment thereto, be referred to the Committee on Military Affairs; but, before any decision was had, on motion of Mr. ISACKS, who wished to give further time for the consideration of the subject,

The House adjourned to Monday.

MONDAY, DECEMBER 19, 1825.

CONGRESS OF PANAMA.

The following resolution, offered on a previous day by Mr. HAMILTON, came up for consideration:

"*Resolved*, That the President of the United States be requested to transmit to this House copies of all such documents, or parts of correspondence, (not incompatible with the public interest to be communicated) relating to an invitation which has been extended to the Government of this country 'by the Republics of Colombia, of Mexico, and of Central America, to join in the deliberations of the Congress to be held at the Isthmus of Panama,' and which has induced him to signify to this House, that 'Ministers, on the part of the United States, will be commissioned to join in those deliberations."

Mr. HAMILTON said, that, since the meeting of the House this morning, he had been informed, by an honorable Member, whose official station gave him the best means of information, that it was the intention of the President, in due time, to communicate to the House all the papers connected with the call embraced in the resolution now on the table. He would, therefore, postpone, for the present, inviting the House to consider it, reserving to himself, nevertheless, the privilege of calling it up at a future period, should he conceive it necessary.

GEOLOGICAL SURVEY.

The following resolution, offered by Mr. SAWYER, was taken up for consideration, and modified so as to read:

"*Resolved*, That the Secretary of War be directed to lay before this House an estimate of the expense of an expedition, under the conduct of an officer of Engineers, from Pembina, on the Red river of Lake Winnipeg, along the 49th degree of N. latitude; to the West, across the Rocky Mountains, to the Pacific Ocean; from thence, along the shores of the coast, to the South, as far as the 42d degree of North latitude; and along the Spanish boundary to the Mississippi river, or any other more eligible route across our unexplored territory to any place on that or the Ohio river; with a view to geological and other examinations, which might be considered useful or interesting."

Mr. SAWYER said, the resolution of the gentleman from Massachusetts (Mr. BAYLIES,) had in view a survey purely hydrographic, and not geographic, as the President had recommended; so that, to have the system complete, it would be necessary to order geographical and geological surveys of our unexplored territories. As a measure of domestic policy, it would be advisable to equip an expedition, under the direction of the Engineer bureau, to trace our Northern boundary to the West of the Lake of the Woods, as has already been done to the East, under Major Long, as far as Michilimackinac. Some scientific gentlemen may be attached to the party, instructed to make mineralogical and other examinations, and take the bearings of prominent points. We know not the nature and extent of our vast possessions, which are daily increasing, among which might be found tracts suitable for settlements, and regions rich in auriferous or other metals. In Major Long's first journey, he discovered vast tracts of muriatiferous soils and salt ponds near the sources of the Arkansas, silver ore in its bed, and thermal springs near its mouth. Such an expedition might introduce us to new Indian tribes, strengthen the bonds of social intercourse with others, and open new and profitable sources of inland trade with all. In Major Long's second expedition, he found a town of the Red river of Lake Winnipeg, settled by Lord Selkirk, at a great expense, called Pembina, actually within the 49th degree of N. latitude, and of course belonging to us. He extended our authority over it accordingly. With a view to another object, which appears to engage our attention—the establishment of a national University—these expeditions may prove useful. The University will require a National Museum, where specimens of natural history, collected by these means, from various quarters of our territory, may be deposited for safe-keeping, for the benefit of the student. But, as the inquiry is merely for information, and as those who vote for it will not be committed to support any ulterior measure that may grow out of it, I hope it will meet with no opposition.

Mr. BARTLETT said, that he had no objections, at a proper time, to call for any information which might be advantageous to the public interest. But he thought that the reasons which had been suggested by the gentleman from North Carolina, in support of the call which he had moved, were not sufficient. He had told the House that this exploring expedition might possibly discover many valuable tracts of country, and some tribes of Indians hitherto unknown. This might be so. But, for his own part, he was of opinion that more lands had already been discovered, than we could at present occupy with advantage; and, as to Indians, the tribes which we had already become acquainted with, had occasioned to the Government vast trouble and difficulty, and the sources of trade which had recently been opened to the West, had proved to be so many sources of perplexity, rather than of advantage. These discoveries, it was said, were to be conducted by our Topographical Engineers. But the officer who presided over that useful corps, had already told us, that the demand for their services was so great, that they were called away in every direction to lay out routes for roads and canals, insomuch that, when they were wanted for the most necessary purposes, the

Secretary of War replied that he had none which he could spare for the service. He thought there was no necessity to trouble the Secretary to make estimates of the expense of a service, when there were no Engineers to perform it. The Departments were called upon, very often, for estimates for objects of pressing and acknowledged utility, and he was in favor of sparing them the trouble of making such as were not necessary. Seeing, therefore, that no measure was likely to grow out of the resolution, if adopted, he hoped that the House would not consent to it.

Mr. SAWYER said, he hoped the gentleman who opposed this resolution did not charge the President with entertaining projects which this House could have no serious intention to fulfil. "Call you this backing your friends?" Whether it was a mere project or not, it had been planned and executed five several times; that is, expeditions of this nature, by the War Department, and as he thought without proper authority. The first expedition that was proposed, in 1803, by Mr. Jefferson, to send an expedition, under Lewis and Clarke, to trace the sources of the Missouri, was founded on an act of Congress, raising funds to defray the expense of this specific object. Now, the question is, not whether this is or is not an idle project, for such the War Department does not consider it; but, whether this House will continue to allow money, contrary to the Constitution, to be expended without an appropriation by law. Several similar expeditions, under the conduct of Capt. Pike, Governor Cass, and Major Long, have been performed; no law had passed to authorize them, yet the information they procured was valuable, and the benefits outweighed, perhaps, the evils growing out of this bad precedent. As to the scarcity of Engineers, one will be sufficient to conduct this expedition, and recruits may be obtained from graduates of the Military Academy. Mr. S. considered that, as a similar resolution had passed, having in view a maritime survey on our Northwest Coast, he thought the system should be completed, by instituting a corresponding one, by land.

The question being taken on the resolution of Mr. SAWYER, as modified by the mover, it was rejected.

Mr. WEBSTER offered the following:

Resolved, That it is expedient to provide by law for the examination and survey of the Peninsula of Florida, for the purpose of ascertaining whether it be practicable to unite the Atlantic Ocean and the Gulf of Mexico by a ship canal, to run from the neighborhood of St. Augustine, or from the mouth of St. John's river, on the Atlantic coast, to the neighborhood of the mouth of the Suwanny river, in the Gulf of Mexico.

Mr. WEBSTER observed, that, in giving the resolution its present shape, he did not intend to ask for an immediate vote upon it, nor to prevent its being considered, hereafter, by the usual committee. The subject itself, he thought to be one of great importance. His own attention was strongly called to it, some time ago, by an intelligent friend, as an object well deserving the serious regard of the Government. He had since given it so much reflection as to be convinced that it well merited inquiry, and he had resolved on inviting the attention of the House to it. Shortly before the commencement of the session, the interesting correspondence relative to this subject, between the Department of War and the gentleman who so ably represents the interests of the inhabitants of Florida, was published; and that correspondence had, indeed, indicated that this measure might be safely left to be brought forward by that gentleman. His kindness, however, had led him to prefer that he (Mr. W.) should pursue his original intention; and accordingly he had submitted the motion.

Whether such a communication as the resolution contemplates were practicable, within a reasonable expense, he could not undertake to say. That was the matter in regard to which information was sought. If practicable, its utility would hardly be doubted by any. It would cut off 800 or 1000 miles of most dangerous navigation, in the line of an important part, both of our coasting trade and our foreign commerce. The whole country would benefit by it. All the States on the Ohio and Mississippi, and those on the Gulf of Mexico, would find in such a communication, a greatly increased facility in getting to the sea, with their vast and various produce. The Atlantic and Commercial States would also feel their full share of the benefit, not only in the coasting trade, now so great and so rapidly increasing, but in their intercourse also with Mexico, and perhaps even with others of the new States of America.

It appeared to him, that, in applying the means of Government to objects of improvement, it was wise to select such as were of the most unexceptionable character, and of the greatest general importance. Such he supposed this to be. He might overrate its magnitude or its utility, or it might turn out to be impracticable. But, if, on examination, it should appear that such communication could be opened, it seemed to him to be one of the greatest objects connected with general improvement, which could engage the attention of Government. For the present, he wished the resolution to lie on the table, and should, hereafter, propose to give some further direction to it.

The resolution was ordered to be laid on the table accordingly.

Mr. LIVINGSTON offered the following resolution:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of repealing so much of the law for collecting duties, &c as prohibits the exportation of foreign distilled spirits in casks of less capacity than ninety gallons.

In introducing this resolution, the mover remarked, in explanation, that, as the law stood, spirits could not be admitted in casks containing less than ninety gallons; and hitherto but little inconvenience had been experienced from the restriction. But, now, it threatened to be very great. Our trade was every day opening to South America; and in those ports spirits must be put into vessels of no greater contents than 14 gallons, because they had to be transported across the mountains on the backs of mules. In most of those ports (he spoke especially of the ports of Mexico,) they had no casks of these dimensions, and it was contrary to their regulations to admit the introduction of staves of a proper size to make them. It became, therefore, very important, that our merchants should be allowed to export their spirits in casks of a size to suit the market. He had consulted with the gentlemen who were on the Committee of Commerce, and had learned from them that this measure had the approbation of the Secretary of the Treasury. He hoped therefore that it would pass without opposition.

Mr. NEWTON, (Chairman of the Committee of Commerce) mentioned for the information of the mover, that the subject had already been referred to that Committee and was at present under their consideration. Whereupon,

Mr. LIVINGSTON consented that his motion should lie on the table; and

It was ordered to lie on the table accordingly.

On motion of Mr. REED, it was

Resolved, That the Committee on Naval Affairs be instructed to inquire into the expediency of establishing a line of communication between the Atlantic and Pacific Ocean, through the Isthmus of Panama.

Mr. R. observed, on introducing this resolution, that the object it had in view was one which he considered of great importance. It was important as a means of obtaining information from those distant seas. Successive

nations on the Southern Continent were now becoming free; our Government had entered into treaties with them; and our commerce in that quarter of the globe was continually increasing. There were, besides, many of our whale ships constantly in those seas, on voyages of three years' duration. A more direct means of communication with those seas was very desirable, not only for the satisfaction of many anxious families, but in case of accident or disaster. The most important end, however, which he proposed by the resolution, was to provide a means of more promptly conveying orders and intelligence between the Executive and that part of our Navy which was stationed in the Pacific. No one could be ignorant of the delay and danger attending a voyage around Cape Horn, especially in the inclement season of the year. The communication he sought to have established, might be accomplished at a very small expense, and the objects which it would attain, were of the highest importance.

Mr. TRIMBLE laid on the table for consideration, the following:

Resolved, That the President of the United States be requested to lay before this House the Message of Mr. Jefferon, recommending an expedition across the Continent to the mouth of the Columbia river, together with any other document or information which he may possess, and think proper to communicate in relation to the same subject.

Mr. TRIMBLE introduced the resolution by observing, that it would probably be recollected by most who heard him, that the subject of establishing a post at the mouth of Columbia River, had been for several successive years before the notice of Congress. The gentleman who had ordinarily had charge of this subject, (Mr FLOYD) he regretted was not now here; and as he had heard a reference made to a letter of Mr. Jefferson on that subject, he had thought that that letter, if brought here and printed, would be acceptable and useful to the members. He had therefore been induced to offer the resolution.

UNCLAIMED DIVIDENDS ON U. STATES' STOCK.

Mr. LIVINGSTON called up the resolution offered by him some days ago on the subject of unclaimed dividends of United States' Stock, which proposes to call on the Secretary of the Treasury for a detailed account of unclaimed dividends on United States' Stock, &c

Mr. L. observed that, as the resolution had already undergone discussion, it would not be necessary that he should repeat the remarks which he had had the honor to submit when this subject was last before the House, especially as the arguments which he then urged had not yet been refuted. He would merely relate a fact which had since come to his knowledge. He had been called on, a day or two ago, by a respectable gentleman from Norfolk, who had permitted him, if necessary, to make use of his name, and who had stated to him the following circumstance: While at Norfolk he had received a letter from a person in this city, informing him that a certain sum stood upon the books of the bank as due to him for interest upon public stock, and if he would send on to that person the requisite power of attorney, he would procure it for him, on condition that he should have a certain portion (he believed one half,) for his trouble. The gentleman complied with the requisition, and thus obtained his money. This was a case in point, and strongly illustrated the necessity of the measure he was advocating. So long as these balances were kept a secret, who could tell how many such letters had been written? How the person who wrote this letter obtained his information, Mr. L. could not tell. He disclaimed all intention of reflecting on the officers of the Treasury or of the Bank of the United States, or on the Clerks they employed. He had no information of any impropriety on their part—he suggested none—he should charge none. But the knowledge of the matter had in this case, by some means, leaked out, and the same thing might have happened in other cases. He thought it unnecessary to add any thing more.

Mr. ALSTON said he could not consider the resolution offered by the gentleman from Louisiana, as proper to be adopted. No doubt it was impossible that information of this kind could be kept an entire secret; it would leak out. But, my life on it, said Mr. A. that, after you publish the list which the gentleman proposes, the money will not remain long in your Treasury. Nothing was more certain than that fraud, forgery, perjury, and every other means, would immediately be resorted to, for obtaining possession of it. Every document necessary to obtain the money, would, sooner or later, be brought forward—a scene of speculation would ensue that would not stop on this side of the Atlantic. He had no intention to dispute the word of the honorable gentleman from Louisiana. He had no doubt that all he had stated was strictly true. But see, said Mr. A. of all the persons to whose credit these balances remain, how few have yet found their way to the Treasury to demand them. He believed, nevertheless, that it might be right to do something on the subject, though he could never consent to spread to all the world a publication which was to show who might come and receive money for asking for it. The first measure he should recommend, would be to inquire what was now necessary to enable an individual to draw the money. He would then place guards and checks over these means of obtaining it. For himself, he had formerly thought that, in order to obtain a dividend, it was necessary to produce the original scrip, or whatever else it was called, the original evidence of the debt. But the gentleman from Louisiana told him that nothing more was needful than to bring the signature of the creditor. Although he could not consent to the resolution as proposed, he was in favor of raising a Committee of the House, and referring to them the whole subject. He suspected, that, in most cases, an inquiry would shew that the claimant in whose name the dividend stood was dead, and had left neither heirs nor creditors. He hoped the subject would go to a committee.

Mr. DORSEY proposed a course which he thought would obviate the difficulties on both sides of this question. It was, to modify the resolution in such a manner as to require that the *names* only of the creditors to whom these balances were due should be published, and not the *amount* which each had a right to demand. The case was one, he said, in which a right was concealed; it was proposed at once to give publicity to all the circumstances. But this, as had been already suggested, would give rise to perjury, forgery, and every species of fraud. But if the *amount* were concealed, this danger would be greatly diminished. Some cases of fraud might no doubt still occur. But the speculator would hardly rush blindfold into a scheme so fraught with danger. Men were not in the habit of committing fraud, unless they had some hope of success. But if the amount which they might claim was concealed, this hope must be very feeble, and the temptation consequently would be much diminished. Mr. D. concluded by expressing a hope that the measure he had proposed would meet the acceptance of the House, and obviate the difficulties which attended the subject. He, therefore, proposed an amendment, which he hoped the honorable mover would accept as a modification of the resolution.

[The amendment went to omit that part of the resolution which requires the amount of the dividend to be published.]

Mr. LIVINGSTON expressed his assent to the amendment, and his resolution was modified accordingly.

Mr. WOOD, of New York, said, if the disclosure pro-

posed by this resolution was necessary at all, this was not the proper mode of making it. The resolution was not broad enough to cover the case. If such a disclosure was necessary now, it would be necessary, upon the same principles, periodically, hereafter. Provision ought to be made for it by law, not by a resolution of this House. What positive proceeding, on the part of this House, said he, does the resolution contemplate? None has been disclosed, and what is the mover's ultimate object I do not know. If publication merely of the facts inquired for be his object, and such publication be necessary, it ought to be made bienially or trienially. Since men have abandoned their hands to their wits, substituted credit for capital, and by the machinery of Banks have manufactured such quantities of paper, a great distrust one of another has grown up; and I myself know that there are individuals who suffer their money to lie idle at home, or here in the Treasury, uncalled for, rather than trust it in the hands of Bank speculators, &c. One gentleman of large property I know has suffered his money to lie here for a series of years, and I am told by others that the same fact exists in other cases, involving a large amount of money. It is quite possible, therefore, that the persons to whom dividends are due on United States' stock may be aware of the fact, and chuse to leave it so, without desiring that it should be publicly proclaimed to the world. The policy of this measure, therefore, seemed to Mr. W. to be doubtful. He thought it advisable that the proposition should be referred to the Committee of Ways and Means to inquire further into the matter, and report whatever provisions they may deem expedient in regard to it.

Mr. McLANE, of Del. said, he felt very unwilling to embarrass the passage of this resolution, which the gentleman from Louisiana seemed to have so much at heart, and to be so perfectly convinced of the propriety of passing; but he was not altogether satisfied that the resolution, if passed, would be productive of any good, and he had some ground for apprehending that its passage would be attended with very considerable inconvenience. He did not mean here to speak of the frauds to which it might open a door: that objection had been already sufficiently adverted to. But he would suggest to the honorable mover of the resolution a single idea in relation to the ground on which he placed it. The whole object of the gentleman was, it seemed, to benefit those who were entitled to this money: it was proposed to legislate, therefore, exclusively for the interest of the owners of it. Now, said Mr. M'L. it would be well to consider whether, in passing this resolution, we are legislating for the interest of the owners, and whether the gentleman from Louisiana has not taken a partial view of the subject. In giving this public notice, Mr. M'L said, you not only give notice to the person in whose name the stock stands, or his heirs or Representatives, but also, to his creditors. You thus leave this property exposed to attachments in those States, and there are many of them, in which this process can be resorted to. The moment this notice was published, the creditors would cause the property to be attached; and, by making the existence of this property public, you embarrass the individuals to whom it belongs, instead of giving them any advantage. If the publication be liable to this objection, we ought at least to pause before we introduce a new principle into our legislation. It had been the policy of the Government, he knew very well, to expose the names of its debtors—every year Congress was furnished with a list of the persons who owe balances to the Government—and this is a wise policy. It exposes to the House the acts of its officers, charged with the public accounts, and moreover, the individuals themselves who are indebted; having thus a salutary effect in more ways than one. But he had never understood that it was decidedly the policy of the Government to expose its creditors; this was the first time in which it had been proposed for the Government to publish to the world a list of its creditors. These dividends on stock, &c. are but matters of account between these individuals and the Government; and, Mr. McL. said, he could see very little difference in principle between calling on the Secretary of the Treasury for transcripts of all the loan-office books, and calling on the Bank of the United States for a list of all the deposites and dealings of individuals with it. Congress had as much right to do the one as to do the other. No one could doubt the injustice of the latter measure, it being the interest and the right of every individual to keep his own account secret for his own information. This right, Mr. McL. appeared to think the passage of this resolve would violate. He thought the mover of it would do better to let this subject take a direction by which the whole business might be maturely inquired into, by a committee, who could correspond with the Secretary of the Treasury on the subject, and examine what course it would, on the whole, be proper to pursue in relation to it. He hoped that the House would not, under the influence of idle curiosity, or of any other motive, adopt in haste a measure which, more maturely considered, would not, perhaps, be agreed to.

Mr. LIVINGSTON observed, in reply, that he found his resolution had now to encounter a new objection, and one which, he must say, notwithstanding the respectable quarter from which it came, appeared to him of a very extraodinary kind. We are now told, said Mr. L. that we must not publish this list of balances, lest, forsooth, we should give the information to the creditor of the claimant, by which means it might come to pass that that creditor would get his just debt. And is this, asked Mr. L. an objection to my resolution? Even admitting, (which, however, I very much doubt,) that the creditor can attach these funds without the owner's consent, where is the injury or inconvenience? Who will get the money? Those who are entitled to it. Is this an objection? The danger arising from fraud, the gentleman has not stated, but has vaguely said that it would be proper to refer the subject for inquiry. But, sir, this subject is not now for the first time brought up to the notice of Congress. It was referred to the Secretary of the Treasury at the last session, and during all this time not a single objection has been adduced which ought to avail against the performance of this great duty. It is said, indeed, that the measure will operate solely for the benefit of our debtors, and not at all for the benefit of the United States. Agreed, sir, but does that prove that it is not a good measure—that it is not an *honest* measure? I agree with my old and valued friend from North Carolina, that, as soon as this list shall be published, the Treasury will very soon be disburdened of these balances; and so let it be. That is the very object of the resolution. It is precisely the effect I wish to produce. The gentleman from New York has reminded us that this money does not lie in the Bank, but in the Treasury, and that therefore the Bank derives no benefit from it. It is true that the Bank derives no benefit from it directly, but it does indirectly derive the whole benefit. It is true that this $226,000 lie in the Treasury, subject to the order of individual owners: but, sir, where is the Treasury? Does not all the money belonging to the Treasury of the United States lie in the Bank of the United States? and is it no advantage to that Bank to have nearly $230,000 lying in its vaults, which its officers know will never be called for? I therefore say again, as I said before, that, unless there is one sort of probity for individuals and another for Governments, the resolution proposed is no more than what we are in conscience bound to do. For one, I can see no difference between public and private morality—between the equity that binds a Government to its citizens, and that which binds every man to his neighbor. Nor do motives of inconvenience present themselves to obstruct the course of justice. The money is what we cannot use; it may be demanded at any moment, and is not subject to appropriation nor employment for any public object; and our withholding from the owners the knowledge of their dues, consists nei-

ther with the dignity of this Government, nor with its character for common honesty.

Mr. DWIGHT rose to suggest a single conideration on this subject. The argument which had been urged against the resolution appeared to him not to be founded in fact. That argument went on the supposition, that a person in embarrassed circumstances would let his money lie in the Bank of the United States with a view to keep it from his creditors. This certainly could not be the fact. In order to conceal it, was it necessary to leave it in bank? Might he not have drawn it from thence and put it in his own pocket? And as to its being liable to attachment without the owner's consent, he knew of no law by which that could be done. No, sir, said Mr. D. it is not the creditors of these perons who now suffer; it is their unfortunate heirs, who are entitled to the money, but ignorant of their right. But, sir, suppose it would be the effect of this resolution to take the money from a fraudulent debtor and pay his *bona fide* creditors. This, surely, is an argument in favor of the resolution, and not against it. It is a result which we ought not to endeavor or to wish to prevent, but rather to forward and ensure. I will vote for such a result, and approve the resolution for such a consequence.

Mr. WICKLIFFE observed, that he had, the other day, moved that the resolution of the gentleman from Louisiana should lie on the table. He had, since that time, paid some attention to the subject, and, the farther he proceeded in it, the more he became convinced of the difficulties with which it was environed. He rose at this time not to discuss the subject, or to oppose the resolution, but to move its reference to the Committee of Ways and Means, with instructions to report whether any provision was necessary to be made by law in relation to this subject.

Mr. STEVENSON, of Pennsylvania, said he was happy to find that this subject was about to take the course proposed by the gentleman from Kentucky. Mr. S. was himself very friendly to the principle of this resolution, but he should have objected to the resolution, or rather to the promulgation of the facts which it called for, without some provision for securing the Government and individuals against fraud. His wishes would be met by a reference of the subject to the Committee of Ways and Means, who would, he hoped, report in favor of communicating the information to the public; but he hoped such provisions would also be reported, in the form of a bill, as to prevent fraud from being practised in consequence of the publication. Mr. S. agreed with the gentleman from Louisiana, that it is unjust to withhold the knowledge of these unclaimed dividends from the public: it would be as dishonest, he thought, to withold the fact of the money remaining unclaimed, as it would be to withhold from the owners the money when demanded. He was willing that the publication should be guarded in any way that should be thought necessary to prevent the execution of fraudulent purposes founded upon it: but he hoped the facts would be communicated to the public. Nor are they now, said he, entirely a secret: the names of the persons who are thus creditors to the Government are known to numerous clerks and agents, who have the books and papers relative to these dividends in their possession: and I know no reason why they should have a monopoly of the knowledge which they may, if so disposed, turn to their advantage. If the facts were entirely a secret, it would be another thing. But it is not so: and I hope the facts, known to a few, will be made known to us and to the nation at large.

Mr. LIVINGSTON observed, that he should have no objection to the proposed reference, if it had contained an expression of the opinion of the House on the principle of the resolution, or any instruction to the Committee to guard against frauds. The latter he wished for, not because he himself apprehended any serious danger from this source, but because he perceived that there were other gentlemen who did apprehend it. He could not but consider their fears as unfounded; he could not perceive why they should suppose that the whole mass of our population were to turn forgers and swindlers, to obtain these balances, which, in most cases, were of inconsiderable amount, when sums so much larger were already exposed to their rapacity.

[Here Mr. L. was reminded by the Chair, that it was not in order to discuss the merits on a motion to refer to a committee.]

Mr. L. replied, that he did not intend to discuss the merits of the main question, nor was he conscious that he had done so; but he bowed respectfully to the authority of the Chair. He did not know why the resolution ought to go to a committee. A committee could tell the House nothing on the subject, which they did not already know. All that the House could obtain, would be the opinion of that committee; and they had already the opinion of its Chairman, without the reference.

Mr. COOK suggested that the resolution ought to be so modified, as to apply only to such balances as had remained unclaimed for a definite time, say two or three years, in which case he would cheerfully vote for it.

Mr. LIVINGSTON reminded the gentleman that it was already so worded as to apply only to those sums which had remained unclaimed for three years past.

The question was then taken on the motion of Mr. WICKLIFFE, and carried.

So the resolution was referred to the Committee of Ways and Means, with instructions to report thereon, as above stated.

TUESDAY, DECEMBER 20, 1825.

POST AT THE MOUTH OF COLUMBIA RIVER.

The resolution yesterday offered by Mr. TRIMBLE, calling for a letter of Mr. Jefferson, on the subject of a Post at the mouth of Columbia River, being called up—

Mr. FORSYTH suggested, that the letter was probably on record, among the documents heretofore transmitted to Congress; in which case it would not be necessary to call for it.

Mr. WICKLIFFE suggested, that the paper referred to had probably been communicated to the Senate, and was of a confidential character, in which case, it would not be proper to ask for a disclosure of it.

Mr. TRIMBLE said, that, if the message referred to was on the files of the House, it could be printed by the usual order to do so. He had himself made a search for it, without success; and, at one time, supposed that it had been misplaced during the late war. He was much obliged to his colleague for his suggestion that it was a confidential message, because *that in itself* was a decisive reason why the resolution should pass. In such cases, it would be always best to refer the matter in the shape of a call for information, to the President, so that the same Department which had originally made the document confidential, might consider how far the reasons of that confidence had passed away. If any reasons yet exist why a secret message of the year 1803 or 1804, should still remain so, they would be known to the President, and the paper would be withheld; but, if those reasons had ceased to operate, the House, in passing the resolution, would obtain the document without any restriction upon it, and the public would no doubt take some interest in the perusal of a message so long withheld from publication. Mr. T. had enlarged the call, so as to include any other facts or documents which the President might think proper to communicate, if any such should be in his possession.

Mr. ALSTON said, that he well recollected that the letter in question had been communicated to this House, under an injunction of secrecy. Whether the injunction had ever been taken off, he knew not. As well as he remembered, the paper was accompanied by a call

for a small appropriation. Whether any was made, he could not now certainly say.

The question oeing then taken on Mr. TRIMBLE'S resolution, it was adopted—Ayes 72, Noes 64.

Mr. COOK moved the following:

Resolved, That the Committee on the Public Lands be instructed to inquire into the expediency of making provision, by law, for the sale of the Lead Mines and Salt Springs, belonging to the United States, and in such manner as shall, by affording sufficient time for fair competition in the purchase thereof, secure the best price for the same.

Mr. COOK observed, in support of his resolution, that there existed, in Illinois, several very extensive tracts of land abounding with lead ore, and others containing rich salt springs, which were the property of the United States, and which were leased out, at present, for a very small revenue. According to the information which he had received, and which he believed to be correct, these mines were, under the present arrangement, very badly worked, and in consequence of the defective manner of working them, were of comparatively little value. There was little doubt that they would be worked in a much more thorough, and in a much more successful manner, if they were the property of individuals, instead of the Public. Within the course of the last year, nearly three millions of pounds of lead had been raised; of which no more than one hundred and four thousand pounds had been received by the Government as rent. He did not believe that this sum was any equivalent for the sacrifice which was now occasioned by the bad management of the mines. If the resolution should be adopted by the House, the Committee, to whom the subject was proposed to be referred, would seek for more particular and more authentic information. The House, he presumed, was not unwilling to know what the facts were; the information could do no injury; but, if obtained and published, would be not only interesting to Congress, but beneficial to the country at large. He had in his possession many documents, which would shew that what he had stated was correct, but which he had not brought with him to the House, not anticipating that the resolution could meet with any opposition, or that the subject to which it related would be drawn into discussion at this time. Although the information called for might not induce the House to resolve upon the sale of these mines, yet its production might lead to other useful results, and he trusted that gentlemen would consent to the call.

The resolution was agreed to without a division.

WESTERN ARMORY.

The House then took up the unfinished business of Friday, which was the question whether the joint resolution proposed by Mr. BLAIR, to direct a survey of the waters of East Tennessee, with a view to the location of a National Armory, together with the amendment thereto, proposed by Mr. MARABLE, for extending the examination to the waters of the Tennessee and Cumberland rivers, should be referred to the Committee on Military Affairs.

Mr. STEWART moved that the resolution and amendment be laid upon the table, but withdrew his motion at the request of Mr. MITCHELL, of Tennessee, who wished to submit to the House a few remarks on the subject generally.

Mr. MITCHELL then observed, that the subject of this survey was one, concerning which, the People, whom he had the honor to represent, had much feeling. He had always been taught to believe, that ours was a Government of equal rights; and the inhabitants of that district of country were of opinion, that they had a right to have its waters subjected to the same examination with the other waters of the West, in relation to their fitness for the Armory proposed. It had, by some means, happened, that those who were appointed by the President of the United States to make the examination, had failed to do it, so far as this part of the State of Tennessee was concerned; and yet it was notorious that that very district furnished one of the largest tributary streams which entered the Ohio—a stream which took the greatest range, excepting only the Missouri, of any of the Western States. Rising in Western Virginia, it passed through a part of the State of Tennessee; then taking its meandering course through the State of Alabama, it again crossed the State of Tennessee, and, entering Kentucky, fell into the Ohio, after a course of little less than fifteen hundred miles. He conceived that the country through which such a stream took its way was entitled at least to an examination; and, when properly examined, it would be found to possess strong claims to be made the seat of the contemplated public institution. He was not, in this respect, afraid of its being brought into competition with any other of the sites which had been proposed—not even with that of Pittsburg, although the gentleman from Pennsylvania seemed so much opposed to the comparison. It would not, he hoped, be considered obtrusive in him briefly to advert to some of the natural advantages on which its claims were founded. It possessed, in its forest woods, the most abundant material for the making of charcoal; and, as for pit coal, it was not found in small spots, here and there, but lay in huge masses—there were mountains of it. Its streams for water power would not lose by a comparison with those in any part of the world. In illustration of its fitness for establishments of the kind intended, he would state, that, in one county alone, he referred to that of Carter, there were twenty or thirty iron works now in successful operation. The iron made in some of these works might compete with that of Sweden; and as to sites, to say nothing of the others, he would mention only one: he alluded to the spot where the Embree bursts out of the Cumberland Mountain. The banks were so situated, that the whole river could be contracted into a very small space, and the dams to contain it admitted of being so constructed as safely to resist the full mountain tide, and this at a very moderate expense. On the one side of this river there was a boundless extent of iron ore, and, on the other side of it, vast masses of pit coal; so that, should it be contemplated to unite iron works with the armory, every facility abounded on the spot. Such being the natural advantages of this part of the State of Tennessee, it could not certainly be said, that the omission to examine it was occasioned by the engineers having determined at once, from a mere geographical acquaintance with the country, that it could not come in competition in this matter. The very reverse would be proved by a fair examination. It had been urged, as an objection against the resolution, that the former examination had been made by aged and experienced men, whereas now there was but a small part of the brigade which could be employed on this subject, and these were men of less age and experience, on whose report it would be unsafe to rely; but he had always supposed, that the end proposed, by confining this examination to engineers, was not that these gentlemen should have authority to settle the location of the Armory, but merely that they might obtain information to be laid before Congress, and that it was Congress and not the Engineers who were to fix the spot where the Armory was to be placed. Is not, asked Mr. M. light our object? and though it may not be quite so brilliant as that which proceeded from the former Board of Engineers, still let those whom we have, give us what light they can. The Secretary of War, of whose capacity and zeal for the interests of the country none could entertain a doubt, had assigned to these individuals a work of the greatest national importance. He had employed them in tracing the route for a great national road of 1100 miles in length—a road, the completion of which would draw from twenty-five to thirty

millions of dollars, out of the Treasury. Were they then incompetent to examine the site of an Armory that would not cost one-fourth the money? Such an argument was certainly not tenable. We, Sir, it is, who must determine the place of this establishment, not the Engineers; and if it is Congress who is to determine it, is it not just that all who have any claims should be alike represented on this floor? Sir, give us justice, and we ask no more. We come before you, said Mr. M. not with a dictatorial air; we come as suppliants, and we beg only that our claims may be examined. If a request thus reasonable shall be refused us by our Government, will not the refusal be calculated to fix a thorn in our side, which will long continue to be felt and remembered? But other gentlemen have urged, in opposition to the resolution, that very important duties have already been assigned to the Engineers, and that one object is enough to be attended to at one time. But, Sir, let this argument have no influence. We do not ask that the work, now in the hands of the Engineers, should be suspended, or in the least impeded; when they reach New Orleans, that work will have been finished. They must return by some route, and we only ask, that, when they are returning, they may take this examination in their way. Gentlemen say that this will occupy much time. But suppose that it should occupy even a month, or two months; this is the long session of Congress, and there will be full time to receive their report. He hoped that the opposition to so reasonable a request would be withdrawn. He hoped that gentlemen, instead of thwarting and resisting it, would lend them a helping hand. If the resolution was not in a form to suit them, he wished they would put it into such shape as would suit them better: If they thought it would be improved by adding to it the words if practicable, he had no sort of objection, and, since he was up, he would beg to amend the resolution by making that addition. Here a paper being handed to Mr. M. he observed, that a member from New Hampshire, near him, had just put into his hands the form of an amendment, which he entirely approved, and would very cordially adopt. It was in these words: "Provided that such examination may be made by them, without interfering with the performance of the duties on which they have been already ordered."

This amendment was agreed to by the House; and the question then recurring on referring the resolution as amended—

Mr. ISACKS said, that, after what had been said in favor of the resolution, he should not have thought it necessary to trouble the House with further remarks, but that he felt it his duty to call up an amendment which had been offered by one of his colleagues (Mr. MARABLE) on a previous day. Upon that he wished to say a few words, and should ask the House to adopt it.

[The amendment was sent to the Chair by Mr. I. which was to strike out the words "Waters of East Tennessee," and insert the "Waters of Tennessee and Cumberland Rivers."]

Mr. ISACKS said, that region of country, extending from the Appalachian Mountain to the Mississippi river, and lying between the parrallels of 35 and 36½ degrees North latitude, was called the *State of Tennessee*. But it had happened in an evil hour, that the distinctions of East and West Tennessee had found their way into our statute book, and had, from that time, been a fruitful source of mischief; and he was very sorry to see that same distinction used here, with a kind of technical meaning, in the forms of legislation. A little longer, and a stranger, with a superficial historical knowledge on the subject, would suppose that really there were two States, of East and West Tennessee, as there were two of North and South Carolina.

The terms of the amendment were not only more proper, but more appropriate to the subject. These rivers and their tributary streams, water the whole State of Tennessee, and large portions of the States of Virginia, Alabama, and Kentucky. They were Western waters entirely in the Western country; they were branches of the Ohio, embraced by the letter and spirit of the law authorizing the establishment of an Armory on the Western waters; they were specially embraced in the instructions to the Commissioners.

But this amendment had been opposed, with some warmth, by one of his colleagues, (Mr. COCKE,) on the ground, that what he called West Tennessee had been surveyed. Yes, it is true that the Commissioners did pass through some of the country West of Cumberland Mountain; and he would not, as that gentleman had done, charge them with treating that portion of the country with "negligence and contempt;" but how much care they thought necessary to take in the examination and making the estimates for the different sites there, their own report would show. And, from that and other evidence, it did appear that, in the examination of the sites on these waters, they only spent but a few weeks; whereas more than twelve months had been devoted to the survey, examination, re-examination, estimating, and re-estimating, the advantages of sites in another neighborhood, and that, too, almost in the neighborhood of another Armory previously established. If the same time had been spent, and the same accuracy attained, in the examination of sites in Tennessee, we would not now find any reason to desire a resurvey; but, although they were there, they only gave a passing call at sites where there are cascades of water; and all the materials in abundance for the manufacture of arms, stock, lock, and barrel, almost in sight of one another. At some, their visit was so short, that the people in the immediate neighborhood of the place did not know they were there till they had departed; and if by chance they saw them, neither knew who they were, or what business they were upon. They likely did not think any thing more was necessary; but one thing is evident, that such examinations do not satisfy those who honestly believe they have claims. Something like equal attention, on such occasions, will always be found necessary. All cannot be accommodated, yet all have a right to have the evidence of their claims fairly taken and presented.

He would mention one consideration which he thought deserving of notice. As the price which it would cost the Government to purchase some of the sites, had formed a considerable item in the estimates of the cost of erection at some places; and an inquiry had this session been directed, on the motion of a gentleman from Kentucky, as to the cost of one site; the Legislature of Tennessee, subsequent to the time when the Commissioners were there, had, by law, reserved all the vacant lands within five miles of several sites, for the use of the United States, provided the Armory should be located at them.

Mr. MARABLE observed, that it was true that West Tennessee had been, in some sort, examined by the Engineers, but very partially. It was within his knowledge that, at some of the sites which those gentlemen had examined, they spent but one or two days. The advocates of the amendment did not beg for mercy of this House; they asked only for justice; and if it were a fact that a full examination of West Tennessee had never been made, it was only justice that it should be. He did not, in this instance, ask for the examination with any exclusive view to that district which he represented, though some gentlemen might, perhaps, be so influenced. For himself, he was not vain enough to suppose that his powers of enforcing such a claim, did he advance it, were superior to those of his colleagues, or equal to them. All he asked of them was, that they would suffer his amendment to remain; it could do no injury; and even if it were understood, as it seemed to be by some gentlemen, that the spot for the Armory was already fixed, or nearly so, yet it might happen, at some future day, that the People

of the Western States might ask that another should be erected, in which case it would be desirable that the various sites which might enter into the competition, should all be fairly and fully examined.

Mr. COCKE said, he regretted the necessity that he was under of making a few observations in reply to what had just fallen from his colleague. Really, he said, if time had allowed for the examination now proposed, he would most cheerfully have acquiesced in any measure which might have been desired, in order to effect it. But, under an impression that no examination of a site for an armory could be made, so as to be reported to Congress at the present session, he was averse to a measure which would throw the establishment of an armory in the West beyond the present session. If, however, it should be determined that the site of an Armory was not to be fixed at the present session, he would vote cheerfully for the examination, not only of the country proposed by the amendment, but of every other section of the country, of which an examination might be asked. But suppose this amendment were to be adopted, would his colleague, or any other man, pretend to say, that, during the present session, any examination, such as it contemplated, could be made and returned to this House? He thought not. He adverted to the wide extent of ground covered by the amendment, which, he said, embraces all the waters of the Cumberland and the Tennessee; includes a portion of Alabama, and portions of East and West Tennessee, a portion of Kentucky, the Western portion of Virginia, and, he might add, part of North and South Carolina, and part of Georgia. Was it expected that the gentlemen now surveying the road to New Orleans could survey all this country? He was willing to vote for surveying any part of the country; but, knowing the facts, how could he consent to go into an examination of a site for an Armory in West Tennessee, without a previous examination of the sites in East Tennessee, where no examination has yet been had? If an examination were to be made in East Tennessee, he had no objection to surveys being also made any where else. He had risen to repel the idea that he had any objection to the examination of sites in West Tennessee: he had no such objection. If the natural advantages of West Tennessee entitled her to preference in the location of an Armory, in the name of justice let her take it.

Mr. ISACKS said, he should only say a few words in reply to the remarks of his colleague, (Mr. COCKE.) The House had already manifested a disposition to refer the resolution to a committee. Should that be done, the amendment could not possibly embarrass the inquiry—it gave to it a wider range—it included as well what was desired on the Eastern side of the mountain, as the West. The committee, if they presented any report (as he hoped they would) to the House, could either enlarge or confine it, according to their views of the subject. And, as to the survey, he was at a loss to find the difference between none at all, and one which rather tantalized expectation, than satisfied it. He said he hoped there would be a re-examination, for another reason. If, contrary to the expectation of several States when this law was passed, and the fair construction which should be given it, the present Armory should, on account of present, and not future considerations, be located near the head waters of the Ohio, the time would come when the Government might think it necessary to establish another among the People who would be expected to use the arms when made—and, while the subject is still open, he hoped something would be done to prevent the section of country to which the amendment referred, from being forever concluded by the survey already made. He hoped the amendment would be adopted, and the resolution take the course best calculated to effect the object of a re-survey.

Mr. LINCOLN said he was satisfied, from the remarks which had fallen from the gentlemen from Tennessee, that the subject should be further examined, and that we ought not to rely entirely on the report of the Commissioners, which furnished all the information we have in reference to the location of a Western Armory. They have examined the subject only as Engineers and as artists, considering only the amount of water power and circumstances relating to the mineralogy and geology surrounding the sites they have examined. We must take a more enlarged view, and consider the subject as politicians. We must have reference, in our decision, to the centrality of the several positions examined, both as to territory and present and future probable population. We must particularly consider whether the People of the West will be satisfied by the measures we adopt: for he understood the proposition for an Armory to have been adopted rather to satisfy that portion of the inhabitants of our country, than from there being any pressing necessity for the measure. But, if the result is to be, only to produce such contests as we have witnessed—where Greek met Greek; if our proceedings are to produce no satisfactory result, but only to occasion a demand for doing more and more; it seemed to him proper that we should pause. But he rose principally to urge the inexpediency of establishing a National Armory any where; he saw no more propriety in establishing a National Armory than a National Manufactory of Stationery, or any other article indispensable for our use. It would be better to rely on the skill, industry, capital, and enterprise, of our citizens, in their private capacity; we should be better and more cheaply supplied with all we need than by Governmental establishments. He was not in favor of extending the arm of governmental power to obtain that which will be supplied to us much better without. National establishments of this kind were always conducted badly in comparison with those under the direction of individual interest. The subject should now be viewed as an original question, and we should feel at liberty to judge of the merits of the object as well as to consider the question of locality. He apprehended that, on this subject, as on others connected with internal improvement, we were anticipating our means. After giving the People of the United States hopes as to the accomplishment of this and similar objects, he feared we shall fail, like insolvent debtors, to fulfil their expectations. Already a gentleman from Virginia has proposed a reduction of the salt tax, in which he would cordially concur, and he only regretted that the member had not gone farther, so as to reduce the tax on the plough and sickle—the tax which sinks our navigation also; and had not proposed a system of reduction which should compel the Government to confine its expenditure to objects of unquestionable constitutionality. On the whole, he hoped, if it was intended to establish a National Armory on the Western Waters, that the proposition of the member from Tennessee might prevail, as that State seemed to have been neglected in the surveys made.

Mr. STEWART said, he rose for the purpose of renewing his motion to refer this subject to the Committee of Military Affairs, to whom several propositions, together with the Report of the Commissioners, had already been referred. This committee would consider the whole subject, and report a bill for the establishment of the Armory at once, or further surveys, if they were by them deemed necessary. Before submitting this motion, however, he felt himself bound to assure the gentleman from Tennessee, who appeared so solicitous on this subject, that his motion was not made from any hostility to Tennessee, or from a disposition to do *her injustice*; but from a conviction that the adoption of the resolution, in its present shape, would be attended with no good, but many bad consequences. It would have the effect, in his view, if not to defeat, at least to protract, the establishment of an Armory in the West to a very distant period. We will

open a door, said Mr. S. which it will be found very difficult, if not impossible, to close. Send Engineers to East Tennessee, and for the same reason, and with general justice, you will be bound to send another set to Illinois, Kentucky, Indiana, West Virginia, and Pennsylvania—all have sites which have not been examined; but the amendments also propose the re-examination of those which have been examined and reported on. Thus the whole work is to be revised: where will you find Engineers? They are not to be had. When will you receive their reports? and, when received, how are you to decide? The reports are at war with each other, one recommending one site, and another a different one.

It was now, Mr. S. said, nearly three years since measures were adopted by Congress for the establishment of this armory—a board of the ablest and most experienced Engineers, in this, or perhaps any other country, was promptly constituted by the Executive, with proper instructions to carry into effect the object of Congress, by examining the Western waters, with a view to the location of the Armory at the most suitable position. The Board at once entered upon the discharge of the duties assigned them. After nearly two years of faithful, active, and untiring industry, they had communicated a very able and voluminous report, which, if examined, could not fail to convince every gentleman of the impartiality, ability, and fidelity, with which they had discharged their duty. From this report, it appeared they had visited all the Western States, as low down as Alabama, wherever sites were to be found sufficiently near to the great navigable streams, so necessary to the supply of the Armories and the distribution of the arms. The reasons of not visiting East Tennessee and the interior of the Western States, must be obvious. They did not furnish those indispensable facilities of transportation and distribution, afforded by the sites found at the head of the great arteries of communication.

Mr. S. contended, that, to adopt this resolution, after what has been said, would be a direct vote of *censure* upon the Board—it was saying, Gentlemen, you have been unfaithful and incompetent—your work must be revised; he, for one, was not prepared to give such a vote, nor would gentlemen do so who would give their report a full and impartial examination.

Another reason against the resolution, as it now stands, is to be found in the fact, a fact which he had from the highest and best source of information, that, to divert the Engineers sent to examine the Southern Road, from the discharge of that duty, would defeat the great object for which they were ordered on that service, which was to enable the Board to communicate a report on that subject to Congress during the present session.

Mr. S. however, protested against the argument of the gentleman from Maine, (Mr. LINCOLN,) who alleged that there was no occasion for an armory in the West; so far from this, he thought that, if not now, there soon would be, occasion for two. There were two in the East, and, looking to the rapid increase of the population, the wealth and resources of the West, and to the extent of its territory, he could see no good reason why two should not also be established there. The Board of Commissioners, for reasons that were unanswerable, had recommended the present armory to be established at the *head* of the Western navigable waters, which at once facilitated the procurement of supplies, and the distribution of the arms. Had the resolution of the gentleman from Tennessee proposed the examination with a view to the establishment of a second armory, he should not have objected to it. Upon the whole, the report of the Board he considered able and satisfactory. The period had arrived when the question should be settled, the site fixed, and the work commenced. With a view to prevent further delay, he therefore renewed his motion to refer the resolution, with the amendments, to the Committee on Military Affairs.

Mr. COOK said, he thought it was not necessary to refer the resolution to the Military Committee. Most of the Western country that had set up any claim to this establishment with any propect of success, had already been examined. The particular section, however, that now sought an examination, from what had fallen from gentlemen, he thought entitled to an examination. The Commissioners now on duty in the South, it had been stated, would very shortly be at leisure to make that examination, and it was obvious that there would be some reluctance on the part of gentlemen residing both in, and out of Tennessee, to establishing this work, unless this country should be previously examined. With a view, then, to giving satisfaction to those thus situated, before the subject came up, he thought it desirable that the resolution should speedily pass, and not be committed. *This*, it had been said, was the time to act. But if we commit this resolution, and the object *should finally* be considered of sufficient importance to render its passage necessary, it must be obvious that it was not likely to be adopted until the favored moment might pass by. In order, therefore, to prevent division amongst those interested in having a Western Armory established, it was important, before that great question, if a great question it could be called, should be brought up, that all well founded dissatisfaction should be removed—and it was apparent that, unless this country should be examined, it would be the source of dissatisfaction, and probably of division, in acting on the subject. It was probable, indeed, that, on that question, we should see Greek meeting Greek, and by our own divisions be defeated. He said if was true there were other points in the West, possessing eminent advantages for such an establishment, that had not been examined; but, owing to the sparseness of the population of the country in which they were situated, had not been brought forward. One such, he believed, from information, and such too, as he relied on, would be found in his own State, towards its Northern borders. Its contiguity to the lakes, which bounded us on the North, and its convenient location to an immediate outlet through the Mississippi and the Missouri rivers, to other portions of our frontier, gave it advantages, that, he had no doubt, would at some day attract the attention of the Government, and secure to it a just share of the public patronage. The amendment offered was unnecessary. The country it embraced had been examined, and that ought to be sufficient to satisfy the People residing in it. He hoped the reference to the Committee would not be made.

Mr. STEVENSON, of Penn. was in favor of the reference, and wished briefly to state the reasons which induced him to vote for it. He thought that, as other parts of the general subject had been assigned to the care of the Committee on Military Affairs, it was proper to assign the whole to that committee. If the House had entrusted that committee to make some of the inquiries on this subject, why should they not be entrusted to make all that were to be made? If, after taking the proper measures to inform themselves, that committee shall not be satisfied that a full examination has been made by the Engineers, they will so report to the House. They certainly will enjoy a better opportunity of knowing all the facts of the case correctly, than the House, as a body, possibly can. If he knew how to do it consistently with the rules of order, he wished to point out to that committee the particular office to which they might apply, and where they would obtain information bearing directly on the point now in controversy. And, since, in the course of this debate, reference had more than once been made to the character of the Engineers formerly employed, he begged leave to read a letter which went strongly to shew the circumspection and prudence which distinguished those gentlemen, and with which, as a Board, they had constantly acted. [Here Mr. S. read part of a letter addressed by the Commissioners appointed to survey the Western waters, to the

Secretary of War, in relation to a letter received by them from Mr. Rhea, in which that gentleman recommended their attention to an examination of East Tennessee.]

Mr. MALLARY was opposed to the reference to the Military Committee. Although it was true that the Commissioners were now employed on a previously assigned duty, yet they could act in this matter, on their return, and it was desirable that the examination, if made at all, should take place as early as possible, in order that the report might reach this House before it rose. If any delay took place, the report, instead of being made to Congress, would have to be made to the President. If gentlemen wished the former, they ought to expedite the measure, and not delay it by sending it to a committee. The effect of the examination might indeed be, that the gentlemen from Pennsylvania would be disappointed in their expectations of having the Armory located at Pittsburg. That hope, it was possible, might be blotted out forever, but, should this be the case, what was that disappointment to this House, or to the country? The duty of Congress regarded the *general interest*. All that was sought by the resolution was, information. Whom would this hurt? Possibly, Pittsburg. But what then? That was nothing to the Union at large. It was necessary that the House should act with promptitude on this matter. The public good required it, and they could do this without the opinion of the committee, as well as after they had called and waited for it.

Mr. WARD, feeling opposed to the course proposed by the resolution, moved that it lie on the table.

The question being taken on this motion, it was negatived—and, the question being then put on its reference to the Committee on Military Affairs, it was carried—Ayes 85, Noes 79.

DESERTION IN THE ARMY.

An engrossed bill "making alterations in the present mode of paying the enlisted soldiers of the United States," was read a third time.

Mr. HAMILTON said that he should not, at this late hour, fatigue the House by entering into a discussion on the provisions of the bill under consideration, without, indeed, some gentleman present should state any objections to its passage; as it involved a measure not only advantageous to the service, but (as the Committee on Military Affairs thought,) ultimately beneficial to the soldier himself.

Mr. MITCHELL, of Tennessee, observed, that the bill involved very important principles, and appeared to be calculated to inflict very serious injury upon the soldier and his dependent family. The object it proposed was to prevent desertion—but he did not think it at all calculated to obtain this end. When a man had once determined to forsake his post and desert the standard of his country, it was not one or two dollars consideration which would be likely to detain him. If any measure of this character must be resorted to, he thought it would be better to enhance the present allowance of the soldier by adding two dollars a month, and retain that addition till the expiration of the time of his enlistment. This might have some little effect; but, to deduct two dollars from his present monthly allowance, was to cut off his only means of supporting his little family. The misery of a wife and children, thus rendered destitute, would have more influence in producing desertion than almost any other motive which could be brought to bear upon a man. There might, too, be a lover in the neighborhood, and such considerations, every body knew, were calculated to exert a strong influence on the uninformed minds of our soldiery. He thought it would be better, instead of passing this bill, to lay it on the table until some better means could be devised for accomplishing the object proposed. Gentlemen should not forget that those who are now enlisted in the public service will not be there forever, and they ought to take care, lest, whilst devising means for retaining those whom we have got, they throw obstacles in the way of obtaining others when these are gone. By depriving the soldier of the command of his own purse, a very serious discouragement will be presented to enlistment. But, as to preventing desertion, if no considerations of honor, or even of life, had been found sufficient to prevent it, he felt confident that no two dollar considerations would have greater power.

Mr. HAMILTON said he would thank the gentleman to withdraw his motion for a moment, to allow him to reply in a few words. He apprehended, as the question was not one of very serious importance, the House might come to a decision on it in a very few moments at the present time. [The motion was accordingly withdrawn]—When Mr. H. remarked, that some of the observations of the gentleman from Tennessee had served rather to increase than diminish his confidence in the wisdom and policy of the measure under consideration. If the passage of the bill will have a tendency to prevent those from enlisting who would otherwise have made up their minds to desert, in case they enlisted, on the first convenient occasion, it would unquestionably have a salutary effect on the interests of the Government; or if it prevented those from enlisting who were burdened with families, the effect would be equally advantageous: for it was well known to those who had any experience on the subject, that soldiers with wives and families, occasioned serious embarrassment to the operations, as well as injury to the discipline of an army; and if the bill has the effect of preventing such from enlisting, he should say that it subserved an important object. What really is the proposition before the House? Why, to provide, without trenching on the substantial comforts of the soldier, that the Government should hold in its hands, by savings from his pay, a sum which should indemnify the country for the loss of his service, clothing, and accoutrements, in the event of desertion; whilst, on the other hand, this accumulating fund should operate as a reward to the soldier who should serve out his term of enlistment with fidelity and honor. That it would have this effect, he had no doubt, from those calculations which form the impulses of human action. But suppose the bill to be neutral in its tendency, it would, even in this view, be harmless in its operation. But it was an experiment which ought to be tried, as the evil which it proposed to remedy, was one of serious and increasing magnitude. The measure itself bore the sanction of the emphatic recommendation of two Secretaries of the Department, founded on a letter from the Major General and Commander in Chief of the Army, who, in his report of the last session, had taken a strong, intelligent, and practical view of this subject. He would call the attention of the House to a few extracts from this communication, (which Mr. H. here read.) He said he would conclude by hoping that a measure which had been so well considered by those who best, from an enlarged experience, understood its bearing and probable effects, would pass, without further opposition, as enlistments were now going on at the several depots, and if any legislation was necessary on the subject, it was important it should be done at once, as the act would be prospective entirely in its operation.

Mr. TRIMBLE said, that he had risen for the purpose of making an inquiry of the Chairman of the Military Committee, (Mr. HAMILTON,) and if the answer to it was such as he expected it would be, he did not see how the House could refuse to pass the bill. By a report, submitted a few years since from the Department of War, the House were informed that the number of desertions amounted, if he recollected rightly, to about one-fourth of the entire number of enlistments, and the then Secretary had recommended this measure, for the best possible

reasons. He remembered that he had then felt satisfied that such a bill ought to pass, and, if the same fact still existed, he should still retain the same opinion.

Mr. HAMILTON, in reply to Mr. TRIMBLE, said that he had the best authority for believing, that the evil had rather increased than diminished.

Mr. BUCHANAN said, that he was sorry this subject had not taken the accustomed course. It had not been referred to a Committee of the Whole, and had been ordered to be engrossed for a third reading before it was printed. He did not think it had received that portion of attention from the Members of the House which its importance demanded. He had been opposed to the measure at the last session, and he had not as yet seen any reason to alter his opinion.

It is certainly of great importance, said Mr. B. that the rank and file of your Army shall be as respectable as possible. Any measure which would have a direct tendency to defeat this result must be impolitic. In case this bill should pass, what will be the probable result? At present, in consequence of the low wages given to laborers in many portions of the country—men who are respectable in that class of society enter the ranks of your Army; as soldiers, they receive $5 per month, and are fed and clothed by the Government; many of them are bound to Society by domestic ties. They have wives and children they have parents, dependent for support on their exertions. Take from them two dollars per month, as this bill proposes, and you reduce the pay which they will receive to a monthly allowance of three dollars only. You thus deprive them of the means of assisting to support those who are in any degree dependent upon them. The consequence will be, that none but the most worthless men in the community will enter your Army. You destroy its moral character; and, in this manner, there is great danger that you will increase instead of diminish the crime of desertion.

Mr. B. said, that, in his opinion, much weight should be attached to the remarks of the gentleman from Tennessee (Mr. MITCHELL.) If death, and the other severe penalties already denounced by your laws against the crime of desertion, were not sufficient to deter the soldiers from committing it, would the distant prospect of receiving the two dollars per month at the end of their term of service, be productive of this desirable result? He thought it very doubtful, particularly as the new recruits under this system would generally be taken from the dregs of society.

Mr. B. observed, that the House had no correct information before them, as to the number of desertions during the last year. He thought this information should be obtained. It was not known whether that crime had increased or diminished. Besides, the measure was one of importance, on which the House should not act hastily. He therefore moved to lay the bill on the table.

The motion was carried by a large majority.

And then, the House adjourned.

WEDNESDAY, DECEMBER 21, 1825.

SCHOOL LANDS IN OHIO.

On motion of Mr. VINTON, of Ohio, the House went into Committee of the Whole, Mr. McCOY, of Virginia, in the Chair, on the bill "to authorize the Legislature of the State of Ohio to sell certain land heretofore appropriated to the use of Schools in that State."

Mr. VINTON moved to amend the bill, by adding to it a new section, to the following effect:

[This section proposed, in substance, that if the proceeds of lands, belonging to any township or district, shall be insufficient to the support of schools within the same, the Legislature of said State shall have power to invest the same until the whole proceeds of the fund belonging to such district or township, shall be adequate to the permanent support of schools therein.]

Mr. V. observed, in explanation, that it would be perceived, by a reference to the bill, that the tracts of land proposed to be sold, were owned separately by the townships and districts in which they lie; and that, as the funds arising from the sale of the land in each township, might not prove sufficient for the support of the schools in that township, the object of the amendment was to provide, that the interest as well as the principal arising from the sale, should be vested in securities until the whole amount should have become sufficient for that object.

Mr. FORSYTH asked from Mr. VINTON an explanation of the motives which led to the insertion of the first proviso of the bill; which is in the following words:

"*Provided*, said land, or any part thereof, shall, in no case, be sold, without the consent of the inhabitants of such township or district, to be obtained in such manner as the Legislature of the said State shall, by law, direct."

Mr. VINTON observed, in reply, that the reason for that proviso arose from the existing state of things in Ohio. The land, as he had stated, instead of forming a common fund, belonged separately to the several townships and districts of that State; each of these has a sole and exclusive interest in its own land, and the memorial of the Legislature of Ohio, in compliance with which this bill had been drawn, while it asks for the power to sell, does not wish to exercise that power, unless the townships concerned give their assent to the sale. It was possible that some of these townships would be unwilling that their lands should be sold; and the object of the proviso was to leave them an opportunity of expressing their will on the subject. It was inserted merely with a view to preserve their rights.

The Committee then rose, and reported the bill as amended; when

Mr. LATHROP proposed to modify it in such a manner that such townships as wished, might be permitted to retain their interest, and that the Legislature should not have the power of investing it without the consent of such township.

Mr. M'COY was opposed to the amendment, and preferred the original bill. He wished neither that the Legislature should have power to sell the lands without the consent of the townships, nor to appropriate the money after they were sold. He thought that the people of the townships ought to have the sole control of the lands reserved for their benefit.

Mr. VINTON observed, in reply, that this was the only school fund which the State possessed, and it was probable that the proceeds within many of the towns, would prove very inadequate to the purposes of education. If the money were permitted to be invested, and suffered to accumulate, the purpose would be answered better in the end than by portioning it out in small sums, which would not avail to obviate the present necessity of taxation. From the state of feeling which prevailed in Ohio, in relation to these lands, it was to be presumed that the Legislature, although it asked for the power to sell them, would be extremely solicitous, in the exercise of that power, to conform itself to the wishes of the towns. He was of opinion that the Legislature of the State was the proper body to regulate the whole subject of public education, and that it ought to be placed under their control without trammelling them by unnecessary restrictions. It would be observed that the amendment did not require the Legislature, but only went to permit them, to do so. The amendment proposed by the gentleman from Massachusetts, (Mr. LATHROP) would be found, in practice, a matter of great perplexity, and that the measures it involved would be of an intricate and difficult character.

Mr. WHIPPLE rose to inquire whether, in case

the bill should pass, there existed in Ohio any regulation which would secure to the children their education while this fund should be accumulating.

Mr. VINTON replied, that the Legislature had adopted the best system in their power, and the bill would leave it to their discretion to determine, whether the fund obtained by the sale should be employed in the mean while or not. This would depend, in a great measure, on the amount obtained by taxation.

Mr. McCOY observed, that many of the Townships in the State of Ohio had recently been settled, and that their inhabitants, having to struggle with the difficulties of a new country, were in greater need of aid on the subject of education, at this time, than they would be at any future period; and though the amount arising from the sale, or from the leasing of their lands, might be very small, yet it was better that they should have it now, in the time of need, than to suffer them to accumulate, so as to become productive hereafter, when the need of it would not be so great.

Mr. COOK suggested the expediency of adding a proviso, that these lands should not be sold at a less price than the public lands of the United States. They amounted, if he was rightly informed, to somewhere between seven hundred thousand and a million of acres, which would all be thrown into the market at one time; and unless some restriction of this kind were added, he apprehended that this valuable fund might become the prey of speculators.

Mr. CAMPBELL observed, that the suggestion of the gentleman from Illinois, (Mr. COOK) appeared to be offered in a good spirit. But he was apprehensive that, if it was adopted, it would be found impossible to effect any sale of the lands at all. Some of them were of poor quality, and would not bring twelve and a half cents an acre. The restriction would occasion great perplexity, and the funds, when collected, would amount to a mere trifle. Mr. C. observed, that a quantity of land, equal to one-thirty-sixth part of the Virginia Military District, as that part of Ohio was called in which he resided, had been originally reserved for the support of schools. There were eighteen quarter townships, and three sections of such land. It had been leased for a term of years, but had been in its result very unproductive. After various attempts, it had been found impracticable for the State to avail itself of the friendly purpose of Congress by any other means than by obtaining the leave to sell the lands. He presumed that if such leave should be granted, the Legislature of Ohio would of course adopt some such regulation as that which had been recommended by the gentleman from Illinois, in order to prevent a sacrifice of the lands. But he thought that it would be best to leave it to that Legislature to fix upon the minimum which they should deem most expedient. He was aware that, in the opinion of some gentlemen, the Legislature of Ohio had committed a great error in making this application: but he had just observed, in one of the morning papers, that the Legislature of Georgia had been obliged to sell the lands appropriated for the support of Franklin College. The lands had been sold, (according to the statement published) and the amount vested in Bank stock. If the statement was unfounded, he presumed the gentleman from Georgia would correct him.

Mr. STORRS thought that the words "any productive funds," in that part of the bill which relates to the investment of the proceeds of sale, were very indefinite, and open to misinterpretation and abuse. It was very important that the fund should be secured against fraud or imposition; and he, therefore, moved to strike out these words, and to insert, in lieu of them, "in the public stock of the United States, or of any of the States."

Mr. VINTON said, this bill, having for its object to increase the means of education in the State of Ohio, much interest in its success is felt, both by the People and the Legislature of that State. It proposed to effect this object by a change of the fund heretofore provided for the support of schools in the State, without giving any new direction to the use. The whole fund of that State, for the support of schools, is in land, which the bill now under consideration authorizes the Legislature to sell and convert into money, to be invested in some productive fund, the proceeds of which to be applied to the support of schools, instead of the proceeds of the land, as at present.

It will be proper, for the information of the House, to give some account of the origin of this fund, its past productiveness, present condition, and the reasons that have induced the Legislature of Ohio to ask of Congress the assent contained in the bill. Previous to the admission of the State of Ohio into the Union, a tract of 640 acres, or one section of land, in each township, owned by the United States, had been reserved from sale, for the support of schools within the township where situated. The title continued in the United States during the Territorial Government. At the time of the admission of Ohio into the Union, the provision of a school fund became the subject of compact between the United States and the Convention that formed the Constitution of that State. This compact resulted in an act of Congress, passed March 3d, 1803, granting to the Legislature of the State, in trust for the support of schools, one entire section of 640 acres in each, of what is usually denominated the "*original surveyed townships*," being six miles square, and composing the principal part of the territory of the State—the land, in each township, being granted for the support of schools within such township.

For the several districts of country known by the name of the "Viginia Military Reservation," "The United States' Military District," and the "Connecticut Reserve," a quantity of land, equal to one thirty-sixth part of the districts respectively, was granted for the support of schools within the same, to be located in quarter townships, the whole number of which, I believe, is forty-nine, and the whole amount of school lands in the State somewhat exceeds seven hundred thousand acres. The act vested in the Legislature the whole title to these lands, and left it in the full exercise of its discretion, both as it regards the *means* by which money should be raised from them for the support of schools, and the manner of applying it to that object—neither having been prescribed by the grant. In other words, the manner of executing the *trust* was not prescribed, but left to the unqualified discretion of the Legislature, as it ought to be.

From the nature of the grant, and the manner of its acquisition, being *by purchase*, the consideration of which is expressed in the compact, it has been the prevailing opinion of legal gentlemen in that State, that the Legislature possesses the power to make such disposition of these lands, either by sale or otherwise, as in its opinion will best promote the object of the grant, being accountable only for the faithful application of the proceeds to the support of schools. This doctrine is maintained in the memorial of the Legislature now upon our tables. But a doubt having been entertained by some, of the correctness of this doctrine, that body, anxious to act in good faith, and unwilling to trespass beyond the acknowledged boundaries of its compact, as well as from an apprehension that the rule would be retarded and the proceeds diminished, if they were thrown into market with even the shadow of suspicion hanging over the title, has solicited, from policy, not from what it conceives to be a legal obligation, the assent of Congress contained in this bill. Immediately after the acquisition of these lands, the Legislature set about devising the means of making them pro-

ductive. The mode adopted of doing this was by leasing them. From that time to the present, for more than twenty years, they have been a constant and fruitful subject of legislation, always abortive in every thing except new legislation, until the Legislature and the People of the State, exhausted with unavailing efforts to render them productive, are now fully satisfied that the benevolent hopes and expectations of those who provided this invaluable fund, must continue, as heretofore, to be disappointed, without a change of the fund itself. This has been owing to many causes, some of which are without remedy. A leading cause among them, is the *cheapness of land*, connected with the *desire*, almost universal among cultivators, to be the proprietors of the soil they occupy. In a country, such as Ohio, where there are millions of acres of land in the market beyond the immediate demand, the acquisition of which, to the extent of the actual wants of the purchaser, is sure to follow from the easiest efforts of ordinary industry, the idle and indigent must be expected to be the usual applicants for leases. Such, with a few meritorious exceptions, has been, and continues to be, the character of the lessees. They enter upon the lands, destitute of property, without habits of industry or economy, and not unfrequently without much solicitude about meeting their engagements for the rent, and continue upon them until, having exhausted the patience of the superintendents, they are turned off the land for non-paymnnt, leaving the premises in a state of dilapidation and waste, the valuable timber out down or destroyed—to make way for a new tenant, who, in his turn, often follows the ruinous footsteps of his evicted predecessor. Another great and remediless cause of the unproductiveness of this fund, can be traced to the *number and remoteness of its parts*, being scattered over so great an extent of country, as to render it wholly unwieldly, and to baffle all attempts to devise an efficient system of accountability. The waste and injury to these lands has been such, that they are not now as valuable, and would sell for much less money at this time, when the State contains between seven and eight hundred thousand inhabitants, than could have been realized from them when it contained a population of one hundred thousand.

If they remain unsold, they will, in all probability, continue, as heretofore, to be almost wholly unproductive, while the demand for education will rapidly increase, and the necessity of making provision for its support become every day more and more pressing. In fact, so great is the call for education in that State, and so limited the ability to satisfy it, as to have created the most serious alarm among the whole of the thinking part of the community. I have no hesitation in saying that, in my opinion, there is not another spot upon earth where, for the same population, the demand for education is so great as in the State of Ohio. If any confirmation of this opinion be wanted, it will be found on recurrence to the last enumeration of the population of the United States. The representation of Ohio upon this floor exceeds that of the State of Massachusetts by a single member only, while the population of the former, under ten years of age, exceeds that of the latter State upwards of seventy-seven thousand. The whole of this vast number of children are now of the age when they ought to be engaged in the acquisition of the elements of knowledge.

Should the means of subsistence continue to be, in future, as easy of attainment as they hitherto have been, the excess of this class of population must, in the course of a very few years, be greatly increased: adding, in a corresponding degree, to the existing demand for education. The Legislature, impressed with the peculiar and urgent importance of this subject, have recently had it under their serious consideration, and devised the most efficient system in their power, for the support of education. A system, however, dependent entirely upon taxation for its support. The sale of these lands would, without doubt, greatly aid the operations of that system, the success of which is earnestly desired by the friends of the well-being and social order of that community; and about which, the Legislature have manifested the most praise-worthy solicitude and concern. One word to the proposed amendment of the gentleman from New York. The Legislature of the State is the proper body to watch over and take care of the subject of education within the State. We ought to leave them in the full exercise of their discretion, in what concerns their peculiar duty, trusting to their fidelity and discretion in a matter that so nearly concerns them and their People. The time may come, when neither the United States nor the State Governments will have any public stock, or, if any, it might not be practicable to make investments in these particular stocks without great sacrifice, and upon the most disadvantageous terms. It is extremely dangerous thus to particularize and trammel the power and discretion of the Legislature, when engaged in legislation of this sort in which we are acting, not merely for ourselves, but for posterity. Instead of dictating how the fund shall be invested, we ought to leave that body in the unqualified possession of the power of investing and managing this fund, as new circumstances, interests, and relations in society, shall, from time to time, render necessary and politic. I hope, therefore, the amendment will not prevail.

Mr. STORRS replied, that he had all confidence in the Legislature of Ohio; yet he thought that the amendment could do no possible harm, but, on the contrary, tended to place the fund in question beyond the reach of calamity or casualty. Experience had proved, that, notwithstanding the utmost prudence and discretion of other Legislatures, great and frequent losses had happened, especially in funds provided for charitable purposes. A recent failure of a public institution in one of the Eastern States, (an institution whose notes were supposed, until its failure, to be as secure as any of the stocks of the United States,) held out an impressive warning on this subject. As to the probability that the time would come when there would exist no stock of the United States, nor of any of the States, it was a probability too remote to be taken into present account. The fund should be made secure, and he thought the amendment was calculated to secure it.

The question was then taken on Mr. STORRS' amendment, and it was not agreed to.

The question recurring on the ordering of the bill to a third reading—

Mr. FORSYTH said, that he was not very conversant with subjects of this kind, and he rose rather to obtain information than to communicate his views to the House. He agreed with the Chairman of the Committee (Mr. VINTON) that, if it were in the power of Congress to give the Legislature of Ohio jurisdiction over the whole subject, it ought to be done. He was opposed to restricting the expenditure of the sum raised by the sale to the township by which the lands respectively were held. The gentleman had told the House, that, in some of the towns, the proceeds of sale would probably be insufficient for the support of schools therein; he therefore proposed that the proviso in the bill, which went to lay this restriction, should be stricken out; so that, if a surplus should arise in one town, and a deficit take place in another, they might be equalized.

Mr. VINTON replied, that the reason why it would happen, that, in some of the towns, the amount would prove too small, while in others it would not, arose from the various qualities of the school lots in different towns: in some they were rich and valuable; in others, sterile and almost worthless. If the whole should be reduced to a common fund, those towns which hold good school lands will refuse their assent to the sale, now the use lay in the townships. The land was originally granted in

such a manner as vested the use in them, and he doubted much if the State Legislature, or Congress itself, could disturb this right. So, then, if the proviso should be stricken out, the whole object would, in all probability, be defeated. The proviso had been inserted with an express intention to guard the use, in its present form, only changing the mode in which the proceeds should be obtained.

Mr. FORSYTH'S amendment not being agreed to—

The bill was ordered to be engrossed for a third reading to-morrow.

THURSDAY, DECEMBER 22, 1825.

Mr. WEBSTER, from the Committee on the Judiciary, reported the following bill:

"A BILL further to amend the Judicial System of the United States.

"*Be it enacted, &c.* That the Supreme Court of the United States shall, hereafter, consist of a Chief Justice and nine Associate Justices, any six of whom shall be a quorum; and for this purpose there shall be appointed three additional Associate Justices of said Court, with like powers and duties, and to take the same oaths, and be entitled to the same salary, as the other Associate Justices thereof.

"Sec. 2. *And be it further enacted,* That the Seventh Judicial Circuit of the United States shall, hereafter, consist of the Districts of Ohio, Indiana, and Illinois; and the Districts of Kentucky and Missouri shall form an eighth Circuit; the Districts of Tennessee and Alabama, a ninth Circuit; and the Districts of Louisiana and Mississippi, a tenth Circuit; and the Justice of the Supreme Court, now assigned or allotted to the seventh Circuit, shall, until the next term of the Supreme Court, and until a new assignment or allotment shall be made by said Court, be assigned to the eighth Circuit; and the three additional Justices, whose appointment is provided for by this act, shall be severally assigned, by the President of the United States, to the said seventh, ninth, and tenth Circuits, until the next term of the Supreme Court, when it shall be the duty of the Justices thereof to assign or allot themselves to the several Judicial Circuits of the United States, and to make record thereof, according to law.

"Sec. 3. *And be it further enacted,* That so much of any Act or Acts of Congress, as vests in the District Courts of the United States, in the Districts of Indiana, Illinois, Missouri, Mississippi, Alabama, and Louisiana, the powers and jurisdiction of Circuit Courts, be, and the same is hereby, repealed; and there shall be hereafter Circuit Courts for said Districts, to be composed of the Justice of the Supreme Court, assigned or allotted to the Circuit to which such Districts may respectively belong, and of the District Judge of said Districts, severally and respectively; to have like powers with other Circuit Courts, and to be holden, until otherwise ordered by law, at such times and places as are now established, in each of said Districts, respectively, for holding the District Court for the exercise of the jurisdiction of a Circuit Court; and all actions, suits, prosecutions, recognizances, and proceedings, of whatever nature, now being or pending in the said District Courts, as exercising the powers and jurisdiction of Circuit Courts, or which are or may be returnable thereto, shall have day, be heard, tried, proceeded in, and decided, in the Circuit Courts organized and provided for, in said Districts, respectively, by this act, in the same manner as if originally brought, entered, prosecuted, given, or had therein."

The bill was twice read and committed.

The resolution offered by Mr. DWIGHT, calling on the Secretary of the Treasury to inform the House whether any extraordinary losses have recently occurred in the collection of the customs, and if so, to state the circumstances thereof, was taken up.

Mr. WURTS offered the following amendment:

"That the Secretary of the Treasury be directed to communicate to this House the instructions, if any, which have been given by that Department to the Collectors of the Customs, under the provisions of the several acts regulating the collection of duties on imports and tonnage, and especially under the provisions of the 62d section of the act of March 2d, 1799; and, also, to inform this House whether any, and what, deviations from these instructions, or from the course prescribed by law, for the collection of the customs, have recently taken place, and whether any, and what, losses have been, or are likely to be sustained by the Government, in consequence of such deviations, stating particularly the circumstances attending them, so far as they may have come to the knowledge of the Department."

Mr. WURTS, in introducing this amendment, remarked, that the facts to which the resolution of the member from Massachusetts referred, were sufficiently notorious, yet he doubted if the resolution, as at present worded, would attain the object which that gentleman had in view. The resolution calls for a statement only of what losses have already been incurred. Now, he believed that it would be found that none had as yet actually happened, but there was every probability that they would occur. The amendment which he had offered, asked for all the facts of the case: for it was useless that the House should know that a sum of money has been lost, unless they were also informed how, in what manner, and why, it was lost. It was with a view to obtain this information that he had offered the amendment.

Mr. DWIGHT expressed his willingness to accept the amendment as a modification of his motion: when

Mr. WEBSTER suggested that it might be proper, and in the spirit of the rule of the House, when a motion for a call upon any of the Departments has been laid upon the table for one day for consideration, and an amendment has been adopted which is in effect a substitute for that call, that the amendment also should be suffered to lie on the table for a day. He made a motion to that effect in regard to this resolve.

The motion was agreed to, and the resolution, as amended, was then ordered to lie on the table.

FRIDAY, DECEMBER 23, 1825.

ACCOUNTS OF MR. MONROE.

Mr. McCOY, from the Committee of Claims, moved that that committee be discharged from the further consideration of the claims of James Monroe, (late President of the United States,) and that the same be referred to a select committee.

Mr. McCOY observed, in support of the motion, that the Committee of Claims was overwhelmed by a vast mass of local business, and that it would be impossible for them to do justice to this petition, without neglecting the others confided to them. The documents connected with the claim of the Ex-President were voluminous, and had not been settled by any Accounting Officers; and the whole subject was one which would require great consideration and deliberation; it was a subject involving great general principles, and with which, in some of its aspects, the interest and character of the nation were concerned. This claim had, last year, been referred to a Select Committee, some of the Members of which were still in this House. They had already examined these documents, and were acquainted with the details of the subject; and, as he was desirous the matter should be fairly investigated, he was of opinion that the same course ought to be pursued, at this time, as at the last session. He had,

therefore, moved, that the papers should go to a Select Committee.

Mr. MANGUM regretted exceedingly that his views of duty obliged him to resist the motion of the worthy and able member of the Committee of Claims. It might happen that, in this opposition, he should have to stand alone; but still he considered it his duty, and should, however feebly, endeavor to perform it in the best way he could. In order to judge of the propriety of the motion, it would be requisite briefly to advert to the history of the claim in question. It would be remembered that, at the last session, a message was received from the then President, which created no slight sensation in this House. The novelty of the principles advanced in it, and the extraordinary time selected for bringing forward the claim, alike attracted the notice of all who heard it, and left it almost impossible to say, whether the object of the distinguished personage in question was to free himself from certain aspersions which had been cast upon his character, or really to have his accounts settled. The message certainly had this double aspect, and many who heard it were at a loss to determine which of the objects was intended to be furthered by it. Now, however, the case was different, and no doubt could remain with any one that the present object was exclusively to urge the claim of the late President, and obtain its settlement. The message of the last session on this subject was at that time referred to a Select Committee, whose fidelity and competency none could doubt. That committee had been laborious in the discharge of their duties; they had examined all the evidence which had been laid before the House on the subject; so that much of the labor attending the investigation of this claim, had in fact been already performed. That committee, however, no longer existing, the subject of this claim had been, a few days ago, referred to the Committee of Claims; but it was now proposed to take it out of the hands of this committee, and again to refer it to a Select Committee. If it were indeed true that the Committee of Claims had not time to attend to this subject, it would be a valid reason in favor of the motion; but he knew well the indefatigable and assiduous exertion, as well as the ability, of that committee, and he was of a different opinion.

The honorable member had said, that this claim was a matter of national importance—a matter of a public as well as of a private nature. He could not agree at all in this view of it: He always thought that it had been magnified and dignified beyond its merits; and, holding this opinion, he could allow but little weight to any argument drawn from this source. If the petition had, now, the same double aspect which it presented when formerly brought before this House, there might be a better pretext for sending it to a Select Committtee—a committee which should, on one side, be a court of honor, and on the other a financial body; but, as it presented no such aspect, there was no longer a necessity for a tribunal of this mixed character. Whatever gentlemen might think, from the course he was now taking, he scorned to appeal to the base and mean passions; yet he felt bound to say, that there could be no sincerity in the profession of equal rights and privileges, if this House will grant to me, because I have held a lofty and distinguished station, a privilege which it refuses to grant to the meanest and the humblest suppliant who presents his claim. So far was he from admitting that a consideration of this kind ought to have any weight, that he held, on the contrary, that, in proportion as any individual was exalted and distinguished in the station which he occupied, in the same proportion ought his acts to be examined closely and probed deeply. He utterly disclaimed all personal and political motives in this matter. He declared, in the face of Heaven, that nothing would give him greater pleasure than to find that his duty directed him to allow the claim in its fullest extent. He would then vote for it with as much pleasure as he had done when making a grant to our late distinguished Guest. But it was a principle which he wished should sink deep into the hearts of the members, not only of this House, but of this Nation, that, under the American Government, the same justice ought to be awarded to all. The late President, in his message, had told the House, that it was important that the most severe scrutiny should be made into the accounts of a public officer who held so high and responsible a station, not only on its own account, but as a matter of precedent. He fully assented to the correctness of this principle; and, when the claim had been presented to the House in this solemn and imposing attitude, was it not the duty of Congress to guard the precedent with all possible caution? And with this view, ought it not to be submitted to a committee, such as all acknowledged the Committee of Claims to be—a committee as blind as Justice—impartial, indefatigable, and known, not only to the House, but he might say, to the Nation, for its great labor and high intelligence? It had now got to be perfectly understood, not only in, but out of this House, that a Select Committee was, out of courtesy, invariably selected from among those who were the personal or avowed friends of the measure which the petition, so referred, prayed for; and, as it was his object and desire to maintain the fame and well-earned reputation of the distinguished individual concerned in this case, he was desirous of relieving his claim from the imputation or suspicion of having been carried through the House by the force of personal favor. The Select Committee which had been raised at the last Congress, on this subject, was worthy of the highest praise; yet there was a strong infusion of friendly feeling pervading every Select Committee. The Committee of Claims was governed by rules as inflexible, and almost as well known, as those which regulate a Court of Chancery. Mr. M. insisted that, as it was the avowed object of the claimant himself, that a solemn precedent should be set by the proceedings of the House, on this petition, it was the more important that every step attending it should be marked with the extremity of caution. If the Committee of Claims had not time to get through the subject the present session, why should not this claim take the course of all other claims, and be laid over to the next? Why shall we award to this individual, because he has lately been the President of the United States, a courtesy which we refuse to the poor soldier who has fought our battles, and who pleads his wants or his wounds before us? He repeated, that he scorned the imputation of seeking in this matter the applause of the multitude: but there was a deep sense in his bosom, that, at the tribunal of this House, all who come before it have an equal right to justice, and he should resist the course now proposed with the same earnestness, had the claim proceeded from any other quarter. He knew that there were precedents for the reference of claims to Select Committees; but the cases which had heretofore received that reference were attended with none of that "pomp and circumstance" which encompassed this claim. He hoped that it would be made to undergo a thorough examination, and finally be decided on its intrinsic merits: But he wished also that it should take the ordinary course. He was fully aware that the utmost abhorrence had been expressed in the public streets, as well as elsewhere, at the great disrespect with which the Ex-President had been treated, by having his petition referred to the Committee of Claims. But, for himself, he was not to be deterred either by the shouts or the hisses from an unwavering performance of what he conceived to be his duty. He knew that in this atmosphere many things were done out of *courtesy*; but he felt it his duty to take the course he was now pursuing, and he should not shrink from its performance. He regretted, indeed, that such was his duty; but he had

endeavored to comply with it, and whatever might be the determination of the House, he should cheerfully submit. There was, he knew, a mawkish sensibility—and a high chivalric courtesy, if gentlemen pleased so to term it, on questions of this sort; but neither the wailings of that mawkish sensibility, nor the complainings of those who were for yielding all to courtesy, should drive him from that course which his conscience approved; which he should endeavor to follow, without mingling with it any private feelings of his own, or the slightest disrespect for the feelings of others.

Mr. McCOY said, though he had no doubt of the thorough honesty of the gentleman from North Carolina in the sentiments which he had expressed, yet he thought that the course which he had taken was a little singular. As to the matter of courtesy in the proceedings of this House, something is due to it, and is to be seen in every day's business; and at every session it has been the practice to refer to Select Committees matters of particularly grave inquiry. He might refer the recollection of the gentleman no further back than three or four days, when a case of claim had been referred to a Select Committee, on the same grounds on which it was asked that the case now before the House should go to a Select Committee, viz: that the papers connected with the case were voluminous, that it was in itself of great magnitude, and, in all probability, if it went to a Standing Committee, a report could not be made on it at this session. Of cases similar to this, in which the course now proposed had been pursued, Mr. McC. said he could refer to a number. He instanced the cases of Governor Tompkins (Vice President at the time,) of Governor Blount, of General Lafayette, of General St. Clair, of General Starke, of the heirs of Beaumarchais, of Baron Bastrop, and of the Marquis of Maison Rouge. If he could take time to look them up, he said he could produce fifty cases of this sort, which had gone to a Select Committee for the express reasons which he had stated when up before. So that it was not altogether a matter of courtesy, but, in many instances, it was a matter of justice, to refer cases to Select Committees. As a general practice, he was as much opposed to taking business from the Standing Committees: he had himself never yet shrunk from his duty, and he should not in this case, if the House should insist upon the Committee of Claims retaining possession of this case against their will. This case, moreover, Mr. McC. said, did present itself to this House in a two-fold aspect. There had been suggestions made, to the prejudice of Mr. Monroe, that, in the disbursement of public moneys, he had misapplied them; and to these suggestions, in his Message of last session to Congress, the then President expressly referred. Mr. McC., therefore, wished this subject to go to a Select Committee, with the double purpose of doing justice to the character of the late President in regard to these transactions, and taking a full and complete view of the claims which he has against this Government.

Mr. SAUNDERS then observed, that, as he had had the honor of serving on the Select Committee to whom this subject was referred at the last session, it might be proper for him to say something in reply to what had fallen from his colleague. On reference to the resolution by which that Select Committee had been created, it would be seen that they were restrained expresaly to such explanations as the petitioner himself might make, and such evidence as he should think proper to submit to them. His colleague was, therefore, mistaken in supposing that *all* the testimony appertaining to this claim had been already examined. That committee did not go into the question, either of the intrinsic justice or of the extent *of the claim* of Mr. Monroe, nor did they inquire for, or collect, any contradictory testimony to rebut that which had been brought forward. The evidence collected by that committee, therefore, must be pronounced incomplete. Nor did the committee express any opinion on the claim. It was true, they had before them a great mass of documents. But, if the gentleman had looked at the report of that committee, he would have found that it is confined to a very few points. The President had asked that the consideration of the House should be extended to another subject, connected with what was called the Furniture Fund, and, in respect to which, he considered that some aspersions had been cast upon his character. But the committee did not touch that subject, because they did not consider it to be at all necessary. The expenditure, it is true, had been great, but, if any blame arose out of it, that censure attached, it was supposed, not to the late President, but to agents under him. Mr. S. thought it was proper that this case should be referred to a Select Committee: for, although all the evidence brought forward by the claimant had been laid before the House by the Committee, at the last session, of that which might be brought on the other side they knew nothing. Both ought to be examined alike. He was not in favor of extending any thing to this individual, which he would not extend willingly to any other. His having been President of the United States had nothing to do with his claim; but, if any individual, however humble, should present a claim under similar circumstances, he would say of that, as he now said of this, that it ought to go to a Select Committee. His friend and colleague had spoken about precedent, and seemed to suppose that the proceedings in this case would, as a matter of precedent, stand prominent and alone: but certainly there were already numerous cases of a similar kind, and which operated as precedents as much as this would do. A variety of different claims, some of which had been enumerated by the gentleman from Virginia, and which required less investigation than this did, had gone to Select Committeees; and this had already happened more than once at the present session. He did not consider this case as forming a precedent, because it was the case of Mr. Monroe: It must stand, like all others, on its own merits, and the House would act, in respect to it, as they should think most just to the individual and to the nation.

Mr. McLANE, of Delaware, said, that when this subject was heretofore under the consideration of this House, it had been his misfortune to differ from the majority of the House. He had been opposed to the application to this House, and to the reference of the application to a committee. He had then thought, that the better course would have been to have presented these claims to the Accountant of the Treasury Department, where they would have been examined as accounts usually are: and if, according to the rules of that Department, the petitioner could not have justice done to him, it had been his opinion, that it would then be in time for him to come to this House for relief. The House had overruled him, however, in that opinion, and referred the case to a Select Committee. When this subject was before the House a few days ago, Mr. McL. said he was in favor of referring it to the Committee of Claims, and had so voted. He was now disposed, however, on a review of the case, to vote for its reference to a Select Committee, on the one ground, and that one alone, that he understood the organ of the Committee of Claims to state that it was believed by that committee not to be in its power, consistently with due attention to other matters referred to it, to do justice to the claimant or to the nation. Mr. McL. said, in making up his opinion thus, he put out of view altogether the character of the individual who presents this claim—he treated the case as a claim of a free citizen of this country, who, whatever he be, or has been, is entitled to the measure of justice which is due to every other individual, and to no more. Thus viewed, the case now before the House was one of ordinary occurrence, in which a petition had been referred to a Standing Commit-

tee, overburthened with business, and which it was, therefore, expedient to transfer to a Special Committee. The cases of Governors Tompkins and Blount had been already adverted to, and precedents were not wanting of a similar course, during the present session, in cases which would naturally have referred themselves either to the Committee on Public Lands or the Committee on Private Land Claims, and only had a different direction given them on the ground that, from the extent of the investigation required, a Select Committee in each case was advisable. On the same ground, Mr. McL. said, he should vote for the proposed reference of this case to a Select Committee.

Mr. DWIGHT observed, that the general principles laid down by the honorable gentleman from North Carolina, first up, (Mr. MANGUM,) met his approbation, but that he thought a correct application of those principles ought to have led that gentleman to a directly opposite conclusion from that which he had arrived at. The gentleman had insisted that equal justice should be dealt out to claimants in the highest and in the lowest station. It was on that very principle, Mr. D. said, that he should vote, in this case, for a Select Committee. We gave a Select Committee to this individual when he first applied, said Mr. D. and I would deal out the same measure to James Monroe, now he has retired to obscurity, (and I am sorry to be obliged to add, to penury,) in Virginia, as I did to President Monroe, when wielding the power of this gigantic Republic, in the palace of the capital. This would be giving the same justice to men in all situations. The Committee of Claims, however able, and however laborious, were overwhelmed with a mass of business, and the very respectable member of that committee who had addressed the House, had honestly apprised it that, if they did justice to this claim, it must be at the expense of neglecting the others confided to them. The gentleman from North Carolina had reminded the House that that committee was governed by fixed and invariable principles of justice. But, did he mean to asperse the Select Committees of this House, by insinuating that they would not be governed by the same principles, or in the same degree by them? The Committee of Claims ask to be relieved. They have been relieved in other cases—why should they not in this? The gentleman says that no difference is to be made between a President of the United States and any other individual. Yet he is himself insisting, that we ought to make a difference. The claim of the Baron de Bastrop, the claim of the Marquis de Maison Rouge, the claim of Caron de Beaumarchais, had all been permitted to go to Select Committees. Why must not the claim of James Monroe go to a Select Committee, unless it be because James Monroe has been President of the United States, and those claimants have not? The favor, if any favor is granted, will be granted not to him, but to the Committee of Claims, who ask the relief.

Mr. MANGUM again rose. He said he was much more solicitous that his views and feelings on this subject should not be misconceived, than that he should succeed in his opposition to this motion. He had already disclaimed any thing like personal or political feeling in regard to this matter: he hoped he was incapable of suffering himself to be influenced by it in any case in which a claim of individual right was involved. But, he said, he thought it might be shown that the analogies to this case which gentlemen wished to force upon the House, on this occasion, had no existence in reality. Does this case, said he, stand on the same basis as those which have been considered analogous to it? Is this a mere Bastrop claim? I think not. In one view this case and the others referred to are essentially different. The others come to us from individuals, being petitioners for claims which they allege to have against the Government. But this case came to us from the Chief Magistrate, with the declaration that it was to serve for a precedent in future cases. I have turned to the Message, said M. by which it was introduced into this House, and I find in it, among other things, this passage: "This, therefore, forms a strong motive with "me for the inquiry which I now invite. The Public "may also derive considerable advantage *from the prece-* "*dent*, in the future movements of the Government." To this case, then, the other cases referred to, unless forced exceedingly, can bear no analogy. The case came to this House from a co-ordinate branch of the Government, in the form, not of a petition, but of a Message from the Executive, with the additional distinction, that it is to form a precedent in the future movements of the Government. If it is to be a precedent in the future movements of the Government, Mr. M. said, let it be guarded, safe, and unexceptionable. Without meaning to reflect on the Select Committee of the last session on this subject, he enforced the observation that, in general, Select Committees might be reasonably supposed to have a bias towards any case they were appointed to investigate. These committees, besides, were not as familiar as the Standing Committees with the rules which ought to prevail in the adjustment of matters of right and of account between individuals and the Government. This matter not being analogous to the cases cited, Mr. M. said, ought to go to a committee which would decide upon it, not by feeling, as a Select Committee might do, but upon principle.

Mr. M. repeated, and hoped that the repetition would not be unacceptable, that there was not a Member of this House who would cherish, with more care than he, the well-earned reputation of that individual whose case was now under consideration. There was not a man in the House who would more cheerfully vote to him any sum which might appear to be due to him. But, whilst he had this feeling, he had some reflection with it. Something was due to consistency, and he did not see any sufficient reason for separating this case, in its destination, from the class to which it belonged. Mr. M. concluded by saying, that he felt very little personal anxiety on this subject: it was not of any great concern to him as an individual, but it might be of great concern to this nation. He had, however, full confidence in the wisdom of this body, and he should submit without a murmur to its decision on the pending question.

The question being then taken on discharging the Committee of Claims from the consideration of this case, and referring it to a Select Committee, it was decided in the affirmative—ayes 106.

DISMAL SWAMP CANAL.

The resolution, offered by Mr. STEWART, calling for information in relation to the Dismal Swamp Canal, was taken up.

Mr. DWIGHT inquired for the reasons which induced the gentleman from Pennsylvania to desire this call.

Mr. STEWART explained, and stated some of the facts of the case. The Company had already expended 400,000 dollars. Their funds had now given out, and they stood in need of 160,000 dollars more. General Bernard had been on the spot, and examined the route of this Canal, and Colonel Roberdeau, of the Engineer Department, had examined the subject with great minuteness and attention. But the House had, as yet, received no information from Government on the subject. The resolution contemplated two principal objects: the one was to obtain information in respect to the importance and value of this undertaking, and the other was to ascertain its conformity to the general plan contemplated by Government, and its fitness as one link in the great chain of internal communication along our Atlantic Sea board.

Mr. NEWTON expressed his assent to the propriety of the call, and his conviction of the importance of the

work. He also stated some of the details in relation to it, of which our Reporter collected, that the average width of the Canal is thirty-two feet, and its depth at this time between five and six feet.

At the suggestion of the Chair, Mr. STEWART modified the resolution by omitting that part of it which goes to inquire whether the plan of this Canal is "in conformity with the views of the Department."

Mr. McCOY apprehended that this call would obtain no information to the House, as he understood that the Engineers, though they passed by the spot, had been under no orders to survey it. The only result of the call would probably be an expression of the opinion of the Secretary of War as to the value of such a Canal.

Mr. STEWART replied that, from a personal interview with Gen. Bernard and Col. Roberdeau, he was authorized to say, that important information might be obtained by the call.

Mr. NEWTON stated some further facts, as to the present condition of these works. He said that the company, after spending much money in excavating the Canal, were now in need of further funds for the erection of locks; and they also contemplated another cut, of about five miles in length, by which a navigation would be opened with Currituck Sound. All that they asked was less than half of what had last year been subscribed, by the United States, to the stock of the Chesapeake and Delaware Canal.

The resolution was agreed to.

FORTIFICATION SYSTEM.

The resolution offered by Mr. TATTNALL, calling for the contemplated plans of Government in relation to fortifications, was taken up.

Mr. TRIMBLE observed, that two calls had already been made upon the Department in relation to this subject. One, he believed, had been in part answered. He could not say whether the other had been answered at all. He rather believed it had not. He was in favor of the call, but would ask the gentleman from Georgia to permit it to lie for one day on the table, in order that its terms might be so modified as to render the call broader and more comprehensive. He wished this, because it was very convenient that the House should receive in one communication all the facts which the Department had to communicate on one subject. Still, however, if it was not the pleasure of the gentleman to suffer this delay, he should vote for the resolution in its present form.

Mr. TATTNALL replied, that he would willingly assent to the delay requested: although, as the call was merely for information, he could not perceive that the fact of there having been previous calls for the same was any objection. He was fully aware that such calls had been made, but the gentleman from Kentucky was mistaken in stating that one of them had been in part answered. Strange as it might appear, although three different calls had been made, at nearly the same time, (he believed at the session before the last,) not the slightest attention had been paid to either of them. Yet the Government was, in the mean while, going on to spend immense sums of money, and, as he thought, very loosely. Yet he would not be understood as feeling or expressing the least hostility to the plan of fortifications which seemed to have been adopted. On the contrary, he highly approved it. But he could not but think it had been very partially executed. That part of the country which he had the honor to represent, for example, had been, he was almost going to say, very improperly neglected.

The resolution was then ordered to lie on the table.

The resolution formerly offered by Mr. DWIGHT, and yesterday amended at the suggestion of Mr. WURTS, in relation to losses in the collection of the Customs, having been taken up—

Mr. WEBSTER observed, that he entertained no hostility to the measure proposed. But he a little suspected that the honorable member who had moved this resolution, was not fully aware of the *extent* of the *call* which it proposed. In its present form, it appeared to require the transmission of all the instructions communicated by the Government to the various Collectors of the Customs throughout the Union, from the organization of the Government. Mr. W. suggested the propriety of a modification, by which the call would be more restricted, and could be more readily complied with.

Mr. WURTS replied, that he had not intended to give to his call by any means so great an extent as was apprehended by the honorable gentleman from Massachusetts. The losses supposed to have been incurred, and into which he wished inquiry to be made, were two-fold:—First, such as had accrued on bonds to a very large amount, the securities to which had become insolvent; and, secondly, such as had happened by permitting great quantities of goods to be taken from the public stores without any bond at all. He understood that there was a restriction, imposed by a regulation of the Treasury, which forbade that more than a certain definite sum (he believed two hundred thousand dollars) should be allowed to be secured, in duty bonds, by the endorsement of any one individual, and the object he had in view was to ascertain whether these instructions had been violated, and, if they had, why they had, and under what circumstances it had taken place. He had no objections to any modification of the call which should attain this end, and, to afford time to make his motion unexceptionable on this ground, he moved that it lie, for the present, on the table.

It was ordered to lie on the table accordingly.

TREATY OF FORT JACKSON.

The resolution yesterday offered by Mr. OWEN, calling for the correspondence of the War Department with Generals Pinckney and Jackson, in relation to a treaty with the Creek Indians at Fort Jackson, was taken up.

Mr. OWEN said, that the resolution which is now under the consideration of the House, is designed by its mover to be used only in the investigation of the rights of certain individuals. He has no other object in presenting it. I am led to believe, that the design of the Government, in asking of the Indian nations to surrender the right of possession, (upon the principle that no other right existed in our tribes of Indians—which principle *I* believe to be a correct one,) to the lands obtained by the Treaty of Fort Jackson, was to secure to the Government indemnity for the expenditures made in consequence of the infraction of previously existing Treaties, by that nation of Indians; to secure to that part of that Indian tribe, which was friendly, indemnity for losses sustained in the destruction of their property; and also to indemnify the inhabitants of the frontier of the then Mississippi Territory, for the losses they had sustained by the ravages of the hostile Indians. For the investigation of the rights of the latter, I wish this information to be used: if it was the design of the Government that their rights should be recognized and provided for by the Treaty; and from this design an additional portion of lands taken, besides those expressly provided for in the treaty, to wit: the Government losses, and losses of friendly Indians; then this class demand indemnity as a *right*; if not, they rely upon your liberality. I am well aware that Gen. Pinckney bore no part in the formation of that treaty; but I have reasons to believe that the correspondence between the Department and Gen. Pinckney disclosed the views and wishes of the Government; and that these views and wishes were designed to be a part of the instruction to the distinguished individual who afterwards formed the Treaty. This is my object for submitting this proposition. I therefore hope the House will adopt it.

The resolution was then agreed to.

And the House adjourned to Tuesday.

TUESDAY, DECEMBER 27, 1825.

ACCOUNTS OF MR. MONROE.

A resolution, offered a few days since, by Mr. STORRS, calling for a statement of moneys paid to the late President Monroe, being taken up—

Mr. STORRS observed, that, since the resolution had been drawn, he had had an opportunity of looking at the documents submitted to the Select Committee raised on the subject on this claim at the last session of Congress, and he wished to modify the resolution by adding the word "disbursements," to be inserted before "emoluments."

The resolution having been thus modified—

Mr. PORSYTH said, as he presumed that all which this resolution sought was information, and every one knew that the salary of the late President had been paid him, as well as what was its amount, he would suggest to the mover that so much of the resolution as called for this item of information should be stricken out, as it was wholly unnecessary, and had the aspect of being inserted only with a view to swell the amount of public money which the claimant had, at different times, already received from the Government.

Mr. STORRS said, that he had no disposition unreasonably to swell the amount of salaries received by the claimant, nor to enter into any debate on the resolution. It is well known that he received his salary as President for eight years past, though it can hardly be said to be officially before the House. There is, however, said Mr. S. one point of view which may render necessary a recurrence to that fact, and our knowledge of it may, perhaps, as well rest on the notoriety of it. The claimant has proposed the justice of allowing to him an item of *interest* on certain claims, which he states himself to have suffered to rest without adjustment, from motives of delicacy, during his administration. Now, it may be worth inquiry at some future time, if the subject should come before the House for the liquidation of this charge of interest, whether such an allowance would be equitable, while the claimant had, during the whole time, by his own consent, been in the receipt of a very large salary, and thus voluntarily created the dilemma which, in his opinion, has produced the delay. He was not, however, anxious to have an official account of his salary as President. The objects of the resolution would be attained without it, and he consented to modify the resolution so as to except that salary from the call.

Mr. MERCER felt it to be his duty to except to the modification, on the ground (if we correctly understood his remarks, part of which were wholly lost by our Reporter, from the difficulty of hearing,) that it would be more desirable that the accounts of the late President should go the public without any curtailment; both the debit and the credit side being fully and fairly exhibited: charging him with his salary as well as other public moneys received, and crediting him by the amount of the claims he should substantiate. It would then be seen, that, if large sums had been paid to this individual, equivalent services had, on the other hand, been rendered by him.

The resolution, as modified, was then agreed to.

LOSSES IN THE COLLECTION OF CUSTOMS.

The resolution offered by Mr. DWIGHT, a few days ago, calling for a statement of losses in the collection of the customs, and amended on the motion of Mr. WURTS, having been read—

Mr. WURTS offered the following modification thereof, which was accepted by the mover:

Resolved, That the Secretary of the Treasury be directed to inform this House, whether any, and what, deviations from the instructions given by that Department, or from the course prescribed by law, for securing and collecting the duties on imposts and tonnage, have recently taken place; and whether any, and what, extraordinary losses have been, or are likely to be, sustained by the Government, in consequence of such deviations, or from any other cause: stating particularly the circumstances attending them, so far as they may have come to the knowledge of the Department.

The question being on agreeing to the resolution, as modified—

Mr. FORSYTH said, that he presumed the resolution alluded to the late transaction at Philadelphia. The public rumor on that subject was, he thought, sufficiently definite. It stated that certain property had been removed from the Custom House in that city, in a clandestine manner; and, from hearing the resolution once read, he thought its langage was not calculated to obtain for the House the information that was most needed. He therefore suggested, as an addition, the following: "And, also, what losses are likely to be sustained by the fraudulent removal of property from any of the Custom Houses of the United States." If the mover declined accepting this as a modification of the resolution, he should offer it as an amendment.

Mr. WURTS replied, that it might turn out, on investigation, that the removal of the property alleged to have taken place, was not "fraudulent." He thought it would be improper to use this language, unless the circumstances were more fully known, and the House was certain that the language would apply. He thought that the terms of the resolution were sufficiently definite, as now worded. It goes to inquire what deviations have taken place from the instructions, issued by the Treasury Department, to the Collectors, in reference to this subject, and what losses have happened, or are likely to occur, in consequence of such deviations or neglect on the part of the officers of Government. For himself, he said, he had no personal knowledge that any special instructions whatever had been given on this subject. Public rumor, however, said that there had, and that they were such as would fully exonerate from blame the Collector, in whose office the loss had occurred. Whatever might be the facts of the case, it was no more than justice to all parties, that the truth should be known respecting it.

Mr. MERCER said, he would suggest to the worthy member from Georgia, that it would be better to modify the amendment he had offered, by striking out the word "fraudulently;" and he moved that the amendment be so altered.

Mr. FORSYTH replied, that he should assent to this modification if the honorable member from Virginia would assign any reason whatever why such a modification was necessary.

Mr. MERCER replied, that the retaining of the word would place the Secretary in an embarrassing situation, as he would, very properly, feel reluctant to say, officially, that the property in question had been "fraudently" removed, unless that fact were legally ascertained. This, he thought, was an obvious and sufficient reason for the modification he had proposed.

Mr. FORSYTH said, that, under the provisions of the laws, there was but one way of *legally* removing goods from a public warehouse, which was, by a compliance of the party owning them with the usual requisitio of bonds and securities, for the payment of the duties thereon. If goods shall appear to have been removed without a compliance with these prerequisites, the Secretary of the Treasury would, Mr. F. presumed, take it for granted that they were fraudulently removed, and the United States thus deprived of sums of money justly due to the Government. He did not conceive that there could be any disrespect to the Secretary of the Treasury, or that any delicacy could be felt, in or out of the House, in giving to such conduct its proper denomination. It was rumored that large quanti-

ties of goods had been removed from the public warehouses in Philadelphia; such goods cannot legally be removed from the public warehouses without a compliance with certain conditions: those conditions were not complied with, and the removal of the goods, therefore, was a fraud. The term "removal," or "removed," without some discriminating epithet, would apply to *all* goods which have been taken from public warehouses during the last year, and would lead to an investigation not only into the circumstances of the removal, but also into the responsibility of the sureties in every case, &c. The term "fraudulent" was not particularly a favorite with him; and, if the gentleman chose, "illegal," "irregular," or any other more delicate phrase, might be substituted for it.

Mr. MERCER observed, in reply, that he could readily imagine a removal of these goods without any fraud. It was possible it might have happened by accident, or by mistake. He would presume any thing rather than fraud, until fraud were proved. He had no such knowledge of facts as prepared him to lay the foundation of such a charge. He did not wish to be understood as having the smallest objection to the addition of the clause proposed by the honorable member from Georgia, and he should cheerfully vote for it, if the word "illegally" were substituted for "fraudulently."

Mr. WEBSTER expressed a hope, either that the amendment would be withdrawn, or that the House would think the resolution, as originally offered, sufficiently broad. He apprehended that the amendment now proposed, would create a much stronger difficulty than it proposed to remove. Whether property had been illegally removed from the warehouses of the United States, was a question that must be judicially decided. Such an act might be performed legally, as respected third persons, and still the conduct of the officers of Government be very reprehensible. Now, he considered the great points of this inquiry to be, first, whether these officers had done their duty, and, secondly, whether the loss had accrued in consequence of their having done it or not. If the loss had happened without blame to the officer, it must be owing to some defect, either in the statutory provision, or in the instructions issued by the Department. For himself, he apprehended it would turn out that no instructions had been given. By law they could not. Interpretations of statutes had, indeed, sometimes been given by the Heads of Departments, but the Constitution knew of no such thing as rescripts from the Treasury, declaring in what sense the law should be understood. No commands from the Treasury could make that right which the law had pronounced to be wrong; nor could it make that a crime which the law allows. All that the House, in this case, wanted to know, was substantially reached by the resolution in its present form. It asked whether any deviation had taken place, either from law or from the instructions received from the Treasury; and whether, in consequence of such deviations, if there had been such, any extraordinary losses had been suffered by the United States. This he conceived to be the proper inquiry. If it should even be found that the removal of the goods had been illegal, he did not see that that fact would help the House in any way to reinstate the Treasury. All that the House wanted to know was, whether the loss had been occasioned by a departure from the law, or by a defect in the law. This object would be attained by the original resolution.

The question being then taken on the amendment proposed by Mr. FORSYTH, it was decided in the negative.

Mr. POWELL observed, that, if it were important to get the information in this case, he thought the resolution stopped short of its own object. If the House learned that any extraordinary losses had taken place, it should also be informed what steps had been taken by the Department in consequence. If the losses suffered were, as had been reported, of an extraordinary character, it was to be presumed that some extraordinary steps had been taken to meet the emergency. With a view to ascertain this, he offered the following amendment:

"And whether any, and what, steps have been taken by any officer of the Government, in relation to any such lossess, if such have occurred."

Mr. CAMBRELENG said, he had no doubt of the propriety of the proposed amendment; but he would suggest the expediency of its being so modified as to make it more comprehensive. If he had understood correctly, the property said to have been carried off from the public warehouses at Philadelphia, had been pursued, not by order of the Department, but by the revenue officers for the port of Philadelphia, and the Treasury Department had not been aware of the fact, until informed of it by the parties into whose hands the teas in question had fallen. He suggested the propriety of adding, therefore, the words, "or by any officer of the customs." Mr. C. said, that he apprehended, when the House had possession of all the information which would be elicited by this resolve, it would come to the conclusion, which he hoped would be ratified by its determination at an early day, that it is indispensable to the interest of the country, and to the security of the revenue, to have, in all the principal seaports, extensive warehouses, erected by the United States, and to be used, under our revenue system, exclusively for public account.

Mr. WEBSTER observed, that he was sorry to have to say another word on this matter. But he could not but think that it would be better if the House should not adopt this amendment. A knowledge of what steps had been taken to retrieve the loss which had happened, would not, so far as he could perceive, be of any aid to the House as to the course it was to pursue. Various answers might be received to such an inquiry. Perhaps it might be that the Collector had resorted to an action of trover—it might be, that he had seized the goods. Perhaps it would be, that the Collector had not been able to form an opinion as to which was the legal remedy; or, finally, it might turn out to be, that there was no legal remedy. The only consideration for this House was, whether the officers of Government had done their duty, and whether the laws of the land had been executed. As to denominating the transaction "fraudulent," he thought that "collusion" was a better word than fraud; as he had no idea that a loss so extensive had taken place through the fraud of any one individual. It was much more probable that there had been a combination of many.

Mr. POWELL said, that he had no particular objection to modify his resolution as proposed by the gentleman from New York, (Mr. CAMBRELENG) but could not agree in the view of the subject taken by the gentleman from Massachusetts. He thought it was very important that this House should know what steps had been taken to recover so large an amount of public property, that the House might judge whether adequate and proper means had been employed for this purpose; that they might also ascertain whether such means are in possession of the public officer; and, if not, that the House may forthwith provide them. He thought that a knowledge of the measures pursued for recovering the property was quite as important as a more accurate knowledge of the loss itself.

Mr. M'LANE, of Delaware, said he had no disposition to embarrass the object of the mover of this resolution, or to encumber it by superadding to it any clause of any description, by way of amendment. At the same time, as the gentleman from Virginia adherred to the amendment which he had suggested, Mr. M'L. said he felt himself bound to vote for it: for, he thought it was not only the

right, but the duty of this House, to get hold of all the information connected with this transaction, and, if it could not be elicited by this resolution, to extract it in some other way. For himself, he disclaimed the motive of calling for this information to implicate any officer of the Government: he would not, on vague rumor, now, or at any time, impeach the conduct of any officer of the Government, high or low. He presumed, that the object of the gentleman, in calling for this information, was not to impeach the conduct of any officer of the Government, but to inquire whether there was any defect in the laws, or in the execution of the laws, which it would require the interposition of the House to remedy. With regard to the suggestion that the information to be received on this subject would lead the House to a conclusion favorable to the extension of the Warehousing system, Mr. M'L. said he was of opinion that the recent transactions in Philadelphia afforded the strongest comment that could have been offered of the wisdom of this House, in rejecting, at the last session of Congress, the proposed extension of the Warehousing system. Our object now is, said he, to know whether further legislation is necessary to the security of the revenue arising from customs. This we cannot do, until the defects of the system are ascertained. We do know, from public rumor, that a great quantity of teas have been removed from the public warehouses of Philadelphia, without bonds having been given therefor, in consequence of which the Government is likely to suffer to a great extent. Has this arisen from a defect in the revenue system, or from irregularity in its administration? This was the point to be examined. It was very possible these teas might have been removed without the knowledge of the Collector: it was very possible the Collector might have pursued these teas, and brought them back. But, if this Collector had been obliged to resort to an action at trover, or had been in any manner embarrassed to recover this property, Mr. M'L. said he was perfectly willing to resort to any measure deemed necessary to prevent the future recurrence of such difficulty. If this resolution did not procure the information desired to this end, he would himself follow it up by another call—feeling himself bound, by his peculiar situation, on the Committee of Ways and Means, to whom the subject naturally refers itself, to prosecute the inquiry into the merits or defects of the present collection system, as far as practicable, &c.

Mr. CAMBRELENG said, he was sorry to trouble the House again on this occasion: and he should not have done it, had the gentleman from Delaware understood his proposition touching the warehousing system. He agreed perfectly with the gentleman from Delaware, that it should not be the object of this Government to extend the warehousing system on the plan heretofore adopted by this Government. The object of the gentleman from Delaware, said Mr. C. is identically the same with mine; for, if the gentleman will reflect, he will see that mine is to restrict and limit the warehousing system to stores in the custody, and under the lock and key, of the Government. The gentleman appeared not to be aware of the practice of converting private warehouses into public warehouses. That is a practice for which I wish to see a remedy provided; and, that we may no longer be under the necessity of resorting to private warehouses, my object is to have established, in the principal commercial ports, public warehouses, which would, I am satisfied, produce an income to the Government, which will more than indemnify the Treasury for the cost of erecting them. And, if this course had been adopted some years ago, said Mr. C. these errors, collusions, or frauds, of which we are now speaking, would never have happened. Under such a system, all the Teas, in this case spoken of, would have been in one warehouse, subject to the daily inspection of the officers. But what was the fact? These Teas were scattered in many stores or warehouses. He knew not how it was in Philadelphia, but in New York there were forty or fifty private warehouses employed in this way, for the want of public ones. When, then, he desired to substitute public for private warehouses, Mr. C. said he did not want to extend the warehousing system: He wished that in Boston, New York, Philadelphia, Baltimore, and other cities, contributing largely to the public revenue, extensive public warehouses should be erected, in which all the imported goods, on which duties had not been paid, or bonded, should be stored.

The question then being on the adoption of Mr. POWELL'S amendment—

Mr. MALLARY spoke in its favor. He considered that the first object in view was to know whether, before the loss happened, the officers of Government had performed or had neglected their duty; and that the second was, to determine whether they had omitted or performed it, after the loss had taken place. This latter appeared to him to be part and parcel of the first inquiry. Both had equally in view the same great point, whether the officers were innocent or guilty in this matter. He was, therefore, in favor of the amendment.

Mr. WEBSTER observed, that it was difficult to speak on a subject, in reference to which the whole ground was conjectural. He had no other objection to the amendment of the honorable gentleman from Virginia, but the delay that it would occasion in answering the resolution. If it were adopted, distant collectors would have to be written to, and an answer to the main inquiry be retarded until their answers were received. His principal wish, however, was to guard the House against hastily coming to the conclusion that the fault in this case lies in the law. It may be elsewhere. We had gone on very well, he said, for thirty or forty years with the law as it now stood, and therefore, the *prima facie* presumption was, that the defect was not in the law.

Mr. BUCHANAN said, he thought it due to the Collector of the Port of Philadelphia, that the amendment proposed by the gentleman from Virginia should pass. If a long life of unsuspected integrity and public usefulness could constitute a claim to the favorable consideration of the House, this amendment should be adopted in justice to that officer. The resolution introduced by his colleague (Mr. WURTS) embraced not only the inquiry, whether goods had been illegally removed from the stores of the custom-house, but, also, what had been the conduct of the officers who had those goods in charge. If it should be ascertained that these goods had been illegally removed, then the case would present an aspect in which the information asked by the amendment might become very important. There was a striking difference between negligence and intentional guilt. If it should eventually appear that the losses sustained by the Government proceeded from the illegal conduct of the Collector, which, however, he did not believe to be the case: then it would be highly important to know what had been his conduct immediately after the discovery and disclosure of the transaction. If every exertion upon his part had been promptly made to protect the public interest and repair the injury which had been done, it was a circumstance which ought to go far in redeeming his character from the imputation of an intentional violation of the law, and was a fact which, in justice, should be made known. Mr. B. said, he concurred in the sentiments expressed by his friend from Delaware, except in the opinion that the object proposed by the amendment ought to be a distinct subject of inquiry. He thought it was one entire transaction, and that justice to the parties concerned required that the whole information should come together from the Department.

Mr. WURTS said, if it was supposed, as the language

of his colleague seemed to imply, that he had offered this resolution with any expectation, or desire, of eliciting any thing to impugn the character or impeach the diligence of the Collector of the Port of Philadelphia, his object was wholly mistaken. [Mr. BUCHANAN here disclaimed the remotest intention to impute to his colleague any such purpose.] Mr. W. then made a few remarks upon the amendment, to which he only objected, that it would prolong the time necessary to answer the call. His object was, to ascertain whether the loss which the Government would sustain, in this case, was attributable to a defect in the laws, or to a loose and careless administration of the laws. The facts, he believed, would turn out to be somewhat different from what appeared to be the prevalent opinion concerning them. He thought it would turn out that the blame rests on the law; but, if otherwise, that it will not fall on the head of the officer, but on subordinate officers, named in the law, and whose duties are defined by it, over whom the Collector has little more than a nominal supervision. A further objection to the amendment was, that it seemed to touch on judicial ground, whereas, it was evident, if the goods in question had passed, by purchase, into the hands of third persons, nothing which this House could do could alter such a state of things. Mr. W. further objected to the amendment, that it might, perhaps, interfere with the course of proceedings instituted by the Treasury Department, in regard to this matter.

Mr. FORSYTH said, in reply, that he did not see how any great delay could result from the amendment. It asks of the Department only to tell the House what has been done in the case. He presumed, that the officers concerned had already reported to the Department what they had done, and, if any orders or directions from the Treasury had been requisite, he took it for granted that they had been given. Gentlemen could not surely suppose, that the Secretary of the Treasury would have, at this time, to write to Philadelphia, to get information of what had taken place there. Doubtless, the loss, with all its circumstances, were already fully known to him, and, possessing a knowledge of the whole case, he could as readily communicate one part of it as another. Nor, Mr. F. said, could he perceive the force of the objection that this inquiry trenched on Judicial ground. It was proposed merely to ask what had been done, and this knowledge would not affect the rights of the individuals concerned. The nature of the subject required that the House should have this information. The object, in requiring it, is to remedy a defect, if any such exists, in our revenue laws. But it has also a more extensive object in view, which is, to ascertain whether the Revenue laws, as they exist, are properly executed. Some gentlemen had said, that they should not choose to express an opinion as to the character of this transaction. For himself, Mr. F. said, he had no such scruple, and, though the language he had used was strong, yet it was perfectly justifiable. He was not, however, to be understood as having intended to pass the slightest censure on the very respectable gentleman who is at the head of the Custom House in Philadelphia. He possessed no evidence to do so: he only wished to ask of the Treasury what were the facts, in order that, when obtained, we may correct the laws, if they need correcting, or punish neglect if any has occurred.

The question was then taken on Mr. POWELL'S amendment, and it was agreed to without a division.

The resolution then passed as amended.

Mr. TEST offered the following:

Resolved, That the Committee on Roads and Canals be instructed to inquire into the expediency of establishing a general system of Internal Improvement, embracing Canals, Roads, and Railways, with a fund to be derived from the sale of Public Lands or otherwise, adequate to carry into effect such system, to be distributed among the several States, if required by them, agreeably to their population.

A division being called on this resolution—before the counting was finished,

Mr. TEST (the mover) observed, that the object of the resolution was probably not understood. He was not disposed at that time to go into the discussion of the broad question, whether Congress possessed the power, under the Constitution, to legislate on the subject, for he considered that point conceded by the passage of the act appropriating money for making surveys and estimates of roads and canals; if the question, however, were not settled, it ought to be, and this was perhaps as favorable a time as any to do so; but my object in introducing the resolution at this time is, to give to the committee some data upon which to go, and to direct their deliberations to a certain and fixed point. It does not go to commit the House, said he, but asks only that the Committee shall inquire into the subject. The House had already agreed to the principle of the resolution, by passing the act of last session, but, unless some such resolution passed, the Committee of Roads and Canals had no ground on which to proceed in its inquiries. He thought the motion was calculated to do good, and he did not see that it could do any possible harm. He had waited some time, hoping that it would have been proposed by some more able member, but the session was gliding on, and he was unwilling that further delay should take place.

After a few observations by Mr. COCKE, with the assent of Mr. TEST, the resolution was laid on the table.

POST ON THE NORTHWEST COAST.

On opening a Message, received from the President, the Speaker announced the same to be of a confidential nature. The galleries were cleared, and the doors closed, and so remained for some time. When they were opened again, it was ascertained that the injunction of secrecy in regard to its proceedings had been so far removed as to allow the publication of the Message of the President, which was as follows:

Washington, 27th Dec. 1825.

To the House of Representatives of the United States.

In compliance with a resolution of the House of Representatives, of the 20th inst. I now transmit a copy of the Message of President Jefferson, to both Houses of Congress, of 18th January, 1803, recommending an exploring expedition across this continent. It will be perceived, on the perusal of this Message, that it was confidential; for which reason, the copy of it is now communicated in the same manner; leaving to the judgment of the House to determine, whether any adequate reason yet remains for withholding it from publication. I possess no other document or information in relation to the same subject, which I consider as coming within the scope of the resolution of the House. JOHN QUINCY ADAMS.

The letter of Mr. JEFFERSON, referred to in the Message, is yet concealed under the veil of confidence, which may or may not be removed by a subsequent vote of the House.

Before strangers were again admitted,

The House adjourned.

WEDNESDAY, DECEMBER 28, 1825.

PROPOSED PENSION TO MRS. DENNY.

On motion of Mr. STORRS, the House went into Committee of the whole, Mr. CONDICT in the Chair, on the bill for the relief of Penelope Denny.

[The bill proposes to allow to Mrs. Denny a half-pay pension, on account of her son, on whom she was dependent for bread, he having been killed in an action with pirates, while serving in the capacity of gunner in the Navy.]

The bill having been read,

Mr. CAMBRELENG said, that, when this subject was under discussion at the last Congress, exception was tak-

en to the bill, that Mrs. Denny, in all probability, had other sons surviving, on whom she might rely for support. Mr. C. said he was satisfied at the time that such was not the fact; but, to satisfy the House on this subject, he had procured affidavits from New York, shewing that the deceased was her only son.

The affidavits were read.

Mr. STORRS, (the Chairman of the Naval Committee,) explained the views of the Committee in reporting this bill. The petitioner, he said, was, as appeared from the documents of the case, the mother of a petty officer in the Navy, who was killed in action with the pirates, (at the same time that Capt. Allen was killed,) who was totally dependent on her son for support. Whilst living, her son had appropriated one-half of his pay for her support, and, when he sailed on his last voyage, left directions to the proper officer, to pay his mother half of all the pay which should become due to him during his absence. She has lost her only prop, in the service of the country, and seeks the same provision which the law would have made to her, had she been the widow, instead of the mother, of the deceased. In the case of the mother of Lieut. Allen, killed at the same time, a bill was pending, and would doubtless have passed, at the time, but for her death, which took place whilst the bill was under discussion. The principle of the bill went no further than this: that, if any person engaged in the Naval service shall be killed in battle, having no wife or child, but leaving behind him a mother, dependent on him for support, the half-pay pension system should be made to embrace the case of the mother. Conceiving this to be a just principle, Mr. S. supported the bill.

Mr. WILLIAMS called for the reading of the report of the Committee in the case of Lieutenant Allen, and Mr. BARTLETT for the reading of some papers connected with this case—After which,

Mr. WILLIAMS said, it appeared, that, in the case of Mrs. Allen, no bill had been passed; and that this, therefore, was an original case, in acting on which, the House was about to establish a precedent. For his own part, Mr. W. said, he thought the pension system of the United States was already carried, in this country, at least, to the fullest extent that could be justified. Though this bill appealed with great force to his feelings, he did not, as a Representative on this floor, feel at liberty to indulge his feelings, in opposition to his judgment. If in any such case a pension was granted, no case could be better entitled than that of the applicant: if the principle was to be established at all, this was a fit opportunity for beginning it. But the pension system was already too broad in its extent. This might perhaps be the only case of the kind which would present itself: but who could say that it would? or who could say how many such cases there might be, or to what extent money might be drawn from the Treasury, by adopting the principle of this bill? It was a new principle proposed to be incorporated in our laws, the extent of which none could foresee, and the charge of which, in process of time, the Treasury might not be sufficient to meet. He was therefore opposed to the bill.

Mr. CAMBRELENG agreed with the gentleman from North Carolina, (Mr. Williams) that our pension list had been very much extended; but while he did so, he must beg the gentleman to discriminate between our military and naval pension lists. While the former amounted to a million and a half annually, the latter was only about ten thousand dollars, and, even that was not charged upon the Treasury, but upon the Navy Pension Fund. It was not necessary to give a history of that fund, as it must be familiar to all. It was created out of a portion of the prize-money, and the seaman who had been killed in this action with the pirates, had himself contributed to that fund. He had served throughout the late war, was captured three times, and was among the sufferers in Dartmoor prison. He had by his own services contributed to the Navy Pension Fund, more than twenty times the trifling pittance which was now asked from the Treasury for the benefit of his aged mother. There was an annual surplus remaining in the Treasury, after satisfying all the claims upon the Navy Pension Fund. Even the interest upon this surplus was more than equal to any pensions of this character which ever could be charged upon the Treasury. Mr. C. said, with regard to the case of Lieut. Allen, he recollected well, that the very day the intelligence of his death was received, a gentleman from Kentucky, (Mr. F. Johnson) offered a resolution in behalf of his mother; a bill was soon after reported, and would unquestionably have passed this House by a large majority, but for the unfortunate death of his mother. In this case, a bill has been twice reported. It was once acted upon, and passed in Committee of the Whole, and the pension would no doubt have been granted, but for the case of Mrs. Perry—a case differing from this. In that case pensions had been previously granted to the widow and children: we were called upon to extend it to the mother. In the present case, there was no widow, no child.

Mr. C. could not think, with the gentleman from North Carolina, that we were about establishing any alarming precedent. The whole amount of Navy Pensions was little more than ten thousand dollars annually. He could not, therefore, perceive how any very alarming consequences could result from extending our Navy Pensions to dependent mothers, where there was neither widow nor child; and where the mother, as in this case, had been supported by half of the pay of her son. But, said Mr. C. the gentleman from North Carolina is mistaken; we are not now establishing any precedent—the precedent was established more than ten years ago, in the case of Mrs. Cheever—and the act, he believed, would be found among the acts of March, 1814. He thought there were also other cases. We are acting upon a precedent already established; there was nothing in the case to justify the apprehensions of the gentleman from North Carolina, and, he trusted, unless some stronger argument were urged against the passage of the bill, that it would be adopted by the Committee, and that the pension would be granted, as it ought to have been long since, to an aged woman, whose only son, upon whom she depended for support, had been killed while fighting in the service of his country.

Mr. WORTHINGTON observed, that, as he was about to give a vote on the subject now before the House, he conceived it his duty to offer a few reasons in support of the vote he should give. It appeared to him to be a case of the first impression, and we were now about to set a precedent for those who were to follow us. We appeared to be legislating on a hereditary principle. We are now called upon to grant a pension to the mother, in the ascending line, and we might go on *ad infinitum* on the same principle; we might go on, also, in the descending line, to the son, grandson, and so forth. If we once adopt the principle, we shall know not when to stop. Sir, said Mr. W. we ought not to put our hands into the Treasury on every occasion—we ought to husband our resources. We ought to grant pensions to none but those who have actually been maimed or disabled in the cause of their country, and not to their relations. We ought to take example from other countries in relation to this subject. It had grown to be an immense evil in England, and, at the commencement of the French Revolution, was a crying grievance, which the People of that country brought in accusation against their King. If the man himself, who suffered on the occasion referred to, were living, no person would be more willing to grant relief than himself. But, as the case now stands, he was decidedly against the bill.

Mr. SAUNDERS said, that he had been on the Naval Committee which reported this bill, at the last session, but he had been himself unfriendly to it. He must, however, take the liberty of reminding his friend from New York, (Mr. CAMBRELENG,) that he must be under a mistake in saying that this case, should this bill pass, would be chargeable on the Navy Pension Fund; and he would suggest to him the propriety of so amending the bill as to make the pension proposed by it payable out of that fund.

Mr. CAMBRELENG replied, that he was perfectly willing to make such an amendment, if thought proper. He agreed, for himself, in the opinion that this case was fairly chargeable on the Navy Pension Fund; but, as he knew that some gentlemen were of a different opinion, he felt reluctant to risk the fate of the bill by himself offering the amendment. If, however, it should be proposed by any gentleman, he would willingly vote for it.

The Committee then rose, and reported the bill without amendment; when

Mr. MALLARY, observing that this case must be new to many members of the House, with a view to allow them time to become better acquainted with it, from a consideration of what had been said, moved that the bill lie on the table. The motion prevailed, and the bill was ordered to lie on the table accordingly.

THURSDAY, DECEMBER 29, 1825.

ELECTION OF PRESIDENT AND V. PRESIDENT.

Mr. COOK offered the following:

Resolved, That, for the purpose of electing the President and Vice President of the United States, the Constitution ought to be so amended that a uniform system of voting by districts shall be established in all the States, *and that the qualified voters of each district shall vote directly for the aforesaid officers.* And that the Constitution ought to be further amended in such manner as will prevent the election of the aforesaid officers from devolving upon the respective Houses of Congress, *and that the eventual choice shall be from the two highest on the list that may have been previously voted for*, and shall be made by States.

Mr. COOK observed, on offering this resolution, that the subject had been in part anticipated by the resolution offered at the commencement of the session, by an honorable member from South Carolina; and it was his wish that the present resolution should be called up by being moved as an amendment, at the time when that was considered. He had drawn it with the intention of presenting to the House at once the distinct question on which they would have to pass.

Mr. McDUFFIE observed, that it was very desirable that, when the subject of the proposed alteration in the Constitution came up for discussion, it should be presented to the House in a form as little embarrassed as possible. The resolution he had some days since laid on the table was purposely so framed as to present the subject in a general form, avoiding all difficulties which might grow out of the details. He wished that the House should first express its judgment on the fundamental principle of the alteration. If this should be approved, it would then be the proper time to take up the details of the subject. He hoped, therefore, that the gentleman would not press his motion for referring his resolution to the Committee of the Whole on the state of the Union with that which he (Mr. McD.) had offered; but would consent, that, for the present, it lie on the table, from whence it might be called up immediately after the other had been passed upon.

Mr. COOK assented to this arrangement, and the resolution was laid upon the table accordingly.

CULTIVATION OF THE MULBERRY TREE.

Mr. MINER, of Pennsylvania, offered the following:

Resolved, That the Committee on Agriculture be instructed to inquire whether the cultivation of the mulberry tree, and the breeding of silk-worms, for the purpose of producing silk, be a subject worthy of legislative attention. And should they think it to be so, that they obtain such information as may be in their power, respect the kind of mulberry tree most preferred: the best soil, climate, and mode of cultivation: the probable value of the culture, taking into view the capital employed: the labor and the product, together with such facts and opinions as they may think useful and proper.

Resolved, That the committee inquire whether any legislative provisions are necessary or proper to promote the production of silk.

On offering this resolution, Mr. MINER wished to say one word, with the hope of obtaining for it a favorable reception. In looking over the report of the Secretary of the Treasury, of last year, he had observed that the amount of silks imported into the United States was $7,233,784, whilst the whole amount of bread stuffs exported was but $6,713,595, being more than a million less than the value of imported silks. The amount of tobacco exported was a little over four millions. The value of the whole products of the sea, including the fisheries, was less than a million and a half, and that of all the productions of the forest was not five millions. He stated these facts merely with a view of shewing that the cultivation of silk might be an interest worth cherishing. He did not, he confessed, foresee that any legislative provision would grow out of this inquiry, but he wished that the committee should inquire—that they should spread the result of their inquiry before this House and before the nation. Its publication would at all events be useful, and it might happen that farther legislation would be required on the subject, in consequence of the information to be received.

The resolutions were agreed to.

FRIDAY, DECEMBER 30, 1825.

A good deal of business was transacted to-day, but none of it of particular consequence. The House adjourned over to Tuesday.

TUESDAY, JANUARY 3, 1826.

SEDITION LAW.

Mr. WEBSTER, from the Committee on the Judiciary, made the following report on the petition of Thomas Cooper:

"The Committee on the Judiciary, to which was referred the petition of Thomas Cooper, report:

"That the petitioner sets forth that, in the year 1800, he was indicted and tried, under the provisions of the act of July 14, 1798, commonly called the Sedition Law, for publishing an alleged libel on the then President of the United States; that he was found guilty, and sentenced to be imprisoned six months, and to pay a fine of four hundred dollars. Having paid this fine, he prays Congress that it may be restored to him, with interest, on the grounds, first, that what he published was no libel, and, secondly, that the act before mentioned was unconstitutional.

"The Committee have considered the case, and agree to report that the petitioner have leave to withdraw his petition."

Mr. HAMILTON said, that he hoped that the gentleman from Massachusetts would add to his report "that the report of the Committee, with the petition of the petitioner, be printed." He would much prefer that the motion should come from that gentleman, as it was no more than an act of ordinary comity to the individual.

concerned; and it, moreover, surely, was little else than an act of bare justice, that the House should be accurately informed, not only of the grounds on which the petitioner's petition had been rejected, but that they should likewise be made acquainted with the character and extent of the claim of the petitioner, the wrongs of which he complained, and the reasons, by his own showing, why redress ought now to be accorded to him. Mr. H. said he would wait, with the hope that the gentleman would make the motion in question before he troubled the House with one of similar import.

Mr. WEBSTER said, that, supposing there was no possible objection to a long argument against the law of 1798 being read, he doubted whether it would be thought worth while to print it. He had no personal objection to that course, if preferred by the gentleman from South Carolina. If that gentleman meant to call up the report for the purpose of controverting the conclusion to which the committee had come, then it might be proper to have all the papers printed. But he was not particularly disposed, for the gratification of individuals merely, to have their disquisitions printed for the use of the House. He had not been instructed by the committee to move the commitment or printing of the report; but, if the memorial was printed, he presumed it would be proper to print the report also.

Mr. HAMILTON said, that the gentleman from Massachusetts had admitted all for which he contended. And that he would now distinctly inform that gentleman that it was his intention to controvert the report of the committee, and that it was with that view that he was desirous that the argument of the petitioner contained in the petition should be printed, that it might be laid on the table of every member of the House, that the view taken of his own case by the petitioner, might be familiar to each, as he, Mr. H., was perfectly satisfied that there was nothing which he could urge of equal cogency with this statement. Besides, he frankly confessed that, whatever might be the ultimate fate of the petition, he was anxious to enrich the public documents of this House with the luminous, constitutional, and statesman-like argument embodied in the petition, on a subject, the interest of which would occasionally be felt, aside from all former party differences of opinion, as a matter of useful instruction or salutary warning. As the sedition law expired by its own limitation, and was not repealed, no discussion had taken place on the subject in this House, after the public mind had settled down into a confirmed conviction of its unconstitutionality. He was not aware that, in an effort to do justice to an individual who had suffered under this law, there would be any harm in discussing those great principles on which the freedom of the press, and the freedom of political inquiry was now happily fixed, he hoped, in this country, forever. He would, therefore, move, that the report of the committee, with the petition of the petitioner, be printed.

The question was then taken on printing both the report and the memorial, and decided in the affirmative.

BANKRUPT SYSTEM PROPOSED.

Mr. WEBSTER, from the same committee, reported the following resolution:

"*Resolved*, That it is expedient to establish by law a uniform system of bankruptcy throughout the United States."

Mr. WEBSTER said, the Committee on the Judiciary had directed him to report the resolution which had been read. He moved that the resolution be referred to a Committee of the Whole. Before the time at which it would be called up, he hoped some further resolutions would be presented from the same committee, describing the outline which it was the intention of that committee to recommend to the adoption of the House.

The resolve was committed, as moved, and a day not far distant assigned for its consideration.

WEDNESDAY, JANUARY 4, 1826.

APPOINTMENTS OF MEMBERS OF CONGRESS.

The resolution offered by Mr. TREZVANT, calling on the President for a List of appointments given by the Executive, to Members of Congress, since the foundation of the Government, was taken up.

Mr. MILLER, of Pennsylvania, moved to amend the resolution, by inserting, after the word "appointed," the following: "and the State or Territory by them represented."

The mover accepted the above, as a modification of his motion.

Mr. BARTLETT observed that the object of the present inquiry had not, probably, attracted the attention of the House, though the resolution had, according to rule, laid one day upon the table. For himself, he was not averse, by any means, to obtaining the information desired by the honorable gentleman from Virginia; but he thought that it was not correct to call on the President of the United States to perform a task which more properly pertains to an officer of this House. When a call was made on the President, it was generally for such information as could be furnished to him from some of the Departments; but there was nothing on the records of any of the Departments, which would show whether a person who had received an appointment from the Executive, to any office under the Government, was, or was not, at the time of such appointment, a Member of Congress. The call was certainly very unusual, if it was a proper one; and in order that the mover might have an opportunity of making such inquiries as would enable him to give the call a more proper direction, he moved that, for the present, the resolution lie on the table.

Mr. MANGUM asked the gentleman last up to withdraw his motion long enough to admit a reply from the mover.

Mr. BARTLETT answered, that he had made the motion with the express view of preventing farther discussion at this time.

Mr. McDUFFIE asked that the resolution might be read again; and the resolution having been read accordingly,

Mr. TREZVANT renewed the request of Mr. MANGUM, which, having been complied with by Mr. BARTLETT, Mr. T. observed, that it was probably recollected by the House, that, about a fortnight before, a resolution had been laid on the table, by an honorable member from Tennessee, (Mr. MITCHELL,) the object of which was to prevent the acceptance of appointments from the President by members of Congress, during their term of service. The intention of the present call was to obtain the information which would be requisite to an enlightened consideration of that resolution. If, as is supposed by many, an evil is to be removed, the House must first know the evil before it can apply the remedy; and how can it proceed more properly in determining on the existence of the evil, than by first getting information from the Executive itself, as to the extent of the practice alluded to? All the appointments to office are made through the President; and on the files of his office, a memorandum of all of them is preserved. This record is the only source from which the information sought by the call can be obtained. Why, then, should the consideration of the resolution be postponed? For what purpose must it lie on the table? What will be the advantage of delay? A considerable time will necessarily be occupied in making the investigation, after it shall be called for: there ought, then, to be as little delay as possible in making the call. If the present resolution is laid on the table, the House will probably be called to act on that of the gentleman from Tennessee, without having this in-

formation before them. I do not say, (added Mr. T.) that the evil alluded to does exist; but the resolution of that gentleman is of itself sufficient to show that an apprehension is entertained in some directions that it exists, and needs correction. Such an imputation, if not just, ought to be wiped off as soon as possible. If such appointments have not been made to any great extent, the fact will so appear; but if, on the contrary, the evil, as is said, both exists, and is growing, then it is time that a proper remedy should be applied. No possible evil can result from the call; some good possibly may. Mr. T. said he hoped, therefore, that his motion would be adopted.

Mr BARTLETT said, that, though he had no objection to getting this information, yet, as he thought the mode in which it was proposed to get it, improper, he should renew his motion to lay the resolution on the table.

The question being taken on laying it on the table, it was decided in the negative—ayes 62, noes 101.

Mr. BAILEY rose, not to oppose or advocate the passage of the resolution, but to make a single suggestion; that if this resolution were passed, it would be proper that this House should communicate to the President the names of all the members of Congress since the adoption of the Constitution, to aid him in giving the desired information. There was an analogous case, though less extensive, eight years ago, having relation to the Congress then existing; and a list of the names of the members of that Congress was sent to the President. The same reason required that, in the present case, the President should be furnished with the names of all members since the adoption of the Constitution.

Mr. FORSYTH observed, that, to oppose any call for information, deemed important by any gentleman, was, at all times, an ungracious task. He had never voted, and should not, at this late hour of his Congressional life, begin to vote, against any such call. He would suggest to the honorable mover of this resolution, whether it would not be much better to give the present call a different direction. The President of the United States is now called on for this information. It was proper to call on that officer for all information of a strictly executive character, and, so far as the appointment of the persons was concerned, the information now required was of that character. But how can the President ascertain whether all the persons who have received such appointments, were, or were not, Members of Congress at the respective times of their appointment, or for six months before? He would ask, whether it was consistent with that decorum and decency which was due from one one branch of the Government to another, to ask the President of the United States to come to the records of this House, and there get certain information, to be immediately handed back by him to the House? All that he wanted from the President was a list of the appointments made within the period embraced by the resolve. The House has already a list of its own members. A comparison of these two lists would enable each gentleman to determine for himself the question of fact. This, too, would answer another part of the resolution, by giving the emoluments of the officers respectively, and also the States from which the members came. If, however, the gentleman wished to get this information in a condensed form, the better way would be for him to ask for the appointment of a Select Committee, to whom the subject might be referred. Such a committee would present all the facts in a report. And here, said Mr. FORSYTH, let me make a remark. The gentleman has stated to us in this Hall that this is a great and growing evil. An evil, sir? What evil? It is a constitutional evil, if it be one at all; it is one which was anticipated and intended by the constitution, and which, in my opinion, has as yet produced no injury to the interests of the country. I know, indeed, that, in some parts of the United States, the opinion is entertained, and no doubt honestly, that this business of appointment of Members of Congress to office, has gone to very improper lengths, is liable to an improper use, and productive of undue influence. Sir, this may be so; but I trust that it will not be assumed as a fact, that the power of appointment has been thus improperly used. If the charge is made, let it be brought home against the President, or any other individual, and we have the power to apply the remedy. We can punish both the corrupter and the corrupted. Here is the proper place for such an investigation. If any gentleman is satisfied that there have been improper practices in this respect, he can bring the offender here for punishment. But, said Mr. F. I would suggest, if any inquiry is to be gone into, it must be gone into still deeper. You must inquire, not merely who have obtained offices, but who have obtained contracts from the Government? whose brothers, whose fathers, whose friends, have got advantageous contracts? And, further still—whose fathers, brothers, and friends, have been recommended to, and actually received offices under, the Government. These, said Mr. F. are sources of corruption equally dangerous with that now in question, and, when we begin the inquiry, these, also, should be examined.

Mr. WEBSTER observed that, as the honorable member from Virginia seemed to think this inquiry of importance, and as he presumed there were none who wished to exclude the information which he sought—the only objection being as to the mode of obtaining it—he would suggest to that member, that he should move to amend his resolution, so as to refer the inquiry which it proposed to a committee of this House. The records of the Department of State, and those of this House, would be both accessible to the committee, and, from consulting them, the committee would be able to give to the House all the information which could be obtained on this subject.

Mr. FLOYD, said, that when an amendment to the Constitution had been formerly proposed, to prevent Members of Congress from holding any office under the Government of the United States, for a certain length of time, after the term for which they had been elected should have expired, he believed he had voted for it, as he thought it a wise precaution to preserve the liberty they had, and the House free from the imputation of motives; that he would not attribute any thing like motive to the present members, as he believed all to be very just, and perhaps the times very honest. But the time might arrive, when we might see a dove-tailed Administration claiming all power, infringing on what some called, and which he believed to be, State rights. He did not wish to fight, as the Barons of England had done, to limit the prerogative of the Crown, but wished to see so much power exercised as was granted expressly in the Constitution, and no more. To take away the hope of office, might be useful at a future day, when office might be more desirable; nor could he conceive why the gentleman from Georgia, who has so much talent, and whom all knew to be so upright, opposed this resolution, as it was only a call for information, which certainly could be better furnished by the President than by a committee of the House, and who has made a speech on the subject much longer than he is accustomed to do on such subjects. If there is difficulty with the President and the Departments, there would, in his opinion, be much more with a committee. The gentlemen now called on for information were well paid for little labor, and he did not think it would be a very heavy task to produce the information wanted.

The opinion that, at a future day, things might be otherwise than at present, has been formerly expressed

to this House; for, if he was not mistaken, a committee, formerly raised to consider and report upon the celebrated compensation law, then stated that members of Congress should be well paid to keep them free from influence. Such, I believe, to be the idea, lest, under other circumstances, gentlemen would seek a seat in Congress only "to turn it to advantage."

Mr. FORSYTH said, that the gentleman from Virginia had entirely mistaken him, if he supposed that he had opposed this call for information.

Mr. FLOYD said he had inferred it from the course of his argument, that the gentleman was opposed to the call.

Mr. FORSYTH said, that the gentleman's inference was both against the fact, and against his express declaration to the contrary.

Mr. BARTLETT then moved to amend the resolution, so as to appoint a committee to report the required facts, instead of calling on the President to communicate them.

Mr. MITCHELL, of Tennessee, opposed this amendment, the effect of which would be, he said, to throw on the members a labor which would be fruitless, because, after all, they would not thus acquire the desired information. If, said he, we strike at the source at once, we shall obtain the information which is to be found on the Executive records only. It could not be presumed that such records were not kept, or that copies could not be obtained from those who were at least as well paid for their labors as the members of this House. He, therefore, hoped the information would be called for. It was not wanting for the members of this House merely, but for the People of the whole Union; and he could not conceive that any committee of this House could furnish it as readily as it could be obtained in the mode now proposed. I (said Mr. M.) will vote for the resolution. I, for one, who speak the language of the People whom I represent, deem it to be an alarming and growing evil, to appoint Members of Congress to other offices, endowing them with fat salaries. I wish the members of this and the other House to be not only pure, but, like Cæsar's wife, that they should be unsuspected. He would commence at the head of the Government, and go down even to the constable, to scrutinize the purity of public men. Mr. M. made a few further observations, to the effect that, if there was any malversation in office, from the head to the foot of this Government, it was the business of this House, as the servants of the People, to detect it. We are sent here, said he, to protect their rights. The resolution asks for information to enable us to discharge this duty, and it asks it from the proper source. Let the Executive, with his hundred officers at his command, make the inquiry and furnish the information. With these views, he was opposed to the amendment, and in favor of the original motion.

The question being taken on the amendment, it was negatived.

Mr. TREZVANT rose, not to make any further observations on the resolution, but to ask that the question on its adoption might be taken by yeas and nays.

The question was so taken on the adoption of the resolution, and decided as follows:

YEAS.—Messrs. Addams, Pa. Alexander, Va. Alexander, Ten. Allen, Mass. Allen, Ten. Alston, Anderson, Angel, Archer, Armstrong, Ashley, Badger, Barbour, Va. Barney, Bassett, Baylies, Blair, Boone, Bryan, Buchanan, Cambreleng, Campbell, Carson, Carter, Cassedy, Claiborne, Cocke, Condict, Conner, Davis, Davenport, Dorsey, Drayton, Edwards, N. C. Estill, Findlay, Pa. Findlay, Ohio, Floyd, Forsyth, Garnsey, Garrison, Gist, Gurley, Hallock, Hamilton, Harris, Harvey, Hayden, Haynes, Healy, Hemphill, Henry, Hines, Hobart, Hoffman, Holmes, Houston, Huguenin, Ingham, Isacks, Jennings, Ind. Johnson, of Va. James Johnson, Kellogg, Kerr, Kremer, Lathrop, Lawrence, Lecompte, Letcher, Lincoln, Little, Locke, Mallary, Mangum, Marable, Markley, Martindale, Martin, McCoy, McDuffie, McKean, M'Kee, M'Lane, Del. M'Neill, Metcef, Merriwether, Merwin, Con. Metcalfe, Miller, Pa. Miner, James S. Mitchell, John Mitchell, Mitchell, S. C. Mitchell, Ten. Moore, Ala. Newton, Orr, Peter, Phelps, Plumer, Polk, Porter, Powell, Reed, Rives, Rose, Ross, Sands, Saunders, Sawyer, Scott, Smith, Sprague, Stevenson, Pa. Stevenson, Va. Stewart, Swan, Taliaferro, Taylor, of Va. Test, Thomson, Pa. Thompson, Ga. Thompson, Ohio, Trezvant, Trimble, Tucker, N. J. Tucker, S. C. Van Horne, Van Rensselear, Vance, Verplanck, Vinton, Wales, Ward, Wickliffe, Williams, Henry Wilson, Wilson, S. C. Wilson, Ohio, Wolf, Woods, Ohio, Worthington, Young.—144.

NAYS—Messrs. Bailey, Baldwin, Bartlett, Barber, Con. Beecher, Bradley, Brent, Brown, Buckner, Burleigh, Burges, Clarke, Cook, Crowinshield, Dwight, Eastman, Edwards, Pa. Everett, Hasbrouck, Herrick, Humphrey, Jennings, Ohio, Francis Johnson, Kidder, Markell, Marvin, N. Y. Mattacks, M'Lean, Ohio, Meech, Miller, N. Y. Moore, Ky. O'Brien, Owen, Sloane, Tomlinson, Varnum, Webster, Whipple, White, Whittlesey, Wood, N. Y. Wright—42.

So the resolution of Mr. TREZVANT was agreed to.

THE JUDICIARY SYSTEM.

The House then again resolved itself into a Committee of the whole, on the bill further to amend the Judiciary System of the United States.

[This bill proposes, That the Supreme Court of the United States shall hereafter consist of a Chief Justice and nine Associate Justices, and provides for the appointment of three Additional Associate Justices of said Court.

That the seventh Judicial Circuit of the United States shall hereafter consist of the Districts of Ohio, Indiana, and Illinois; the eighth Circuit, of the Districts of Kentucky and Missouri; the ninth Circuit, of the Districts of Tennessee and Alabama; and the tenth Circuit, of the Districts of Louisiana and Mississippi.

It repeals so much of any act or acts of Congress, as vests in the District Courts of the United States in the Districts of Indiana, Illinois, Missouri, Mississippi, Alabama, and Louisiana, the powers and jurisdiction of Circuit Courts, and provides that there shall be hereafter Circuit Courts for said Districts, to be composed of the Justice of the Supreme Court, assigned or allotted to the Circuit to which such Districts may respectively belong, and of the District Judge of such Districts.]

Mr. WEBSTER, Chairman of the Judiciary Committee, said that the bill which was under consideration of the Committee, was so simple in its provisions, and so unembarrassed with detail, that little or nothing, in the way of explanation, merely, was probably expected from the Committee. But the general importance of the subject, and the material change which the proposed measure embraces, demanded some exposition of the reasons which had led the Committee on the Judiciary to submit it to the consideration of the House.

The occasion (said Mr. W.) naturally presents two inquiries: first, whether any evils exist in the administration of justice in the Courts of the United States; and, secondly, whether, if there be such evils, the proposed bill is a proper and suitable remedy. On both these points, it is my duty to express the sentiments which the Committee on the Judiciary entertain. Perhaps, however, Mr. Chairman, before entering into a discussion of those two questions, I may be allowed to state something of the history of this Department of the Government, and to advert to the several laws which have been, from time to time, enacted, respecting its organization.

The Judicial power, which, by the Constitution, was to be exercised by the present Government, necessarily engaged the attention of the first Congress. The subject fell into the hands of very able men, and it may well excite astonishment that the system which they prepared and recommended, and which was adopted in the hurried session of the Summer of 1789, has been found to fulfil, so far, so well, and for so long a time, the great purposes which it was designed to accomplish. The general success of the general system, so far, may well inspire some degree of caution in the minds of those who are called on to alter or amend it.

By the original act, of September, 1789, there was to be a Supreme Court, according to the Constitution, which was to consist of six Judges, and to hold two sessions a year, at the seat of Government. The United States, or such of them as had then adopted the Constitution, were to be divided into Circuits and Districts, and there was to be a District Court, in each District, holden by a District Judge. The Districts were divided into three Circuits, the Eastern, the Middle, and the Southern; and there was to be a Circuit Court in each District, to be composed of two of the Justices of the Supreme Court, and the District Judge for the District; this Circuit Court was to hold two sessions a year, in each District, and I need not inform the Committee, that the great mass of business, excepting only that of Admiralty and Maritime jurisdiction, belonged to the Circuit Court as a Court of original jurisdiction. It entertained appeals, or writs of error, also, from the decisions of the District Courts, in all cases.

By this arrangement, then, the Justices of the Supreme Court were required to hold two sessions of that Court, annually, at the Seat of Government, to hear appeals and writs of error; and it was required of them also, that two of them should attend in each District twice a year, to hold, with the District Judge, a Circuit Court.

It was found that these duties were so burthensome, that they could not be performed. In November, 1792, the Judges addressed the President on the subject, (who laid their communication before Congress,) setting forth their inability to perform, without exertions and sacrifices too great to be expected from any men, the services imposed on them by law. It was, doubtless, this communication which produced the law of March, 1793, by which it was provided that one Judge of the Supreme Court, with the District Judge, should constitute the Circuit Court. And, inasmuch as the Courts would now consist of two Judges, provision was made, perhaps sufficiently awkward and inconvenient, for the case of difference of opinion. It will be observed, Mr. Chairman, that by these laws, thus far, particular Justices are not assigned to particular Circuits. Any two Judges of the Supreme Court, under the first law, and any one, under that of 1793, with the District Judge, constituted a Circuit Court. A change, or alternation, of the Judges, was contemplated by the law. Therefore, it was provided, by the act of 1793, that, in case of division of opinion, as the Court consisted of but two Judges, the question should be continued to the next session, and, if a different Judge then appeared, and his opinion coincided with that of his predecessor, judgment should go accordingly.

And here, Mr. Chairman, I wish to observe, that, in my opinion, the original plan of holding the Circuit Courts by different Judges, from time to time, was ill-judged; it was founded on a false analogy: it seems to have been borrowed from the English Courts of Assize and *Nisi Prius;* but the difference in the powers and jurisdiction of the Judges in the two cases, rendered what was proper for one, not a fit model for the other. The English Judges at *Nisi Prius*, so far as civil causes are concerned, have nothing to do but try questions of fact by the aid of a jury, on issues or pleadings already settled in the Court from which the record proceeds. They give no final judgments; nor do they make interlocutory orders respecting the proceeding and progress of the cause. They take a verdict of the jury on the issues already joined between the parties, and give no other directions in matters of law, than such as become necessary in the course of this trial by jury. Every case begun, therefore, is ordinarily finished. Nothing of that case remains for the Judges' successor. If it be tried, the record is taken back with the verdict to Westminster Hall; if it be not tried, the whole case remains for a subsequent occasion. It is, perhaps, surprising, that the very able men who framed the first judicial act, did not see the great difference between this manner of proceeding at the English Assizes, and the necessary course of proceeding in our Circuit Courts, with the powers and jurisdictions conferred on those Courts. These are Courts of final jurisdiction; they not only take verdicts, but give judgments. Here suits are brought, proceeded with, through all their stages, tried, and finally determined. And, as in the progress of suits, especially those of equity jurisdiction, it necessarily happens that there are different stages, and successive orders become necessary, from term to term, it happened, of course, that the Judge was often changed before the cause was decided: he who heard the end, had not heard the beginning. And, when to this is added, that these Judges were bred in different schools, and, as to matters of practice, especially, accustomed to different usages, it will be easy to perceive that no small difficulties were to be encountered in the ordinary despatch of business. So, in cases reserved for advisement and further consideration, the Judge reserving the question, was not the Judge to decide it. He who heard the argument, was not to make the decision. Without pursuing this part of the case farther, it is quite obvious that such a system could not answer the ends of justice.

The Courts, indeed, were called Circuit Courts; which seemed to imply an itinerant character; but, in truth, they resembled much more, in their power and jurisdiction, the English Courts sitting in bench, than the Assizes, to which they appear to have been likened.

The act of 1793, by requiring the attendance of only one, instead of two, of the Judges of the Supreme Court, on the Circuits, of course diminished, by one half, the Circuit labors of those Judges.

We then come to the law of February, 1801. By this act, the Judges of the Supreme Court were relieved from all Circuit duties. Provision was made that their number should be reduced, on the first vacancy, from six to five. They were still to hold two sessions annually, of the Supreme Court: and Circuit Judges were appointed to hold the Circuit Court in each District. The provisions of this law are generally known, and it is not necessary to recite them particularly. It is enough to say, that, in five of the six Circuits, the Circuit Court was to consist of three Judges, specially appointed to constitute such Court; and, in the sixth, of one Judge, specially appointed, and the District Judge of the District.

We all know, Sir, that this law lasted but a twelvemonth. It was repealed *in toto* by the act of March 8, 1802; and a new organization of the Circuit Courts was provided for by the act of the 29th of April, of that year. It must be admitted, I think, Sir, that this act made considerable improvements upon the system, as it existed before the act of February, 1801. It took away the itinerary character of the Circuit Courts, by assigning particular Justices to particular Courts. This, in my opinion, was a great improvement. It conformed the constitution of the Court to the nature of the powers which it exercised. The same Judges now heard the cause through all the stages of its progress, and the Court became, what its duties properly made it, a Court of Record, with permanent Judges, exercising a various jurisdiction, trying causes at its bar by Jury, in cases proper for the intervention

of a jury, and rendering final judgments. This act, also, provided another mode of proceeding with cases in which the two Judges composing the Circuit Court should differ in opinion. It prescribed, that such difference should be stated, certified to the Supreme Court, and that that Court should decide the question, and certify its decision to the Circuit Court.

In this state of things, the Judicial System remained, without material change, until the year 1807, when a law was passed for the appointment of an additional Judge of the Supreme Court, and a Circuit allotted to him in the Western States.

It may be here observed, that, from the commencement, the System has not been uniform. From the first, there was an anomaly in it. By the original act of September, 1789, a District Court was established for Kentucky, (then part of Virginia,) and for Maine, (then part of Massachusetts,) and, in addition to the powers of District Courts, there was conferred on these, all the jurisdiction which elsewhere belongs to Circuit Courts, and, in other cases, as new States were added to the Union, District Courts were established, with the powers of Circuit Courts. The same thing has happened, too, when States have been divided into two Districts. There are, at present, several States which have no Circuit Court except the District Court, and there are other States which are divided into more than one District, and in some of which Districts there is but a District Court with Circuit Court jurisdiction; so that it cannot be said, that the system has been at any time entirely uniform.

So much, Mr. Chairman, for the history of our Legislation on the Judicial Department.

I am not aware, Mr. Chairman, that there is any public complaint of the operation of the present system, so far as it applies to the Atlantic States. So far as I know, justice has been administered efficiently, promptly, and satisfactorily, in all those Circuits. The Judges, perhaps, have a good deal of employment: but they have been able to go through their arduous duties in such manner as to leave no cause of complaint, as far as I am informed. For my own part, I am not sanguine enough to expect, as far as those Circuits are concerned, that any improvement can be made. In my opinion, none is needed. But it is not so in the Western States. Here exists a great deficiency. The country has outgrown the system. This is no man's fault nor does it impute want of usual foresight to any one. It would have seemed chimerical in the framers of the law of 1789, if they had struck out a plan which should have been adequate to the exigencies of the country, as it actually exists in 1826. From a period as far back as the close of the late war, the People of the West have applied to Congress on the subject of the Courts. No session of Congress has passed without an attempt, in one or the other House, to produce some change: and although various projects have been presented, the inherent difficulties of the subject have prevented any efficient action of the Legislature. I will state, shortly, Sir, and as nearly as I remember, what has been at different times proposed.

In the first place, it has been proposed to recur to the system of Circuit Courts, upon the principle, although not exactly after the model, of the act of February, 1801. A bill of this character passed the Senate in 1819, dividing the country into nine Circuits, and providing for the appointment of one Circuit Judge to each Circuit, who, with the District Judge of the District, should constitute the Circuit Court. It also provided, that the Supreme Court, as vacancies should occur, should be reduced to five members. This bill, I believe, was not acted upon in this House. Again it has been proposed, to constitute Circuit Courts by the union of the District Judges in the Circuit. It has been proposed, also, to extend the existing system somewhat in conformity to the object of the present bill, by adding to the number of the Judges in the Supreme Court. And a different arrangement still has been presented, which contemplates the appointment of Circuit Judges for some Districts, and the continued performance of Circuit duties by the Supreme Judges in others, with such legal provision as shall not attach the Judges of the Supreme Court, in the performance of their Circuit duties, unequally, to any part of the country, but allow them to be distributed equally and fairly, over the whole. This system, though somewhat complex, and perhaps liable to be misunderstood, is, I confess, what appears to me best of all suited to our condition. It would not make the Supreme Court too numerous; and it would still require from its members the performance of Circuit duties; it would allow a proper distribution of these members to every part of the country; and, finally, it would furnish an adequate provision for the despatch of business in the Circuit Courts. Upon this plan, a bill was presented to the House of Representatives at the first session of the last Congress, but it did not meet with general favor; and the fate of a similar proposition elsewhere, at a subsequent period, discourages any revival of it.

I now come, Sir, to consider whether any, and what, evils exist; and then, whether this bill be a suitable remedy. And in the first place, it is said, perhaps with some justice, that the business of the Supreme Court itself, is not gone through with sufficient promptitude: that it is accumulating: that great delays are experienced, and greater delays feared. As to this, I would observe, that the annual session of the Court cannot last above six or seven weeks, because it commences in February, and the Circuit duties of the Judges require them to leave this place the latter part of March. But I know no reason why the Judges should not assemble earlier. I believe it would not materially interfere with their Circuit duties, to commence the session here in the early part of January; and if that were the case, I have litttle doubt that, in two years, they would clear the docket. A bill to make this change, passed this House two years ago; I regret to say, it was not acted upon in the Senate.

As to returning to the original practice of having two sessions of the Supreme Court within the year, I incline to think it wholly inexpedient. The inconvenience arising from the distance of suitors and counsel from the Seat of Government, forms a decisive objection to that proposition.

The great evil, however, Sir, at present experienced, that which calls most loudly and imperatively for a remedy, is, the state of business in the Circuit Courts in the Western States The Seventh Circuit consists of Kentucky, Ohio, and Tennessee. All the other Western States have District Courts, with the Powers of Circuit Courts. I am fully of opinion, that some further provision is required of us, for the administration of justice in these States. The existing means are not equal to the end. The Judicial organization is not competent to exercise the jurisdiction which the laws confer upon it. There is a want of men, and a want of time. In this respect, it appears to me, that our constitutional duty is very plain. The Constitution confers certain judicial powers on the Government of the United States: we undertake to provide for the exercise of these powers; but the provision is inadequate, and the powers are not exercised. By the Constitution, the judicial power of this Government extends, as well as to other things, to causes between citizens of different States We open Courts professedly to exercise that jurisdiction: but they are not competent to it; it is not exercised with reasonable promptitude; the suitor is delayed, and the end of the constitutional provision, in some measure, defeated. Now, it appears to me very plain, that we should either refuse to confer this jurisdiction on the Courts, or that we should so constitute them, that it may be efficiently exercised.

I hold, Sir, the certificate of the Clerk for the District and Circuit Court of the District of Kentucky, that there

are now pending, in those Courts, 950 causes. As this is not a Maritime District, most of these causes, doubtless, are in the Circuit Court; nor has this accumulation arisen from any want of diligence in the Judges themselves: for, the same paper states, that 2,000 causes have been disposed of within the last three years. The Memorial of the Bar of Nashville informs us that 160 cases are pending in the Circuit Court for the Western District of Tennessee; a number, perhaps not much less, is on the docket of the Court for the Eastern District of Tennessee; and, I am authorized to state, that 200, or 250, may be taken as the number of suits pending in the Circuit Court of Ohio. These three States, Sir, constitute one Circuit: they extend over a wide region; the places for holding the Courts are at vast distances from one another; and it is not within the power of man, that the Judge assigned to this Circut should get through the duties of his station. With the state of business in the other Western and Southwestern States, I am not so particularly acquainted. Gentlemen from those States will expose it to the Committee. I know enough, however, to be satisfied that the whole case calls for attention. It grows no better by delay, and, whatever difficulties embarrass it, we may as well meet them at once, and agree upon such remedy as shall, upon the whole, seem most expedient.

And this, Sir, brings me to the most difficult part of our inquiry; that is to say, whether such a measure as this bill proposes, be the proper remedy. I beg to say, Sir, that I feel this difficulty as deeply as it can be felt by any member of the Committee; and while I express my own opinions, such as they are, I shall be most happy to derive light from the greater experience, or the better intelligence, of any gentleman. To me it appears, that we are brought to the alternative of deciding between something like what this bill proposes, and the Circuit Court system, as provided in the bill of the Senate, in 1819. As a practical question, I think it has come to this point: Shall we extend the present system, by increasing the number of the Judges? or, shall we recur to the system of Circuit Courts? I invoke the attention of the Committee to this question; because, thinking the one or the other inevitable, I wish for the mature judgment of the House on both.

In favor of the Circuit Court system, it may be said, that it is uniform, and may be made to apply to all the States equally: so that if new States come into the Union, Circuit Courts may be provided for them without derangement to the general organization. This, doubtless, is a consideration entitled to much weight. It is said, also, that, by separating the Judges of the Supreme Court from the Circuits, we shall leave them ample time for the discharge of the high duties of their appellate jurisdiction. This, no doubt, is true: but then, whether it be desirable, upon the whole, to withdraw the Judges of the Supreme Court from the Circuits, and to confine their labors entirely to the sessions at Washington, is a question which has most deeply occupied my reflections, and in regard to which I am free to confess, some change has been wrought in my opinions. With entire respect for the better judgment of others, and doubting, therefore, when I find myself differing from those who are wiser and more experienced, I am still constrained to say, that my judgment is against withdrawing the Judges of the Supreme Court from the Circuits, if it can be avoided. The reasons which influence this sentiment are general, and perhaps may be thought too indefinite and uncertain to guide in measures of public importance; they nevertheless appear to me to have weight, and I will state them with frankness, in the hope that, if they are without reasonable foundation, I shall be shown it, when certainly I shall cheerfully relinquish them.

In the first place, it appears to me that such an intercourse as the Judges of the Supreme Court are enabled to have with the Profession, and with the People, in their respective Circuits, is itself an object of no inconsiderable importance. It naturally inspires respect and confidence, and it communicates and reciprocates information through all the branches of the Judicial Department. This leads to a harmony of opinion and of action. The Supreme Court is, itself, in some measure, insulated; it has not frequent occasions of contact with the community. The Bar that attends it is neither numerous, nor regular in its attendance. The gentlemen who appear before it, in the character of counsel, come for the occasion, and depart with the occasion. The Profession is occupied mainly in the objects which engage it in its own domestic forums; it belongs to the States; and their tribunals furnish its constant and principal theatre. If the Judges of the Supreme Court, therefore, are wholly withdrawn from the Circuits, it appears to me there is danger of leaving them without the means of useful intercourse with other Judicial characters, with the Profession of which they are members, and with the public. But, without pursuing these general reflections, I would say, in the second place, that I think it useful that Judges should see in practice the operation and effect of their own decisions. This will prevent theory from running too far, or refining too much. We find, in legislation, that general provisions of law, however cautiously expressed, often require limitation and modification; something of the same sort takes place in judicature: however beautiful may be the theory of general principles, such is the infinite variety of human affairs, that those most practised in them, and conversant with them, see at every turn a necessity of imposing restraints and qualifications on such principles. The daily application of their own doctrines will necessarily inspire Courts with caution; and, by a knowledge of what takes place upon the Circuits, and occurs in constant practice, they will be able to decide finally, without the imputation of having overlooked, or not understood, any of the important elements and ingredients of a just decision.

But further, Sir, I must take the liberty of saying, that, in regard to the judicial office, constancy of employment is, of itself, in my judgment, a good, and a great good. I appeal to the conviction of the whole Profession, if, as a general observation, they do not find that those who decide most causes, decide them best. Exercise strengthens and sharpens the faculties, in this, more than in almost any other employment. I would have the judicial office filled by him who is wholly a judge, always a judge, and nothing but a judge. With proper seasons, of course, for recreation and repose, his serious thoughts should all be turned to his official duties—he should be *omnis in hoc*. I think, Sir, there is hardly a greater mistake than has prevailed occasionally in some of the States, of creating many Judges, assigning them duties which occupy but a small part of their time, and then making this the ground for allowing them a small compensation. The judicial office is incompatible with any other pursuit in life: and all the faculties of every man who takes it, ought to be constantly exercised, and exercised to one end. Now, Sir, it is natural, that, in reasoning on this subject, I should take my facts from what passes within my own means of observation: if I am mistaken in my premises, the conclusion, of course, ought to be rejected. But I suppose it will be safe to say, that a session of eight weeks in the year, will probably be sufficient for the decision of causes in the Supreme Court: and, reasoning from what exists in one of the most considerable Circuits in the Atlantic States, I suppose that eight, ten, or at most, twelve, weeks, may be the average of the time requisite to be spent by a Circuit Judge in his Circuit Court in those Circuits. If this be so, then, if the Courts be separated, we have Supreme Judges occupied two months out of twelve, and Circuit Judges occupied three months out of twelve. In my opinion, this is not a system either to make, or to keep good Judges. The Supreme Court ex-

ercises a great variety of jurisdictions; it reverses decisions at common law, in equity, and in admiralty; and with the theory and the practice of all these systems, it is indispensable that the Judges should be accurately and intimately acquainted. It is for the Committee to judge how far the withdrawing them from the Circuits, and confining them to the exercise of an appellate jurisdiction, may increase or diminish this information. But, again, Sir, we have a great variety of local laws existing in this country, which are the standard of decision where they prevail. The laws of New England, Maryland, Louisiana, and Kentucky, are almost so many different codes. These laws are to be construed and administered, in many cases, in the Courts of the United States. Now, is there any doubt, that a Judge, coming on the Bench of the Supreme Court, with a familiar acquaintance with these laws, derived from daily practice and decisions, must be more able, both to form his own judgment correctly, and to assist that of his brethren, than a stranger who only looks at the theory? This is a point too plain to be argued. Of the weight of the suggestion the Committee will judge. It appears to me, I confess, that a Court remotely situated, a stranger to these local laws in their application and practice, with whatever diligence, or with whatever ability, must be liable to fall into great mistakes.

May I ask your indulgence, Mr. Chairman, to suggest one other idea: With no disposition, whatever, to entertain doubts as to the manner in which the Executive duty of appointments shall at any time hereafter be performed, the Supreme Court is so important, that, in whatever relates to it, I am willing to make assurance doubly sure, and to adopt, therefore, whatever fairly comes in my way, likely to increase the probability that able and efficient men will be placed upon that bench. Now, I confess, that I know nothing which I think more conducive to that end, than the assigning to the members of that Court, important, responsible, individual duties. Whatsoever makes the individual prominent, conspicuous, and responsible, increases the probability that he will be some one possessing the proper requisites to be a Judge. It is one thing to give a vote upon a bench, (especially if it be a numerous bench,) for plaintiff or defendant, and quite another thing to act as the head of a Court, of various jurisdiction, civil and criminal—to conduct trials by Jury, and render judgments in law, equity, and admiralty. While these duties belong to the condition of a Judge on the bench, that place will not be a sinecure, nor likely to be conferred without proofs of proper qualifications. For these reasons I am inclined to wish that the Judges of the Supreme Court may not be separated from the Circuits, if any other suitable provision can be made.

As to the present bill, Mr. Chairman, it will doubtless be objected that it makes the Supreme Court too numerous. In regard to that, I am bound to say, that my own opinion was, that the present exigency of the country could have been answered by the addition of two members to the Court. I believe the three Northwestern States might well enough go on for some time longer; and form a Circuit of themselves, perhaps, hereafter, as the population shall increase, and the state of their affairs require it. The addition of the third Judge is what I assent to, rather than what I recommend. It is what I would gladly avoid, if I could with propriety. But, on the subject of the number of Judges, I admit that, for some causes, it will be inconveniently large: for such, especially, as require investigation into matters of fact, such as those of Equity and Admiralty; and, perhaps, for all private causes, generally. But the great and leading character of the Supreme Court, its most important duties, and its highest functions, have not yet been alluded to. It is its peculiar relation to this Government, and the State Governments: It is the power which it rightfully holds and exercises, of revising the opinions of other tribunals on Constitutional questions, as the great practical expounder of the powers of the Government; which attaches to this tribunal the greatest attention, and makes it worthy of the most deliberate consideration. Duties at once so important and so delicate, impose no common responsibility, and require no common talent and weight of character. A very small Court seems unfit for these high functions. These duties, though essentially judicial, partake something of a political character. The Judges are called on to sit in judgment on the acts of independent States: they control the will of Sovereigns: they are liable to be exposed, therefore, to the resentment of wounded sovereign pride; and from the very nature of our system, they are called on, also, sometimes, to decide whether Congress has not exceeded its Constitutional limits. Sir, there exists not upon the earth, and there never did exist, a Judicial Tribunal clothed with powers so various, and so important. I doubt the safety of rendering it small in number. My own opinion is, that, if we were to establish Circuit Courts, and to confine their Judges to their duties on the bench, their number should not at all be reduced: and if, by some moderate addition to it, other important objects may well be answered, I am prepared to vote for such addition. In a Government like ours, entirely popular, care should be taken in every part of the system, not only to do right, but to satisfy the community that right is done. The opinions of mankind naturally attach more respect and confidence to the decisions of a Court somewhat numerous, than to those of one composed of a less number. And, for myself, I acknowledge my fear, that, if the number of the Court were reduced, and its members wholly withdrawn from the Circuits, it might become an object of unpleasant jealousy, and great distrust.

Mr. Chairman, I suppose I need not assure the Committee that, if I saw any thing in this bill which would lessen the respectability, or shake the independence of the Supreme Court, I am the last man to be in favor of it. I look upon the Judicial Department of this Government, as its main support. I am persuaded that it could not exist without it. I shall oppose whatever I think calculated to disturb the fabric of Government; to unsettle what is settled; or to shake the faith of honest men in the stability of the laws, or the purity of their administration. If any gentleman shall show me that any of these consequences is like to follow the adoption of this measure, I shall hasten to withdraw from it my support. But I think we are bound to do something: and shall be most happy if the wisdom of the House shall suggest a course more free of difficulties than that which is now proposed to it.

When Mr. WEBSTER concluded his remarks—

Mr. MITCHELL, of Tennessee, said, this was a subject of great importance, and, after the able and elaborate argument of the gentleman from Massachusetts, others, as well as himself, might desire some time to reflect on the subject: to afford an opportunity for which, he moved that the Committee now rise.

The Committee rose accordingly, reported porgress, and obtained leave to sit again; and

The House adjourned.

THURSDAY, JANUARY 5, 1826.

PRESENTATION OF MEMORIALS.

The House resumed the consideration of the following resolution, moved yesterday by Mr. FORSYTH:

"*Resolved*, That the following be added to the Rules of the House: 'The Speaker shall not present any memorial, petition, address, or paper, of any description, not officially communicated by some officer of the Government, to the House, except on his responsibility as a member."

Mr. FORSYTH rose, and said, that the object of this resolution was very apparent on the face of it, though the

necessity for it might not be understood without a statement of the grounds of it by the mover. Under the rules which now exist, Mr. F. said, it had been considered incumbent on the persons who occupied the Chair, to present to the House every paper addressed to them in their official capacity. During this session a paper had been laid before the House, from some madman, (for so he must be,) addressed to the Speaker, from France: during the last session, a paper of a similar sort, was addressed to the House, from another madman, who laid claim to the throne of France. It was obvious, that, under this construction of the Rules, it was in the power of any individual, influenced by madness or malice, to present to the House any thing he pleased, however groundless or improper. The public attention is always attracted by whatever appears in the shape of a memorial, addressed to Congress, and these memorials go forth to the Public, clothed with a factitious consequence. The Speaker, as a Member, ought to have all the privileges of every other Member of the House. In his capacity of a Member, it is, that he presents petitions; but he certainly ought not to be permitted, under cover of his official character, to present papers offensive to the House, or prejudicial to the public interest. If such papers were laid upon the table merely, there to sleep, the evil of their presentation would be but small: but there was always some busy meddling individual, who would take pleasure in publishing papers thus presented; and every thing of the sort would be eagerly seized upon and published to the world, to gratify idle curiosity. As the adoption of the rule would relieve the Speaker of the House from the discharge of what must be considered a disagreeable part of his duty, Mr. F. hoped it would be adopted.

Mr. CAMPBELL said, that he did not at all dissent from the doctrine laid down by the gentleman from Georgia, but he felt bound to state what he understood to be the fact in this case. He believed it not to be the practice of the Speaker of this House to exhibit to the House all such communications as may be directed to him in his official capacity. The situation of that officer, he held to be, in this respect, like that of other members of the House. He must exercise a sound discretion with reference to papers transmitted to him, in determining what ought, and what ought not, to be presented to it. If a communication was greatly deficient in matter, or was wanting in decency of manner, and appeared to present nothing, either of individual or general interest, it would, of course, be disregarded by the Speaker; but, if a project were presented, however apparently chimerical, or however extravagant in its ideas, though it might come from a foreign country, yet, if it were respectful in its manner, it was not, on either of these accounts, to be withheld from the House. Many such had been received and presented—such, for example, as that which, a session or two ago, proposed the construction of a flying machine, another, which advised the planting of a geographical garden; a third, which suggested a plan of musical education for the Indians in Florida, &c. The paper to which the gentleman from Georgia had alluded, was, Mr. C. admitted, a very extraordinary one, but he believed that, if that very paper, instead of having been addressed to the Speaker, had been sent to the gentleman from Georgia, that gentleman would have found himself a good deal at a loss to determine whether he should submit it to this House, or commit it to the flames. For the exercise of their discretion in such cases, members were of course responsible; but they certainly were not bound to present to the House every thing which might be sent to them. The views, too, of different members might be different, as to the same petition: whilst some might think it ought to be withheld, others might think it ought to be presented. A diversity of opinion might be expected on this, as on other matters. Upon the whole, he could not but say, that, though the views of the gentleman, in presenting the resolution, were no doubt very good, yet the proposed addition to the Rules he considered as altogether unnecessary.

Mr. FORSYTH said, he did not know what views were at this day entertained, by the Speaker, of the Rules of the House; but, from the two gentlemen who preceded him in the Chair, Mr. F. had understood, distinctly, that they considered themselves obliged to present to the House every thing, decently expressed, which came directed to them, in their official capacity. Each of them had considered himself as the organ of the House, merely, to open and present to it the papers addressed to him, as its presiding officer. But, if the rule was as the gentleman from Ohio had said, then the proposed addition to the Rules was not necessary. Mr. F. said he did not intend, by his motion, any censure on any gentleman, for presenting any petition whatever. The one in question was a very extraordinary one, and he should himself, being in the place of the Speaker, have had no hesitation in rejecting it. He would not have been, in any way, instrumental in presenting such ravings to the public view. He could hardly imagine, from the manner in which he spoke of it, that the gentleman from Ohio could have read the paper. Mr. F. said he had no wish to trench on the rights of the Speaker, or of any Member of the House; all he asked, was, that all papers, other than those from other Departments of the Government, should be presented to the House, by the Speaker, under the same responsibility for their contents, as rests on every other Member of the House.

Mr. LITTLE observed, that he believed it had always been the practice, on the part of those who occupied the Chair of the Speaker of this House, to lay before it whatever communications might be addressed to them, provided they were clothed in respectful language. He did not think they had been in the habit of considering themselves as possessing any discretion at all in the matter. Inconvenience had certainly resulted from such a course of things, and he therefore thought there would be much propriety in adopting the rule now proposed. It would place the Speaker on the same footing in this respect with other Members of the House. This, he thought, was proper, and he should, therefore, under his present impressions, vote in favor of the resolution; but, to afford some further opportunity for reflection on the subject, he thought it would be better for the present to lay it on the table.

This motion of Mr. LITTLE was suspended, at the request of the Speaker; when

The SPEAKER observed, that it might perhaps be expected that the views of the Chair should be presented in respect to a rule which had the Speaker of the House more especially in view. He said that, as well at the present session, as when, on a former occasion, he had had the honor to occupy the same station, numerous communications had been sent to him, which he had not presented to the House. There were many now on his table in that situation. They were couched in respectful language; but they were wanting in that degree of intellect which rendered it fit that they should be made the subjects of the attention of this House. The communication alluded to by the gentleman from Georgia, and which seemed to have given occasion to the introduction of the resolution which he had proposed, had received much consideration. Feeling some doubts as to the propriety of laying it before the House, he had consulted several gentlemen on the subject, and the opinion of all to whom he had spoken on the subject, was, that it was his duty to present it. This had been his own opinion; and he had presented it accordingly; but he had taken care, in the manner of bringing it before the House, to apprise gentlemen what was its general character; he had spoken of

it, in presenting it, as "a rhapsody." It was marked, to be sure, with very great enthusiasm, but it referred to subjects of grave importance, and to subjects which were actually before the House for consideration, such as the cutting of a canal from the Atlantic to the Pacific, the Congress of Panama, &c. As to the publicity which had been given to this document, it had taken place without the knowledge of the Chair, or, as he understood, of the Clerk of this House. For himself, he conceived that the 43d rule of order, (which he read) applies to the presiding officer equally with the other Members of the House.

[The 43d Rule is in the following words: "Petitions, memorials, and other papers, addressed to the House, shall be presented by the Speaker, or by a Member in his place; a brief statement of the contents thereof shall verbally be made by the introducer, and shall not be debated or decided on the day of their being first read, unless where the House shall direct otherwise; but shall lie on the table; to be taken up in the order they were read."]

Mr. FORSYTH said, that, under the view which the Speaker had presented of the Rule, this resolution appeared to be unnecessary. He was, therefore, disposed to withdraw it.

The SPEAKER having announced the resolution to be withdrawn—

Mr. HAMILTON begged leave, with great respect and deference, to propose to the Chair one inquiry, viz: Whether the Speaker was aware, at the time he determined to present the communication in question to the House, that, in the postscript to that communication, this House was solemnly called upon, by the memorialist, to *annihilate* a portion of this Union, if it did not embrace his "sublime measure," the emancipation of all slaves therein?

The SPEAKER said, the Chair informs the gentleman, very frankly, that he was not aware, and is not now aware, that the memorial in question contains any such intimation.

Mr. HAMILTON rejoined: Then, sir, I have the honor to inform the Chair, that there is, in the memorial referred to, such an invocation.

Here this conversation terminated, the resolution of Mr. FORSYTH having been withdrawn.

Mr. TATTNALL moved to consider the following, offered by him some days since, and, by his consent, then laid on the table:

"*Resolved*, That the President of the United States be requested to lay before this House, a detailed report of the system and plan of fortifications proposed for the national defence; specifying the location and cost of each particular work already erected, and the location and estimated cost of such as are contemplated to be erected, and stating whether any, and, if any, what, works already erected, have been deemed useless, in the contemplated plan of defence."

Mr. TRIMBLE said, that he owed, as well to himself, as to his friend from Georgia, to state that, when that gentleman had first presented his resolution, he had asked him to consent that it should lie on the table, in order to admit of a few moments' conference between himself and the honorable mover. The gentleman had very politely assented to that course, and the intended conference had taken place; the result of which was, that he was now entirely willing that the resolution should pass; having learned, partly from that gentleman himself and partly from another source, that the call formerly made, upon this subject, was still under consideration by the War Department, and will receive an answer, at least in part, as soon as the facts embraced in the call can be collected from the various sources to which it has been necessary to apply.

The resolution was then agreed to.

JUDICIARY SYSTEM.

On motion of Mr. WEBSTER, the House then again went into Committee of the Whole, Mr. TOMLINSON in the Chair, on the bill "further to amend the judicial system of the United States."

Mr. MITCHELL, of Ten. said, that it would, perhaps, be expected by the Committee, that they were to hear something from him, as he had, last evening, made the motion for the Committee to rise. But he could assure the Committee that that motion had not arisen from hostility to the measure, or from a desire to dilate upon it; but purely with a view of affording, to himself and others, some time for reflection. After listening to the able and elaborate arguments of the gentleman from Massachusetts, I believe, (said Mr. M.) I could, if it were left to myself, make some additions to that bill, which would make it better, but I have no idea of encumbering it with objections, or amendments. I, for one, will vote for it in its present form; at the same time, I hope that the Committee which reported this bill, well knowing, as they do, the practical defects which must attend its provisions in some parts of the Western States, will hereafter present to the House some measure calculated to remedy them.

The bill was then read through; when

Mr. FORSYTH submitted an amendment, to the following effect, to follow the word *quorum*, in the fifth line of the first section:

'*Provided*, That no final judgment shall be pronounced affecting the rights, liberty, or life, of any citizen of the United States, by less than a majority of the entire number of Justices, including the Chief Justice.'

Mr. F. observed, that the object of this amendment was so obvious, that he should not detain the House by many remarks in explanation of it. According to the provision of the bill, as it now stands, six Judges are to constitute a quorum of the Court; and a majority of this quorum are to have the power of decision—by which arrangement, it may so happen, that four Judges of this Court may decide on any question, of whatever moment, in a manner contrary to the opinions of the remaining five Judges, or six, as the case may be, and these five or six Judges will be afterwards unable to control the decision of the minority. This, he thought, was a state of things which this House could not with propriety sanction. He knew that some inconveniences would arise, in practice, from the adoption of a different plan. But he considered these as irremediable, and that it was better to endure them than to place such a power as this in the hands of a minority of the Supreme Court.

Mr. WEBSTER said, that he had hoped, from the very simple form in which the bill had been reported by the Committee, that it might be discussed upon its leading principles; and that propositions like the present, and others of a similar kind, would be reserved for subsequent and separate determination, so as not to embarrass the discussion of the bill on general principles. The proposition of the gentleman from Georgia was, that the judgments of this Court shall not be given by less than a majority of its whole number. It would be well recollected by many gentlemen present, that several propositions had last session been brought forward by an honorable member from Kentucky, (Mr. WICKLIFFE,) among which was one requiring a certain definite majority, when the Supreme Court passed a sentence which went to invalidate any law enacted by one of the States of the Union. He was not, at present, prepared to discuss such an alteration as was proposed, nor did he think the amendment at all advisable; but he should be obliged to go into the discussion of it, unless the gentleman from Georgia would, for the present, withdraw his motion to amend.

Mr. FORSYTH replied, that whatever might have been the particular case provided for by the resolution of the gentleman from Kentucky, (Mr. WICKLIFFE,) for himself, he knew of no difference in respect to the sentences of this Court, whether they affected the rights of a citizen, of a State, or of the United States. In his view, they were

all alike constitutional questions; and it was radically wrong that the life or liberty of the citizens of this country should depend on the decisions of a minority of the Supreme Court. Gentlemen would recollect how loud the complaints were in the West, when, lately, the constitutionality of a law, passed by one of those States, had been decided against by only three Judges of the Supreme Court. It was obvious, that in this way the life of an individual might be lost, his property taken away, or his reputation forever ruined, and this even against the opinion of a majority of the Court. As to the alleged practical inconvenience of requiring the concurrence of a majority, in any decision of the Court, he saw no mode by which it could be obviated.

Mr. WICKLIFFE said, that, if the amendment of the gentleman from Georgia should be pressed now, he should feel bound to vote for it. But he had risen for the purpose of asking that gentleman not to press it at this moment, as he intended himself, if it should not be done by another, to present to the House, in a distinct form, a bill requiring the concurrence of a majority of the Court in deciding all cases of a more weighty character; and if, when such a proposition was before them, the House should be of opinion that such a majority ought to be required in *all* cases, they would then have an opportunity of so deciding. Believing, however, the subject to be one of great importance, he had forborne to bring it forward in connection with the present bill, the discussion of which, he hoped, would not be embarrassed by pressing this measure in the form of an amendment. It was well known that there existed in the House a great diversity of opinion in relation to the general subject, and it was probable that many would vote for the bill without the amendment, who, if the amendment were incorporated with it, would oppose it altogether. It certainly was a great evil, that a minority of that Court had power to decide the greatest questions. But, whether this power should reside in a majority of a quorum of the Court, or in a majority of all its members, was certainly a proposition which admitted of discussion in a separate form, without embarrassing or retarding the present bill.

Mr. FORSYTH replied, that it certainly was exceedingly difficult to resist the application of the gentleman, especially considering the grounds on which he had placed it. Still, however, it appeared to him, that the present was a proper occasion for introducing the principle of his amendment. He was not, however, strenuous in insisting upon the discussion in a particular form; but he would say to the gentleman, with perfect frankness, that he was desirous to see the whole subject discussed; and that he should be opposed, and violently opposed, to any classification of the causes to come before the Supreme Court of the United States. However various they might be, they all rested on the same basis—the great object of all laws and judicial proceedings—the preservation of individual right. The gentleman at the head of the Judiciary Committee also had asked him not to press his amendment. He could assure the gentleman that, in the presentation of it, he was actuated wholly by a sense of duty. He was sorry, therefore, that he could not, to oblige him, withdraw it.

Mr. WICKLIFFE said, that he accorded with Mr. FORSYTH in the principle of his amendment, though he was not for carrying it to the extent that gentleman did. Mr. W. added a few remarks, which the reporter was prevented from hearing with sufficient distinctness to state them.

Mr. WEBSTER then said, that, if the Committee were called on now to pass on this amendment, he would state some considerations which he thought were entitled to weight. He had been told that this amendment had been probably suggested by the recent decision of an interesting cause in the Supreme Court, in which a question respecting the law of a State had been decided by less than a majority of the Court. From what he had learned respecting this case, it seemed to be insulated in its character, and not in the least likely to happen again. For himself, though he thought, on general principles, that no distinction ought to be made in respect to the number of the Court necessary for a decision, between different causes coming before it, yet, if he were reduced to such circumstances that he must choose, he should certainly prefer the proposal of the gentleman from Kentucky to that of the member from Georgia. I prefer it, because it will embrace, comparatively, a small class of causes. Look at the practical effect of the amendment proposed. Consider the delay which must, almost necessarily, be the result of the adoption of it—a delay to the losing party as well as to the gaining party. The bill proposes the appointment of a Circuit Judge for Louisiana. It must occur to every gentleman that the attendance of that Judge at this place, at every session of the Supreme Court, is at least very questionable. Now, if he should be absent, and the number of Associate Judges consequently reduced to eight, and if it shall then happen that, in the decision of any cause, there are five Judges in favor of deciding it one way, and three another way, no decision can be had, and the cause must be continued. The next term the same difficulty may recur, and thus the most ruinous delays be continually occurring. The proposition of the gentleman from Georgia goes to make a majority of the whole Court necessary to every judgment—an arrangement which, I believe, exists in no other country or court whatever.

I have heard it urged as an objection, that, unless this amendment is adopted, a minority of the Court may decide, not only the case, but the law, and thus lay down principles of the most extensive application. But, sir, nothing is more common than, where decisions on weighty points have been given hastily, or by a very small Court, to give the law argument a re-hearing—to let the decision stand good in the particular case in which it was given, but not to suffer that case to settle all similar cases. There is nothing legally binding in a precedent, and if there are circumstances in the case which entitle it to farther consideration, that consideration is generally given to it. A case like that which has occurred, and has been referred to, is extremely unlikely to happen again. It may not recur in an hundred years; and I would not introduce a general regulation of so much importance, to provide against an exigency of such rare occurrence. The Committee on the Judiciary, however, has, I believe, once reported on the subject of the measure proposed in the memorial from Kentucky, acceding substantially to the proposition contained in this amendment. And if, on farther consideration, such an arrangement should be deemed expedient, the House will have an opportunity of making the requisite provision.

The question was then taken on the amendment of Mr. FORSYTH, and decided in the negative.

Mr. POWELL said, that he concurred with the gentleman from Massachusetts, that the evils at present existing in our judicial system, require a remedy commensurate with the difficulties to be removed. He did not, however, at present rise to discuss the scheme now presented, though perhaps, if none more competent to the task should suggest an amendment to it, he might himself do so. There were one or two features of the bill which he could not approve. In the first place, he was altogether opposed to increasing the number of Judges. He would be in favor of according to the Western States such Circuit Courts as should be satisfactory to them. But, while he would do this, he was opposed to adding to the number of Judges. His object, however, at present, was not to discuss the general merits of the bill, but to present an amendment, which, he thought, was required by jus-

tice, insofar as the present Judges are concerned. In the second section of this bill, it is provided that the additional Judges to be appointed, shall, until the next term of the Supreme Court, be allotted to their respective Circuits by the President of the United States—but that, afterwards, it shall be the duty of all the Judges to make an allotment of their respective Circuits among themselves, in such manner as they may deem most expedient. What will be the practical effect of such a provision as this? It will be, that a majority of the Judges may, if they shall be so disposed, change the entire allotment of the Circuits, as it now stands. He would ask, if this was just? Would it be just to the Judges already in office? Would it be just, for instance, to change the allotment of a present Judge of Maryland or Virginia, and assign him to the tenth Circuit? It was no answer to this objection, to say, that it was not to be apprehended that the Judges would so use their power. It is enough for us to know that the power is given, and that such a result may occur; and unless there existed some special necessity why the power must be given, I should be in favor of withholding it. Would it not answer all the purposes, if the three new Judges should be assigned to the three new Circuits, leaving the rest of the arrangement as it now exists? This would obviate all abuse of the power. Mr. P. here proposed an amendment; going to strike out that part of the bill which provides for the allotment of the Circuits by the Judges themselves, and inserting a clause assigning the three additional Justices to the seventh, ninth, and tenth Circuits, and placing the Judge who is now on the seventh Circuit, upon the eighth Circuit.

Mr. BUCHANAN observed, that he could not concur in sentiment with the gentleman from Virginia. The provision which allowed the Judges themselves to fix upon their own allotment among the several districts in the United States, still existed. That provision had continued in existence till now, without any inconvenience, that he had ever heard of, having been sustained in consequence of it. Was it not a proper arrangement? Could any argument of force be alleged against it? Who is it that is appointed a Judge of the Supreme Court of the United States? The President makes a selection of these officers over the whole Union. He seeks for men in whom natural intellect has been matured by study and experience; who possess firmness, energy, and weight of character—men eminent in their profession and learned in the law. Men, in whom these requisites unite, may not always be found in every section of the Union, and the intention of the law is, that, after they shall have been selected, wherever they may chance to be, they shall be brought together, and shall then distribute themselves through the various districts of the Union, in such manner as shall best consult their own personal convenience, and the interests of the country at large. Such had been the practice through an unbroken series of years, and to say now, that particular individuals shall be fixed to this or that particular Circuit, would be to interfere with a Judicial right. If one of the Judges shall die, or shall resign his office, a new allotment is necessary, and this gives opportunity for the President to make a choice wherever he shall see fit, and then the new Judge falls into the general arrangement, and is allotted as best suits the convenience of all parties. Is there, said Mr. B. any danger here—is there any formidable cause of alarm—is it likely, Mr. Chairman, that the three new Judges will be able to control and overrule the seven old ones? Is there the remotest probability, that any one of the Atlantic Judges will, by such an influence, be removed against his will across the Alleghany Mountains? The power of choosing their own Circuits has been vested in these Judges since the foundation of the Government, and an attempt, by this amendment, to incorporate into the law a new system, would be likely, instead of being beneficial, to prove highly injurious. The Committee on the Judiciary, in presenting the bill in its present form, had been influenced by a wish to permit the subject to come fairly and simply before the House. In that simple form he hoped the principles of this measure would receive their discussion, and that the subject would not be embarrassed by adding to the bill any new provisions at present. Let the gentleman's measure be argued as a general measure, and then let it stand or fall on its own merits.

Mr. POWELL said, in reply, that it was far from being his intention to impugn the original policy which produced the feature alluded to in the first Judicial act. On the contrary, he thought that it would be in strict conformity with that policy, to adopt the present amendment. Here are, said he, three new Judges to be appointed. So far as refers to them, let this policy prevail. Let them, if you please, allot the new Circuits among themselves. But, he would ask, if it was not the height of injustice to give opportunity for a case which, though he hoped it was not probable, might, nevertheless, occur, in which gentlemen discontented with their present Circuits might enter into a combination with the three new Justices, in such manner as to obtain a majority, and thus to regulate and control the allotment of the whole ten Circuits? Sir, said Mr. P. I would not destroy, I would preserve, the policy of the original Judicial act, but I would also make it applicable to the occasion. If the consequence which had been suggested by the gentleman from Pennsylvania, (Mr. BUCHANAN) did indeed necessarily follow, and by adopting the amendment, the circle was to be narrowed from which the President of the United States now selects the Judges of the Supreme Court, he certainly should not advocate it. But he could not perceive how this was to be the case. If these three new Judges were to be assigned to three specific Circuits, the President would still have the whole United States from which to choose them. But he prayed the Committee that they would not give these gentlemen a chance, in effect, to supersede a faithful old servant, by sending him to a distant Circuit; and thus, probably, forcing him to resign. The President might rest quite secure—he was not in the least danger of disappointment. Let him but point his finger to any professional gentleman in the Union, with a view to this appointment, and that gentleman will accept it. He will never stop to inquire whether he is to be sent across the mountains to Louisiana, or is to travel over the smoother surface of the Atlantic States. Rely on it, Sir, if once called, he will accept. As to that provision in the law, which, in case of death or resignation, requires a new allotment, supposing the Judges to live, then the case is provided for; but the present is a case not within the law. It requires a new legal provision. With relation to this aspect of it, for himself, he confessed that, young as he was in legislation, he had no great confidence in the correctness of his own judgment. He had given this part of the subject his best consideration, and had endeavored to perform his duty by submitting the result. He should now bow with submission to the decision of the House.

Mr. DRAYTON said, that he should not have risen at the present time, had he not been called on by the objections urged against the bill by the gentleman from Virginia, (Mr. POWELL) who had just taken his seat. As well as he had been enabled to hear him, which, however, was but imperfectly, he understood the objections of the gentleman to bear, first, on the proposed number of Judges, and next, on that feature of the bill which allows them the power of allotting their Circuits among themselves. Now, Mr. Chairman, as to the first objection, if that part of the bill should be taken away which increases the number of the Judges, it is my opinion that the entire object of the bill will be defeated. What is that object, sir? It is the distribution of justice to the People of these United States. Now, justice consists, first, in the enactment of equal laws, and then, in the equal and efficient admi-

nistration of the laws; for, it is a matter of comparatively little consequence, how just or how wise the laws which are passed may be, if, when passed, they are not equally and impartially carried into execution. Their enactment in the statute book may possibly interest the politician, or amuse the speculative jurist, but can never essentially benefit the actual condition of human affairs. While in the statute book, merely, such laws hold out, indeed, the prospect of a benefit; but, when the application of that benefit is required by the People, it is denied them. Such laws, with all their sound of wisdom and justice, are a mere mockery to the understanding: keeping a promise to the ear, but breaking it to the sense. Now, if justice consist not only in the enactment of equal laws, but in the effective and equal execution of them; and, if it shall appear, that, in these United States, the laws at this moment are not equally and impartially administered, then it will follow, that all the citizens of this country are not in the enjoyment of public justice; and, if the fact be, that, in some parts of the Union, important benefits are extended to our population, which, in other parts, are practically denied, then, I say, that those to whom they are denied, are entitled not only to ask, but to clamor, for their rights, which have been withheld from them: for it is vain to say that they possess their rights, while they see another part of the Union, which has no better claim to justice than themselves, in the full possession of what is denied to them. To render these few observations pertinent to the matter under discussion, it seems to me necessary, Mr. Chairman, that I should establish, in the first place, the fact that the administration of justice, in these States, is now unequal. Secondly, that this is an evil which ought to be remedied, and that this bill affords a remedy. Sir, in what I shall say on this subject, I shall not enter into any elaborate investigation of the various evils and anomalies which are to be found in the present judicial system. Were I even willing to do this, I should be unable. Some years since I was in the practice of the law, and it is by actual practice alone that that sort of knowledge is acquired, which would enable one to become minutely acquainted with the details of a system embracing so wide a field as the administration of the laws of the Union in twenty-four States. Happily, I need not do this. It will be sufficient if I show, that, in two or three prominent instances, certain portions of this Union derive great and valuable advantages from the present judicial system, which other parts do not; but, on the contrary, suffer from it embarrassments and injuries. If I shall be afterwards enabled to show that the remedy provided is adapted to meet and to remove these evils, I shall have done all that the subject requires of me.

According to the present Judicial System, Circuit Courts are held, in most of the States, twice in every year, while, in some other of the States, they are held only once. Now, sir, it must be evident, that if, in one part of the Union, Circuit Courts are held twice in a year, whilst, in another part of it, they are held once, the arrangement must be unjust, unless it shall appear that, where one Circuit Court is held, there exists but half the business to be done. Now, sir, from all the information I have been able to collect from others, and from the little which I possess myself, it appears to me that, so far from this being the case, the fact is directly the reverse. In some States, where two Circuits are held, there is not enough business to occupy the Court beyond a few days in each term, while, in others, where only a single Circuit Court is held, business exists to an extent so great as to render the Judges utterly unable to get through their dockets. Sir, this is a reversal of the rules of justice. You give much where little is needed, and you give little where much is required. Where there are few suits there are many Courts, and where there are many suits there are few Courts. In other States, where there are no Circuit Courts, the District Judges exercise the powers of Circuit Judges. Where this is the case, what is the advantage of what is called an appeal? You appeal from the Judge who pronounced the sentence—to whom, sir? To himself! Can you hope—is it reasonable to expect—that you will be able to convince him that his first decision was wrong?

Sir, such is the pride of opinion, that, while the advocate is laboring to convince the Judge, the Judge, instead of listening to his arguments with the more attention, and pondering and meditating on them with the more solicitude, because they are directed against what he has himself determined, is, on the contrary, summoning up and marshalling reasons in his own mind, to support and illustrate his original opinion. Sir, this is human nature. A Judge has no charter by which he is exempted from the frailties of humanity. Is, sir, an appeal, under such circumstances, such an appeal as will answer the purposes of justice? But in those Circuits where a Judge of the Supreme Court presides, associated with the District Judge, the case is different. Here, there is an appeal, not in name only, but in fact. The appellant has the benefit of an unbiassed and disinterested opinion, proceeding from one who is likely to have influence with the District Judge. Here there is no predilection for a previous judgment to be encountered, and there is a reasonable probability that the appellant obtains a decision in his favor, if he is entitled to it.

Now, sir, this is a most important and valuable benefit, which the suitors in one part of the Union possess, and of which those in another part of the Union are deprived; and in case these two Judges cannot agree, their difference of opinion is certified to the Supreme Court, and that Court pronounces between them. But where a District Judge exercises Circuit Court powers, this great advantage is not enjoyed. In such a Court, there can be no division of opinion: for there is but one Judge, and, of course, there can be no reference from him to the Supreme Court. It is true, an appeal exists where the amount is over 2000 dollars; but how many causes, where the sum in dispute is less that 2000 dollars, involve questions of nice and intricate law, and are connected with principles of deep and extensive importance. Is it not a vast advantage to take these principles from the adjudication of a single District Judge, and submit them to all the learning and experience of the Supreme Court? And is it right that, while this advantage is extended to some of our citizens, it should be withheld from others, who have an equal claim to it?

Yet, Mr. Chairman, I think there exists an evil still greater than any which I have mentioned. In a Circuit Court, before a Judge clothed with Circuit jurisdiction, if a motion is made for a new trial, in a criminal case, affecting the property, the reputation, the liberty, and even the life, of the accused, the decision of that District Judge is final. There is no revision of his decision. But when a Judge of the Supreme Court sits on the Circuit with the District Judge, the decision of the latter, if erroneous, may be corrected by the reasons and learning of his associate. And, in all criminal cases, the judgment of the Circuit Court is final, unless there should be a division in the opinions of the Judges—when the points, in which this division exists, are ultimately decided upon by the Supreme Court. Where the Circuit Court is composed of only a single Judge, this division of opinion cannot arise; and a citizen charged with the highest offences, in one part of the Union, is condemned by the irreversible decree of a single Judge, whilst, in another part of it, he has the benefit of an appeal to a separate Court, and, should the Judges of it disagree, to the Supreme Court of the United States. Where the amount in dispute before a District Judge, exercising the jurisdiction of a Circuit Court, exceeds 2000 dollars, an

appeal lies from his decree to the Supreme Court, directly, but even this right is greatly encumbered. The distance, the time, the expense, are all formidable obstacles. But, where there is a Circuit Court, an appeal can be had with almost no difficulty at all. The decision of that Court may be satisfactory, but, if not, the final appeal to the Supreme Court is still open.

Another evil growing out of our present partial distribution of justice, is, that from those parts of the country where there are only District Courts, with Circuit jurisdiction, the Supreme Court is unaided by the learning and experience of a Judge peculiarly conversant with the local laws and usages of the Circuit in which he presides. The District Judge may record and transmit his decision to the Supreme Court, but he cannot be present; he can answer no question; he can give no verbal elucidation of difficulties unexpectedly arising. The Circuit Judge can do this—the advantage of which is too evident to require any comment.

Mr. Chairman, I could detail many other instances of inequality, which mark our present administration of the laws; but I am unwilling to fatigue the House by doing so. If, then, such inequalities do exist, and such grievances are felt in some sections of the Union, but not in others, can the question be answered in any other way than the affirmative, when it is asked, Is justice unequally administered in the United States? Yet the citizens of this Republic have all a right to justice, and have all an equal right to it; and, possessing this right, they ask no more of us than to grant it.

The next inquiry is, whether the remedy proposed for this evil is a practicable and efficient remedy. Its practicability admits of no dispute. It is practicable, because it is practised: and this bill only proposes to apply to one part of the Union, what already exists in other parts of it. There can be little difficulty in showing that it will remedy the evil. The mere fact of the existence of Courts of the United States, upon the system of the present bill, and no where complained of, demonstrates its efficiency. There was one objection urged by the honorable gentleman from Virginia, and which had reference to the proposed number of the Judges. He stated his objection to this part of the bill; but if he assigned any reasons in support of it, I was not fortunate enough to hear them. No doubt he could have advanced such as would have been plausible, and ingeniously maintained.

[Mr. POWELL here asked leave to explain; and Mr. DRAYTON giving way for this purpose, Mr. P. said, that he had expressly stated, when last up, that it was not his intention, at present, to urge any of the objections he might have to the bill. He had barely mentioned some of them, in very general terms, but had confined his argument entirely to his proposition for amending the bill.]

Mr. DRAYTON observed, in reply, that he did not wish to combat any argument which had not been adduced: for he had a right to presume, unless the bill met with open opposition, it had the approbation of the Committee. Another objection of the gentleman from Virginia, which was made, and which he believed he did hear, was directed to that feature of the bill which allows to the Judges the allotment of their own duties among themselves. As to this, he would merely remark, that it is no more than the exercise of the same power which is possessed by every other branch of the Government. The Judges, as Judges, are an independent body, and are more competent to arrange the interior detail of their own department, than any other persons can possibly be. This is the only power which the bill gives them. It refers to a subject with which they are and must be best acquainted, and until it can be shown that some other persons are better qualified than the Judges, to understand, and to apportion their own duties, no farther reply would be necessary to this objection. I will conclude, Mr. Chairman, with merely saying, that, by carrying this bill into effect, we shall not only satisfy the just demands of a large part of this Union, but we shall have discharged a duty due to ourselves, by expunging from our statute book those parts of a judicial system which, for many years, in their operation, have been partial, and therefore unjust.

The question being now taken upon the amendment of Mr. POWELL, it was decided in the negative.

Mr. MERCER then moved to strike out the first section of the bill; and, as he felt reluctant to trespass upon the attention of the Committee, at so late an hour, he would, for the present, move that the Committee rise, report progress, and ask leave to sit again.

The Committee rose accordingly, and, having obtained leave again to sit,

The House adjourned.

FRIDAY, JANUARY 6, 1826.

Mr. STEWART offered the following:

Resolved, That the Committee on Roads and Canals be instructed to inquire into the expediency of making provision for the erection of a Bridge on the National Road, where it crosses the Monongahela, at Brownsville, in Pennsylvania.

Having offered this resolve—

Mr. STEWART rose to make a single remark, in explanation of its object. It would be recollected by the House, that the Committee of Roads and Canals had been instructed, on his motion, a few days since, to devise a permanent system for the preservation and repair of the Cumberland Road. The erection of this bridge, he said, might very properly constitute a part of this system. Without this bridge, the road was incomplete, and inadequate to the great object of its construction. It was a fact, notorious in the West, that the public mail and the public travel had been frequently interrupted, for days together, during the Winter season, by the ice and floods upon this river. By referring to the files of the House, gentlemen would find an official communication from the late Postmaster General, stating the fact that the frequent delays and failures of the Great Western Mail was owing to the impassable condition of this River; and that the only means of preventing them, in future, was the erection of the bridge mentioned in the resolution. Every river and stream upon this road, from one end of it to the other, had been bridged, except the Monongahela, at Brownsville. There was no reason why it should form an exception. Without this bridge, the road itself was incomplete. It was a broken link in the great chain of connexion which this road constituted between the Eastern and Western States. It ought to be repaired. He therefore hoped the resolution would be adopted, and the Committee on Roads and Canals authorized to make provision for the erection of this bridge, in the bill providing a permanent system for the preservation and repair of the Cumberland Road.

The question being then taken on this resolution, it was decided in the affirmative—ayes 70, noes 47.

JUDICIARY SYSTEM.

On motion of Mr. WEBSTER, the House having again resolved itself into a Committee of the Whole, Mr. TOMLINSON, of Connecticut, in the chair, on the bill "further to amend the Judicial System of the United States," and the motion yesterday made to strike out the first section of the bill being under consideration—

Mr. MERCER then rose. The Committee, he said, would do him the justice to believe, that he spoke with perfect sincerity, when he made the avowal, that he had never risen in that Hall under a sense of heavier responsibility than he had assumed by his motion to strike out the first section of the bill before the Committee; nor had he ever, on any occasion, felt so painfully

the inadequacy of his feeble powers to the duty which he had to perform. I confess, sir, said Mr. M. it was with equal surprise and alarm that I heard, on the first day on which the committee sat, a motion put, though happily not then decided, that the committee should rise and report the bill, without a solitary murmur of dissent to its avowed principles. My apprehensions were excited yesterday, as this measure was hastening to the same maturity, when the voice of my worthy colleague sounded gratefully in my ear, through the medium of his rejected amendment, the welcome signal of opposition. I am not only oppressed by the vast importance of the question now depending before the committee, but cannot be insensible of my own unfortunate situation, in being compelled to oppose a measure, brought into this House under the imposing sanction of the Judiciary Committee—a committee consisting of gentlemen celebrated, no less for their professional learning than the extent of their general acquirements, and who are sustained, on this floor, on the present occasion, by the force of their separate, as well as combined reputation.

One ray of hope, however, breaks through the gloom of these discouragements. I am cheered by the fact that the chief organ of the committee, the very able Chairman, by which this bill was reported, has acknowledged that he yielded a reluctant assent to some of its provisions, and has, in fact, as I hope to prove, disclosed its utter incompetency to fulfil the avowed wishes of its friends in the remedy that it provides for the evils of which they complain. My resolution to resist this measure was even strengthened, by the argument in its favor, delivered yesterday, in a manner so gratifying to this committee, and to no member of it more than to myself, by "a patriot soldier of the South," another learned organ of the same select committee. I was, indeed, not a little surprised, when I heard his objections to our present judicial system, and traced the path by which he had reached the conclusion that the present bill provided a remedy for the evils which he pictured. I shall endeavor to demonstrate, that its effects, should it prevail, will not be to promote the distribution of prompt, impartial, and uniform justice; that, on the contrary, it will prove deleterious, if not destructive of the vital principles of our present judicial system; that, of evils which it professes to cure, for some it provides no remedy, and others it will aggravate.

What, then, is the character of our present federal judiciary, and what are the evils which call for this great reform?

I listened with pleasure, Mr. Chairman, to the remark of the gentleman from Massachusetts, in the brief but comprehensive history with which he favored the committee, that the first Congress which sat under this Constitution had, with singular felicity, struck out, by one act, a judiciary system, which had, for so many years, stood the unerring test of experience, and proved its own adaptitude to the genius and necessities of our advancing and still prosperous country.

I understood him emphatically to state, that the only evil which he had heard charged upon this system, in any of the Atlantic States, was a delay, real or apprehended, in the proceedings of the Supreme Court, and, for this, he had himself suggested a very simple and efficient remedy—a remedy which constituted, however, no part of the bill on your table. From the St. Mary's to the St. Croix, from the Ocean to the remotest Western verge of the Atlantic States, the People are in a state of perfect contentment, the honorable member assures us, with their present judicial system. Where, then, are the evils which call for redress? They are to be found, it seems, beyond the territory which I have described—in a portion of this Union, in the prosperity of which my feelings are as deeply enlisted, Mr. Chairman, as in the welfare of the Atlantic States. For all that concerns the happiness of this country, I ought to feel the solicitude which I express, because I know it well, and hold, in high respect and esteem, its worth and genius, as well native as acquired.

And to what portion of this extensive and fruitful territory are we referred for these evils? Sir, the Judiciary Committee tell us, by their Chairman, that they are confined to a single circuit, embracing three, only, of eleven States. And in what do they here consist? In a delay of justice, to such extent, that, on the docket of the District and Circuit Courts of Kentucky, and chiefly, if not solely, on the latter, there remain undecided nine hundred and fifty causes. On the dockets of the District and Circuit Courts of Ohio, probably the latter, since this State has as little maritime jurisdiction as her Southern neighbor, there are, he apprises us, two hundred and fifty suits standing over; and the gentlemen of the Bar of Nashville, where the only remaining Circuit Court is held, have stated that there are one hundred and fifty suits depending.

Now, sir, it is to me highly gratifying, amidst this array of judicial distress, to derive, from the same authority, the most consolatory information—that, in the Circuit Court of Kentucky, to which a Judge of the Supreme Court has long been allotted, and who also resides in Kentucky, this accumulation of suits is not to be attributed "either to negligence of duty," or "want of industry;" and this information is moreover corroborated by the extraordinary fact derived from the same source, that, in this single court, in the short period of three years, more than two thousand causes have been actually decided. Now, sir, a very simple operation of common arithmetic will determine the true extent of this delay; and its result manifest, that, with the same diligence that has been hitherto manifested by this Court, eighteen months will clear its docket of every cause now upon it. And in what description of causes does this eighteen months' delay occur? Sir, many of them must be land causes, carried into the Federal Circuit Court, for reasons well known; causes involving the collection of a mass of testimony, to be gathered by surveys in the remotest forests of the State, to be collected afterwards, and investigated, with painful labor, by a District Judge, assisted by a Judge of the Supreme Court, who, though residing in the State of Kentucky, and justly venerated and beloved, has been, for some time, laboring under the infirmity of a disease, which our bill, should it pass, cannot remedy.

And is this a delay either extraordinary or peculiar to the Federal Court of Kentucky? Happy, sir, should I be, were I not compelled to assure the honorable and learned advocates of this bill that the courts of the district and of the Comwonwealth, in general, which I have the honor, in part, to represent, know no such despatch, even where the temporary disability or misfortunes of a judge constitute no impediment to the progress of justice.

We are not informed by the committee with what rapidity the causes on the docket of the Circuit Court for the district of West Tennessee are disposed of, nor those of Ohio: but, if it bear any tolerable proportion to that of Kentucky, and they have the same presiding judge, both courts will be speedily disencumbered without the aid of the bill on your table. The mountain of distress, built up by the Judiciary Committee, turns out to be but an optical illusion, and, on examination, unlike the works of nature, turns out, when approached, to be but a molehill.

While on this branch of my argument, I beg leave to present to the committee a document, derived but an hour ago from the Deputy Clerk of the Supreme Court, which is alike applicable, in its results, to our whole subject of debate, but more especially to a topic to which the honorable member from South Carolina so forcibly called our attention—the inequality and injustice of our present

judicial system, in allotting a Supreme Judge to some districts, and denying his services to others.

Among the best tests of the sound administation of justice in the Courts of the United States which have original jurisdiction, is the contentment of the suitors, or the absence of appeals from their judgments to the court instituted for the correction of their errors. And the conclusion thence to be inferred, is irresistible, where, as in the case of Kentucky, the progress of justice in the court of original jurisdiction is so rapid as to dispose of more than six hundred and sixty cases in the short compass of a single year. The ordinary interval between the docketing and the decision of a cause, by the Supreme Court of the United States, is, I am told, about four years; and there are pending, upon the docket of that Court, for the approaching term, one hundred and forty-three causes. Of these causes, five are from the District Court of Louisiana; two from that of Mississippi; three from that of Alabama; one from the District Court of East, and nine from the Circuit Court of West Tennessee; nineteen from the Circuit Court of Kentucky; nine from the Circuit Court of Ohio; one from the District Court of Indiana; none from that of Illinois; from Missouri, none; from the Western District Court of Virginia there is one; from that of Pennsylvania, none; and none from the Northern District of New York.

Now, sir, this little slip of paper, from the face of which I repeat those facts, is to me a volume of more important testimony than the Judiciary Committee have afforded us, and which I beg leave to recommend to the solemn consideration of this committee. Several very interesting conclusions may be deduced from it, in relation to the actual wants of our country, and their pertinent and best remedy, if any be required. And among these deductions of reason from recorded facts, I comprehend this, that, even in Kentucky, the numerous causes, carried up to the Federal Court, are not taken there because difficult of investigation, but for a more perfect remedy of that injustice of which the suitor complains. The larger fees, indeed, every where paid to counsel, in the Federal Court of a State, might tend, especially where the plaintiff is, as must be the case here, a *non*-resident, to the increase of the business of that Court, in every State. But the land laws, and the replevin or relief laws, of Kentucky, neither this committee, nor this Congress, of which it is a part, have any power to enforce, modify, or repeal. And they are unquestionably the fruitful causes of the accumulation of business in the Federal Circuit Court of that much suffering and long agitated State. Even where a claimant is excluded, by his residence within the State, from instituting an action of ejectment or of debt, in the Federal Court, he has only to transfer his title, or the evidence of his demand, to some nominal tenant or assignee of another State, to obtain admission into the Federal Court, and the benefit, if not of speedier, of more ample justice. Among the two thousand causes, disposed of in the Kentucky Circuit, during the short compass of three years, many must have been promptly and easily decided, and there brought for that reason and that alone.

Some of these remarks may, perhaps, apply in explanation of the multiplication of those suits in Ohio instituted in behalf of the Bank of the United States and other absent collectors, for the recovery of debts. But the most valuable conclusion which, for my present purpose, I propose to draw from this document, is that which meets directly the chief argument of the gentleman from South Carolina, to which the gentleman from Massachusetts annexes great, though less importance, since *he* would leave the three Northwestern States, for some years longer, to the circuit powers of the single Judge of their present District Courts, and he would not only be content, but apparently better satisfied with nine than ten Judges, on the bench of the Supreme Court. The argument of the gentleman from South Carolina reproaches our present judicial system with inequality and injustice, because it does not allot to the district courts of these and five other Western States some Judge of the Supreme Court. Now, sir, of this argument, I first remark, that, if it be sound, it leaves the Judiciary Committee without apology for an obvious anomaly in their own system. What relief does the bill upon your table provide for the Eastern District of Tennessee and the Northern District of New York, and the Western Districts of Pennsylvania and Virginia; the last of which, with a full moiety of the white population of that State, comprehends three-fifths of its territory? That honorable member represented this inequality of justice as incompatible with its most obvious and necessary ends. Sir, it is remarkable that it was approved and zealously sought in the Atlantic States, by the People, or their Representatives, whom it is thus supposed to injure and degrade. My very learned colleague and lamented friend, now no more, who once represented, on the floor of this House, a Congressional district West of the Alleghany, believed, I well know, that he rendered an essential service to his constituents, when he erected a Western District Court in Virginia, having a Judge invested with the powers of a Circuit Court; and that he was not mistaken, not only did his re-election prove, but his colleagues and mine of the rich and populous valley on this side of the Alleghany, sought and procured an extension of the jurisdiction of this court Eastwardly, as far as the summit of the Blue Ridge. The office of Judge for this district, it has been, indeed, sometimes found very difficult to fill. A friend of mine no sooner accepted than he resigned it. It was tendered to a Judge of our General Court, but he preferred a State appointment; not, I presume, because he objected to the great extent of its undivided authority—though he might have anticipated some mortification, in travelling over a vast extent of mountain and valley, rivers and rocks, through towns and hamlets, without finding a single defendant suitor at the many seats of justice in his wide jurisdiction, except, perhaps, in the single village of Clarksburg. It never did, I am sure, enter into the imagination of the People of the Western district of Virginia, or of either Pennsylvania or New York, that they were neglected or maltreated, because a Judge of the Supreme Court was not sent to assist, by his advice and counsel, their District Judge; or to multiply the chances of appeal, the power of which is as complete, from the judgment of a single Judge in a District Court, having Circuit Court powers, as from the Circuit Court itself. In this document, I have, moreover, an unquestionable ground for inferring, certainly without the least intentional disrespect of the Judges of the Supreme Court, that, in these and other districts having a single Judge, with the powers of a Circuit Court, justice does not suffer from their necessary absence

From the District Court of East Tennessee, where no Supreme Judge ever appears, there is but one docketed appeal on the records of the Supreme Court; from the Western Circuit Court, consisting of two Judges, and one of them a Judge of the Supreme Court, there are nine appeals, as there are from Kentucky nineteen, and from Ohio nine; while, from the District Court of Louisiana, embracing, within its manifold jurisdiction, admiralty, equitable, and common law, the rich emporium of the commerce of the West, there are but five appeals. From the District Courts of Pennsylvania and New York, extended as is their jurisdiction, there is not a single appeal.

From those districts, therefore, wherein there is no Circuit Court, or where, in plainer phrase, no Supreme Judge ever presides over the administration of justice, there are but few appeals—while, from those which are favored with the benefit of a Circuit Court, in which a Judge of the Supreme Court sits with the District Judge,

there are not many appeals, indeed, but many more than from the former.

Any answer to this reasoning, if, indeed, it be deemed worthy of reply, would have more force with me, if I did not too well know the actual condition of the courts of Kentucky, from which the loudest complaints proceed, of the defects of our present judicial system. I know their condition, and knowing it, I aver that those complaints cannot be redressed. They would be *aggravated* by expediting the proceedings of the Federal Courts, without a radical change of the principles which guide their decisions. I unhesitatingly aver, therefore, my belief that the remedy proposed by the bill on your table, if it shall not operate so as to produce other effects than those which seem to be anticipated, by the gentlemen from Massachusetts and South Carolina, who have addressed the committee, will not produce the benefits which many of its friends seek, and expect to obtain. It is neither commensurate with the imputed evil, of which complaint has been here made, nor can it administer adequate relief, or any relief whatever, unless, as I have said, it shall have a different effect from that which either of these gentlemen expect. The plaintiffs in the Federal Court of Kentucky do not complain—the defendants ask not speedier justice. Such is not the character of the relief which they have sought at home. And if this bill has the effect expected by the Judiciary Committee, it will be, to them, not bread, but a stone. If its real object be uniformity, how does it happen that it makes no provision for the Western district of Virginia, containing a population of near 300,000 white inhabitants, or of Pennsylvania, containing a much larger number, or of New York, having more than either? A million and a third of the white population of the United States will remain, according to the language of the gentleman of South Carolina, without the benefit of equal justice. Even East Tennessee, in a bill designed especially for the relief of the West, has been pretermitted, and is to remain unredressed.

Sir, the true, the only remedy for the evils of which our friends from Kentucky compain, is too palpable to escape the searching scrutiny of the gentleman from Massachusetts. It can be effected only by a change of the judgment of the Supreme Court, upon the validity of the occupying claimant laws of that State, and by a recognition of the constitutionality of its new replevin or relief law. It can be accomplished only by a revolution of opinion on the bench of the Supreme Court of the United States, which would be less deplorable, if it there terminated: if it should not prove the commencement of dissension, instability, and change, where harmony, firmness, and consistency, have hitherto prevailed. Sir, the new remedy is not to operate on the Circuit or District Courts of Tennessee, Kentucky, and Ohio, but on the Supreme Court, held annually, in this Capitol. And how will it be wrought by the immediate addition of three new Judges to the seven now entitled to sit on that bench? That bench is to be new peopled, the court popular and political. Its numbers are to be augmented for no purpose of judicial propriety. To the proper administration of its ordinary, regular, judicial functions, it is to become less fitted, by the very admission of the gentleman from Massachusetts. Too numerous, he distinctly admitted it would be, for the investigation of facts; for the administration of its equitable, its maritime and admiralty, even for its common law jurisdiction. It is to be revolutionized for the sake of its extraordinary and political jurisdiction, its agency in the exposition of constitutional law.

Sir, these are, to me, new doctrines; as novel as a Supreme Court of Appeals consisting of no less than ten Judges; a court of final jurisdiction, which will not have its examplar in the judicial system of any of the United States, or of any State in Europe, to which we look for analogies to enlighten and guide our reason.

This is the first time that such a measure was ever contemplated within the hall of an American Legislature; and the argument in its support is as extraordinary as the measure itself. In all the changes of the judicial system of the United States, hitherto effected, or proposed, from the first organization of this Government, to the present day, with the single exception of the act of 1807, which added a single Judge to the six who previously sat on the bench of the Supreme Court, it has been contemplated to reduce, not to increase their number. An alteration in that Court, neither demanded by the People in general of the United States, nor requested by the Judges themselves, has never before been proposed. That of 1793 was conceded to the petition of the Judges, and relieved them from a moiety of their circuit labor. It was an alteration not required by the People. The change of 1801, brief as was its duration, was prompted by a regard also to the convenience of the Judges, as well as the better administration of justice. It provided for a reduction of the number of the former from six to five, on the happening of the first vacancy, and, relieving them from all circuit duties, instituted a distinct system of Circuit Courts. It more effectually separated the original from the appellate jurisdiction of the United States' Judges, and sought to free the final trial of every cause from every bias in favor of the original judgment.

The manner in which this new system was executed, accompanying, as it also did, a revolution of parties in the United States, occasioned the repeal of the act which gave to it its transient existence: but the immediate return to the former judicial system, was marked by no attempt to increase the number of Judges of the Supreme Court, although such an effort might have been expected, had the triumphant party of that day possessed the notions, now sustained on this floor, by the gentleman from Massachusetts.

It was six years after, and eighteen from the adoption of the Constitution, that a single Judge was added to the bench of the Supreme Court; when, if, as some men singularly imagine, the progessive increase of the numbers of a court should bear any proportion to the growth of the Republic, our population had doubled, our territory had reached, *very near*, and our commerce, risen from nothing, had *surpassed*, its present extent, and our wealth was incalculably multiplied. At the end of another period of eighteen years, we are called on, for reasons of unheard of expediency, to add to the bench of the Supreme Court, at one moment, three new Judges!

In the last period of eighteen years, making, with the former, the entire age of our present political institutions, the only important bill in relation to our judicial system, which has passed either branch of this Legislature, is that which the Senate sent to this House seven years ago, proposing to reduce the Supreme Court to five Judges, and to relieve them from their circuit duties.

We are now about to propose to the Senate, to double that number. In all the severe ordeals to which the character and stability of that Court has been exposed, in the six and thirty years that it has now endured—in all the efforts to shake its steady purpose of universal justice, nothing resembling the present proposition had been, therefore, conceived or attempted. We have passed through a war of severe suffering, and brought from its well fought battles, by sea and land, a standard covered with unfading honor. The politics of Europe agitate us less than the ocean which beats upon our shore; the old partitions of party are broken down, and that co-ordinate branch of our happy Government, which imparts stability to the rest, and has survived so many elements of change and mischief, is now threatened with an entire revolution. A new illumination has been cast upon the proper structure of the Supreme Court, manifesting, it seems, the necessity of a great and immediate augmentation of its present numbers. It is a court having great political power, and

the better to administer that power, its capacity for all other purposes of utility is to be impaired, as the chief advocate of this change has himself distinctly admitted, and, indeed, partly demonstrated. Is any change required even for this purpose? Let us consult the history of the Court, and, for authority, the Chairman of the Judiciary Committee. Is there an opinion or judgment of this Court involving a question of constitutional law, which that gentleman condemns?

How many years elapsed, after the formation of this Government, before any change of that Court was proposed, and how little change has time effected in its structure? How have the People regarded it? With what unvarying trust and confidence, I may say veneration and love? I speak not of the transient disgusts of particular individuals or communities. One of the earliest complaints, by any State, of the exercise of its jurisdiction, perhaps the very first attempt to impair its authority, as the expositor of the Constitution, in the last resort, was made, by Pennsylvania, in the celebrated case of Olmstead. That State threatened an armed resistance to the officer of the Court, which was met, with firm decision, by the Chief Magistrate of this Union. He not only refused to bend to the storm, but gave explicit warning, that, if the resistance continued, he should order the troops of the United States to put it down. At that moment of disaffection, Pennsylvania called upon her sister States to aid her in establishing a tribunal altogether distinct from the Supreme Court, to adjudge controverted questions of constitutional law. Sir, I remember, with mingled pride and pleasure, the conduct of Virginia, when this call was addressed to her. Her Legislature answered, most respectfully, but with simple brevity, that the Constitution of the United States had already provided this tribunal in the Supreme Court of the United States, and that a better could not be created. This, sir, was then the unanimous voice of the most numerous legislative assembly, except that of the ancient, and perhaps of the present State of Massachusetts—an assembly, which, from its very numbers, must be regarded like a numerous Court of Justice, as exposed to the influence of factious feelings—the assembly of a State which had contested the constitutionality of the first system of internal taxes, had more than doubted the constitutionality of the National Bank, and resisted, as far as argument could go, the constitutionality, also, of the alien and sedition laws. All these constitutional questions were agitated, with many others, when this State had no Judge on the bench of the Supreme Court, and at a time of great party excitement. Her judgment has been consistent and uniform. And where now are those complaints which were heard in a tone so angry, from the rich, flourishing, and enlightened State of Pennsylvania? In despite of her natural and just pride, wounded by threatened force, and unsoothed by judicial honors, she walks at peace with her sisters, and in harmony with the Court.

How are the complaints now made from the West, and especially from Kentucky, to be redressed? Not by the lenient influence of time, but by the rude hand of perilous innovation. Sir, the remedy is palpable. It is to bring three additional Judges upon the bench of the Supreme Court from the West. Does any member of this Committee really believe that they will be selected from any other quarter of the Union? What did the almost unanimous rejection of the amendment proposed by my colleague imply? That the Committee believed no derangement would be made of the allotment of the present Judges, if the bill passed in its present form. The three additional circuits, which it creates to the West, are, therefore, to be supplied by three Western Judges. It is not to be expected, that members of the profession of law from the East, will be deputed, if this bill shall pass, to fulfil its requisitions to the West. No, sir, these Judges will be chosen from the profession over whose circuits they are to preside. If this bill passes in the spirit which prompts its advocates—to identify the Judge with the People—the Judges should be from the West; and what, then, sir, will be the result? You will have three new Western Judges suddenly transferred from the bar to the bench of the Supreme Court. My colleague and friend near me whispers four. The present venerable Judge of the Western Circuit is indeed confined to his sick chamber, and rumor states that he is dangerously ill. I wish him a speedy restoration to health, and to that bench on which he has been distinguished by an undeviating firmness and rectitude. Let him live or die, his memory will be cherished, with affection, wherever the name and story of Moultrie shall be heard.

The Committee will pardon this digression, to which I have been led by the whisper of my friend, as I thought, "that there would be four new Judges from the West." In relation to the propriety of this sudden augmentation of the number of the Judges of the Supreme Court, the Chairman of the Judiciary Committee acknowledges that his mind has undergone a great change of opinion within a short time past. I have the report of his speech, and believe that I quote him correctly. I certainly wish to do so.

[Mr. WEBSTER, in explanation, said, that, if any observations of his had attracted the attention of the honorable gentleman from Virginia, he wished them to be correctly stated. What he had said was, that, in relation to the general question, whether it was expedient and desirable in itself, to relieve the Judges of the Supreme Court from the performance of circuit duties, his own opinions had undergone some change.]

I thank the honorable member (said Mr. M.) for the pause allowed me by his explanation. It enables me to return to the path I had left, with a recollection of what the honorable member did say; and whatever he says will always receive from me the respect to which it is entitled. "In all cases of admiralty and maritime law, in all cases of equity, "the court would be more numerous than was desirable. "As a court of common law, it is numerous enough already. It was for the better discharge of its political "duties that he desired its proposed augmentation of numbers. As a measure of necessity, its augmentation was "required to extend the circuit system, to bring the Judges "in contact with the People of the different States, that "they may be inspired with caution, and taught to impose "restraints and qualifications on the general provisions of "law, which, however cautiously expressed, often require "limitation and modification." By such means, the Honorable Chairman proposes to conciliate popular feeling in behalf of the Court, and to secure to it, (I wish to do him justice,) the public support and approbation.

Sir, if I thought this sudden increase of the number of the Court calculated, by all its consequences, or even their general result, to lead to this end, I would heartily concur with the gentleman from Massachusetts in advocating the bill by which he proposes to accomplish it. "The opinions of mankind naturally attach," says the gentleman, "more respect and confidence to the decisions of a court somewhat numerous, than to those of one composed of a less number." Mr. Chairman, I know that I have never sought to acquire, and I am very conscious that I do not possess, one moiety of that gentleman's information, on all subjects of a professional and legal character. He has given us an able, because concise, and comprehensive history of our Federal Judiciary, in which we have seen, that but one enlargement of the Supreme Court has been made since its first organization, and that a reduction of its former number was once proposed, and carried by an act of transient duration; but, of which, I presume, he did not disapprove. That act provided for a reduction of the number of Judges to five, as did the bill which came to us but six years ago from the Senate. I should have been gratified if the Hon. Chairman had given us, what he could have done with so much readiness, the experience

of the several States upon the same subject. I regret that this duty devolves upon me, instead of a gentleman possessed of so wide a range of legal information. The result of my limited experience and observation does not accord with that of the honorable member from Massachusetts, in any of the moral reflections by which he reconciles, to his own judgment, his recent change of sentiment, in regard to the best possible structure of our Federal Judiciary.

There exists, I believe, Mr. Chairman, not a solitary example in the world, of an appellate court, of the highest resort, composed of as many as ten, or even nine Judges —the number preferred by the gentleman from Massachusetts. In New York, the Supreme Court consists of but three Judges; in South Carolina of three only; in Louisiana, of no greater number; in Virginia, where its number was once three, it is now five; and, I believe there is not a State in this Union wherein there exists a Court of Appeals, in the last resort, having a greater number of judges. A friend near me, [Mr. HEMPHILL,] says, that in Maryland, this court is composed of six judges; this, then, is a solitary exception, and aids my argument by the authority of a learned member from Pennsylvania, once himself a judge. All these Courts are believed to have the confidence of the People whose laws they expound, and whose respect for their Judges will no where be found to be proportioned to their number.

In New York the number of the Judges of the Supreme Court has recently been reduced from five to three only, and this change accompanied and constituted a striking feature of a change of the political constitution of that populous State, effected by a nett majority of six and twenty thousand voices. May I be permitted to borrow authority from abroad, and to inquire if the Courts of Westminster, whose integrity, at least, has rarely, if ever, been impeached, derive their authority and influence from the number of their Judges? The Courts of King's Bench, Common Pleas, and of the Exchequer Chamber, have four Judges each. An appeal, but seldom made, lies, indeed, from their separate judgment to the House of Lords, over whose deliberations another Judge, the sole Chancellor of England, and highest law officer of the British Empire, presides.

The authority which the decisions of these foreign tribunals still carry with them in the Courts of our own country, points to the true origin of the respect and confidence of any People in the wisdom and integrity of their Judges. That of the People of these States, in the Supreme Court of the United States, has the same, it has no other. It never had any other, and it needs no other foundation.

Swell their numbers from seven to ten, from ten to twenty, and still, what proportion will that number bear to ten millions of People? Let them traverse the country by day and night, and study wherever they go the popular feeling, and what harvest would they reap, but of contempt, if, studying the popular favor, they sacrifice to it one scruple of that justice, which has its duties on earth, but is fastened to the throne of the Eternal by an adamantine chain?

The merit of the Supreme Court of the United States is manifested by its written opinions; by its learning, its truth, and its consistency—the certain pledge and firm assurance of its diligence, ability, and integrity. Between the knowledge of these qualities and the People, the only link of connection consists of that profession trained to the study and practice of the law, competent to estimate justly the merit derived from the most eminent portion of their own body, and set above them, to be their light and counsel. Even their knowledge of a Judge cannot be deduced from familiar intercourse, but from the perusal and examination of his opinions. In the intervals of leisure, Judges, like other men, prefer any other topic of mere conversation to the dry and laborious duties of the bench. Of the peculiar investigations depending, or likely to come before them, a circumspect and vigilant sense of duty imposes upon them even studied silence; and it is not a small evidence of this, that the Judges of the very Court of which I am speaking, debar themselves of most of the pleasures of social intercourse, in obedience to a sacred regard for their high and solemn duties. And so far from this separation having impaired, it must, wherever known and justly appreciated, augment their reputation. Were your Judges, sir, admitted, at an earlier age, upon the bench of the Supreme Court, it might, indeed, impair their usefulness; but surely, at the age of forty-five or fifty years, and sooner no man should ascend that bench, they will have acquired a sufficient stock of general knowledge, in relation to all the ordinary interests of society, to avail themselves of the analogies which common sense supplies to learning, in the investigation of practical legal truth. The philosophy of the gentleman from Massachusetts applies to the education of the bar, rather than to the duties of the bench; but if to any bench, certainly not to that of the Supreme Court of the United States, unless, indeed, the power which supplies its vacancies, as they occur, shall be miserably perverted—a consequence I do not apprehend. A judge should be capable of writing an opinion, undoubtedly; and, with twenty-four supreme courts in the several States, and twenty-eight Federal District Courts, supplied with crowded bars, it cannot be difficult to find an able Judge, and, if such difficulty really exist, it will not be removed by the knowledge of the Chief Magistrate, and of the Senate who confirm his nomination, that the appointed Judge may be required to write and to pronounce his own opinions on the bench of a Circuit Court.

In the argument which requires continued exercise for the perfection of any and every faculty, I fully coincide; but this again can scarcely apply to the habits of men who are between the ages of fifty and seventy years, whose own pursuits prompt them to the culture of those fields of science in which they were nurtured, and the preservation of whose reputation, a labor as arduous, at least, as its acquisition, imposes on them the necessity of diligence.

A journey, often repeated, of many hundred miles, over wretched roads, with bad accommodation, may improve the hardihood of youth, though it would scarcely augment its acquisitions. Made the test of the ability of an aged judge, it may, indeed, by multiplying his infirmities, hasten his departure, and make room for a sturdier successor in office, but will scarcely improve his ability, while his constitution endures the shock.

The more the Judges are multiplied in number, to keep pace with the multiplication of their circuits, the more uncertain must be their attendance upon any of their duties, either original or appellate, and the greater must be the hazard of inconsistency in the judgments of that court, which is to impart stability and certainty to the laws.

But why need I talk of stable or certain decisions, when some of the very evils which this bill is required to remedy, the fruition of the hope which it inspires, supposes a reversal of some of the judgments which the Supreme Court has already pronounced? And for this, its prompt enlargement, I admit to be the natural, if not the only means. Sir, the end of the enlargement of the Court is avowed. It is to fit, it for its political function, as the expounder of the laws of the States and of the Union, in relation to each other, to foreign treaties, and to the Constitution of the United States. And this political function implies a sort of *representative quality* in the Court, resembling that of the members of this House, to which, I readily concede, that a knowledge of the temper, circumstances, wishes, and even passions, of their constituents, is highly important, if not absolutely essential to a wise

or expedient legislation. If justice, therefore, were expediency, the exposition of the law its enaction, then might the judge represent his constituents, or the wishes of that section of country, from which he may be taken, or in which he may reside.

Sir, much of the excitement which has prevailed in Kentucky, in relation to a celebrated decision of the Supreme Court, on the occupying claimant laws of that State, is attributable to an inflammatory pamphlet, which represented it to be the judgment of a minority of the Court, leaving it to be implied, that the majority could or might have reversed that judgment. This pamphlet charged the opinion itself with being that of but three Judges; and a venerable Judge, if not the Court, with holding back a manuscript copy of their opinion, because he or they were ashamed of it.

The last part of this charge is unworthy of reply. With respect to the first, I well know, and here affirm, on unquestionable authority, that one of the absent Judges, now in his silent but honored grave, and then confined by sickness, concurred in the sentence of the Court, and another of those Judges was withheld from the expression of his opinion, by its coincidence with that of the Court, and delicacy only. He had near relatives deeply interested in that judgment. Had it met his disapprobation, no moral or judicial propriety would have restrained him from saying so; and every principle of justice would have permitted, if it had not more earnestly prompted, the avowal of his opinion. The sentence of the Court, therefore, which has produced, I admit, much suffering, and excited, very naturally, much discontent, expressed the opinion, not of three, but of five Judges, and I believe of every Judge of that Court, but one.

As a part of the proposed reform of the Supreme Court, which is, from prudence, to make no part of this bill, but to follow it, it is, I understand, contemplated to alter, in a most important respect, the Constitution of the Court. Whether this change is to depend on the passage of the bill, or to be tried as a distinct substantive measure, I am not certainly apprised. But it increases, not a little, my present alarm for the safety and utility of this branch of the General Government. Not only is the quorum of the Court to be augmented, but a concurrence of a certain number of its Judges, present or absent, to be required, in order to decide all questions which involve doctrines of constitutional, or, as it is called, political law.

For my part, sir, I see no difference whatever, in the faculties to be exerted, in deciding; or the quality of that function of a Court by which it decides, that the Constitution of a State or of the United States, is not repealed by a Federal or State enactment, and the power or office of adjudging, that a prior statute, or act of Congress, is not repealed by the provisions of another, subsequent in time, but containing no inconsistent or repealing clause; or that a subsequent act does repeal or modify one of antecedent date, which it, however, omits to name. It is in the investigation of the rights which arise under these enactments, the rights of the parties arraigned or litigant before the Court, that its whole province consists, as expositor not of what *should be*, but of what *is* the law. The proposed discrimination, I believe to be theoretically wrong, and incapable, in practice, of producing any other result than delay or confusion: for the criteria for distinguishing and classing those causes exists, not in the copy of the record, but in the mind of the Judge, who decides, for reasons satisfactory to his judgment, the case which it presents. But does the Constitution warrant the creation of more than one Supreme Court? Can several Courts be carved out of the many Judges who compose that one, when its quorum shall have been fixed by law? Can the concurrence of more than a majority of that quorum be required, under the Constitution, to pronounce a judgment? If so, and I ought to suppose so from the coincidence of so many learned members of this Committee, and of the last Congress, in asserting and maintaining this power, does it equally apply in all cases, criminal as well as civil, to the constitution of the jury? May not *its* number be changed from twelve to three? and, for its unanimity, be substituted the will of a bare majority? And, if so, of what value is that boasted provision of our Constitution, derived from the wisdom of our Saxon ancestors, which secures to every citizen of the United States the trial by jury? Why, as in France, may not the Court be counted with the jury, and determine the fate of the accused, whether it be life or death, by the will of a bare majority? I have been taught to define the technical words of the Constitution, derived from English law, by a recurrence to its lexicons, though I am ready to admit the difficulty of giving, in all cases, exact precision to their limits.

This proposed adjunct to the meditated reform of our jurisprudence, which I am now combating, might possibly fail, if a Supreme Court, of ordinary dimensions, had to expound our law: but if it is to constitute part of the very system which changes the whole character of that body, I must acknowledge that my confidence in its judgment will be shaken. I would not trust it.

Sir, if the Court is to be changed, for the better performance of its political duties, must not the new Judges possess and exert the sympathy which seems to be required of them with the country from which they come? In accomplishing political objects, what so natural as union of council?—in numerous bodies, possessed of power, what so certain as the existence and speedy development of parties? The moment you depart from the strict, and limited, and clearly defined, judicial power of a Court, all is uncertain. Who can tell where its knowledge and study of the public feelings may carry it? What new lights it may derive from regarding, as is recommended by the member from Massachusetts, the effects of its decisions upon public sentiment; from mitigating the severity of 'general rules?' Sir, this is to be done, in criminal cases, by the Executive power of pardoning the offender; in civil cases, by a representation to the Legislature, and a modification of the law, by the power which gave it being.

I say, sir, the effect of the bill will *not* be to expedite justice. Who ever heard of expediting the decisions of a body of men, by increasing the number of those who are to form and to pronounce them? Rather than submit to the proposed change, let the system remain unaltered. It provides no remedy for the four years' delay of the causes on the docket of the Supreme Court, which, however, admits of a different remedy, and is, in fact, decreasing. The number of causes on that docket is now one hundred and forty-three; it was, three years ago, one hundred and seventy-eight. Sir, the business of this Court is not accumulating, and my evidence of this fact is such, that the Chairman of the Judiciary Committee cannot doubt it. If he does, I refer him to the docket. The alteration of this Court is, then, required for political purposes, and for no other. To none other, as I trust I have shown, can it be conducive.

What is the Supreme Court in contemplation of law? A court of appellate and conclusive jurisdiction, designed, by the uniformity of its decisions, to make certain the common rule of action prescribed by the Legislative, and enforced by the Executive Department of the Government. It is, eminently, designed to correct the erroneous judgments of all subordinate tribunals of original jurisdiction. It is, therefore, essential to its own character, that it should have no original jurisdiction itself. What is true of the whole Court, is, in abstract and sound speculation, alike true of all its members—every one of which should be capable of bringing to the investigation

and decision of every question carried up from an inferior tribunal, a mind free from every bias, for, or against either of the parties, or the principles and argument involved in the original judgment which is to be affirmed, or set aside for error. If this be a correct exposition of the end and purpose of the institution of a Court of Appeals, how, sir, do the doctrines square with it, which have been advocated in the course of this debate, by both the gentlemen who have preceded me, in favor of the bill now before you?

The whole Court cannot, indeed, go in one body to each district, to try, as a court of original jurisdiction, each cause: but they depute, for this purpose, one of their body, who is, too, to influence the judgment of the District Judge, and to imbibe, at the same time, as much as possible of the popular feeling which surrounds him, as the brief compass of some few days or weeks may allow. This deputy is, in fact, to decide the cause, and to return with the record in his pocket, and, in a state of perfect disinterestedness, to lay it, or cause it to be laid, on the table of his associate Justices, for their decision. I ask, should a Judge, so situated, be required, ought he, indeed, to be permitted, to decide again the same question, or to influence, in any degree, that decision? Surely this is, in some sort, a mockery of justice. The effect to be produced, and, as it seems, intended to be produced, by the exension of this much-boasted Circuit Court system, is, that the same Judge shall decide the same cause twice, which he will do, if he first sways the opinion of the District Judge, and his associates on the bench of the Supreme Court be equally divided. What influence the esprit du corps of every body may give him over his associates, in sustaining his first judgment, I have no experience to guide me in fixing, but by reference to the feelings and sympathies of the purest and best men, who, being but men, are not infallible.

I differ, therefore, sir, essentially, and diametrically, from the gentleman of Massachusetts, in thinking the circuit system, here, better than that of England. The very circumstance that our Circuit Judge does, and the English Judge does not, pronounce an opinion upon the cause in the *nisi prius* court, marks an obvious difference to the prejudice of our system, and that prejudice is augmented by the fact, that the English Judge has not, at Westminster, that absolute power with his associates, of final adjudication, that our Judges may, and do, lawfully and necessarily, exercise at Washington. And to this, I add one physical quality, that this duty, in a little island, cultivated as a garden, and intersected by canals and artificial roads in every direction, can be better performed there, and with less sacrifice of valuable time, and health, not less important, that in the United States of America.

It is urged, sir, that unless our Judges of the Supreme Court travel to the States in which the causes they have to determine originate, they must need a mass of local knowledge, both of the People, and the practice of their courts, essential to a correct judgment. I have already stated the general contentment afforded by the decisions of the District Judge, where he has no associate from the Bench of the Supreme Court; but the true answer to this objection is, that the questions to be decided, on an appeal, are furnished by the record; and, moreover, illustrated and explained, in every case of real difficulty, by counsel of unquestioned ability. And in those cases which have given rise to the loudest complaints of error, on the part of the Court itself, the counsel engaged in the argument, have possessed, with ample local knowledge, the most consummate ability, and the opinion of the Court has reflected the greatest lustre upon the talents and learning which adorn the bench.

But, Mr. Chairman, the main argument against this bill, which extends so greatly the present Circuit Court system of the United States, is, in truth, furnished by the honorable Chairman who has reported it; and such, I can truly say, is my opinion of that gentleman's legal ability, that, when I can get an argument which has his own sanction, I prefer it to any which my own invention could possibly supply.

In the latter part of his speech, yesterday, that honorable member—and, in quoting him, I am happy to find that my copious notes of his speech accord with the language of the printed report of it which I hold in my hand—observed, that the circuit system, meaning that which he desires to extend, must be of transient duration. If this prediction, and I readily confide in it, be true, why encumber us now, with three new Judges, and the corresponding machinery of this bill? Certain complaints exist in Kentucky. Is it wise, then, to make a cumbrous and durable provision for an evil both transient and circumscribed?

So extended an apparatus can serve only to create a new obstacle to that indispensable and permanent change of system which the gentleman tells us he already anticipates, before the passage of a bill which must greatly tend to obstruct its future introduction.

The honorable Chairman has even prescribed the period of the commencement of a different system of the new system. But I should be glad to know why it may not earlier happen? In the ordinary course of affairs, Florida, Arkansas, and Michigan, may be expected, in a very few years, to be admitted members of this Union. The shape of the first will require probably two Courts, and each of the two last will be entitled to one at least. Another Judge, or two more, must, then, be added to the bench of the Supreme Court, on the principle which, in my opinion, expediency now sanctions, of relieving the Judges of the Supreme Court of the labors of their circuits. Let us, then, at once, adopt it, to restore perfect uniformity to our judicial system, which, so long as the absence of it furnishes a plausible ground of complaint, cannot but be a cause of regret.

Some of our present Judges have become old men. They are as venerable for every moral worth, as they are for their advanced age. Their constitutions cannot have been improved by the laborious peformance of their public duties; by increasing which, in the mode proposed by the Judiciary Committee, you will not proportionably augment that physical ability to discharge them, which time is slowly, I trust, but certainly wearing away. Or, if delay of change be expedient, preserve, a little longer, the present system, till the Western limits of the Union embrace the only incorporated territory beyond the Mississippi, and the rising States of Michigan and Florida.

Sir, the immediate enlargement of this Court may gratify, in some very inconsiderable degree, the pride of those States who may supply the three new Judges; but, as I have already said, it must be abortive of the good which the People of those States anticipate from the increased number of the Judges, unless it imparts to their proceedings a new character.

I concur most heartily in the opinion expressed by the gentleman from Massachusetts, that a Judge of this, as of every other Court ought to be—I mean on the bench—"altogether a Judge, always a Judge, and nothing but a Judge;" that, as the gentleman has quaintly, but forcibly said, he should be "*omnis in hoc.*" But, if this bill be adopted, I am inclined to believe that our new judges, faithful to the spirit which invokes them to life, will rather become omn-*es ad* omni-bus—"all things to all men."

You are to send a Judge from this Court into a distant circuit, popularity hunting. You send him to imbibe the taint of popular prejudice, and then bring him back to innoculate the Court.

Sir, I apprehend not the ill consequence which the

gentleman from Massachusetts does, from a reduction of the number of the Court to five, and a withdrawal of its members from the circuits. I cannot believe that the Court would become, unless it underwent a total change of character, "either the object of great distrust," or of "unpleasant jealousy." Such is not the condition of our State Courts, and it is not the condition of the present Supreme Court, whose number rarely exceeds five at present, and who need, under no circumstances, and could be required under none, to abandon, permanently, their present abodes, were they relieved from their circuit duties. Their total absence from home, less than at present, would be only for the annual term of their lengthened session in this city. Sir, is it not by the reports of their decisions in this capitol that this court is now estimated? And is it not sufficiently venerable? Is it not adorned by great and illustrious merit? Are not all its decisions stamped with the most undeviating rectitude? Has it not always possessed, does it not now enjoy, the confidence of the nation? And has this been purchased by any sacrifice at the shrine of popular favor, by mixing with, and representing the local feelings of their respective circuits? It has so happened that an individual member of this Court, the man most highly gifted of all the men I know, and, with but one exception, ever knew, a man not more revered than he is beloved, has had the hard fortune to differ, on many leading questions, from the decided majority of his own State—indeed, in almost all his prominent judgments upon constitutional law. He has, at some periods of his life, been the subject of no little persecution; but his reputation has survived it, and is daily brightening, as he advances towards the term of his mortal bourne. A voice from this Capitol annually sounds his praise to the remotest corners of this wide-spread Republic; and the Court over which he presides, having given stability to our political institutions, constitutes itself their brightest ornament.

This Court has encountered much discontent, but by patient fortitude, not by its numbers, nor by bending to circumstances, it has ultimately prevailed over prejudice and passion, as it will yet continue to do, if left to the impulse which has hitherto guided its judgment—the principles of eternal truth. Sir, it is a gratifying source of reflection, and manifests the durability of our entire political fabric, that, amidst all the shocks of this part of our Federal system, very few States have at any one time been united in its condemnation; and their successive efforts to shake the public confidence in its decisions, have found those who were at one time its enemies, at another, its steadfast friends.

A representation of a local and powerful interest in its body, has never, till now, threatened an extensive union against the consistent tenor of its past decrees. If it become a representative court, it should be subjected, in its constitution, to all the principles of representation. It should derive the relative weight of the component parts of the entire system from some common standard of numbers or of wealth. If the representation of this House be the standard, the West should be content with a less number than four judges out of ten, its proportion of this House being much less than one-fourth.

Sir, so abhorrent is this doctrine to my feelings, when applied to the judicial power of the country, that I would reduce the number of Judges, if it were merely to exclude its practical application, which, if admitted to be true in theory, the Executive and the Senate will scarcely venture to resist. How many different courts of six out of ten Judges may be made, and how little coherence may be found in their opinions! All law, which depends for its identity on its construction, will become unstable; the sickness of a Judge, the breaking of his carriage, some domestic affliction, may change the constitution of the land. And when the Court shall have become the prey of contending parties, in what respect will its mere numbers cause it to be held, by the distant People, who hear of its dissensions across their mountains, as we now do of theirs? 'Tis not a time for such a change. The Supreme Court is the anchor of the vessel of state—break it loose from its strong hold on the affections of the People, and we are tossed for a time on the tumultuous billows, only to be finally dashed on the rocks, or swalled up by the quicksands of party.

I am not unwilling, Mr. Chairman, to accord to my friends in the West a change in the present judicial system, if they will only leave the Supreme Court untouched, or provide for its gradual reduction to five members. Should my present motion prevail, I am willing, on the Committee's rising, to move a recommitment of the bill to the Judiciary Committee, with an instruction to report an amendment, which shall provide for a reduction of the number of Judges of the Supreme Court, on the occurrence of the first vacancy, to six, and of the second, to five; which shall retain the present division of the United States into judicial districts, and distribute those districts into nine, or even ten, circuits, alloting a Circuit Judge, to each circuit, who shall, twice in every year, hold, in each district of his circuit, along with the Judge residing in such district, a Circuit Court.

The expense of this would be less than that of the present system, modified as this bill proposes. It would possess a perfect uniformity, and admit of easy extension, according to the future necessitities of our growing country, without requiring at any time a radical change of the Supreme Court. Let us hazard no experiments here—while this is sound, all other danger is security; when this is gone, all other security is uncertain. I regret to deny any thing to the earnest solicitude of the West. I repeat it, Mr. Chairman, I feel a deep interest in its welfare. No man, who, like myself, has crossed the Allegany sixteen times in the course of a not very long life, could fail to entertain a strong attachment to the active, intelligent, and hospitable People, who inhabit the rich, beautiful, and improving country, beyond those mountains. I will cheerfully accord to them all the means which the constitution places within the power of Congress, for the advancement of their prosperity and happiness. I am ready to unite with the gentleman from Massachusetts, in expressing a regret, that so small a portion of the public money has been spent upon their territory, and to join him in uniting the great estuary of all their noble rivers, by a shorter transit, through the isthmus of Florida, to the markets of the East. In the language of their own orator on this floor, I am willing to compel "the proud Allegany to bow her head to the spirit of Internal Improvement"—to make their yet lonely valleys responsive to the boatman's song—their hills clap their hands with joy, and their fertile fields laugh with fatness. But let them not insist on the destruction of the strongest political bond that unites us, the security of our common peace and happiness. Whenever it shall comprehend in its bosom two contending parties, the confidence of the People, their love and reverence for its decrees, are gone forever.

I am confident, Mr. Chairman, that, if the gentleman from Massachusetts regarded this question in the light in which I cannot but view it, he would give, to my feeble arguments, a force which this Committee could not resist—a force which I feel that they deserve, but which I cannot convey.

Mr. Mercer concluded by observing, that no one who heard him could be more sensible than himself of the defects which had marked his very imperfect effort to present to the Committee his views of this important bill, speaking, as he did, in a hall of vast extent, where, instead of hearing distinctly what he himself said, his voice was returned to his own ear, mingled with

a thousand broken echoes; and he had to make a physical exertion to be heard by his auditors, which disturbed and impaired the operations of a mind, of late, little used to debate. He had, however, been induced to submit his imperfect views to the Committee, chiefly by the hope of arresting the progress of a measure which he saw rapidly hurrying through the House, which he believed to be fraught with public calamity, and of attracting to it the attention of much abler men.

Being conscious of the little claim he had to the attention of the Committee, his obligation, he felt, was the greater, for the indulgent attention which had been accorded to him.

Mr. MITCHELL, of Tennessee, then rose, and said, that, though he felt much indisposed—too much so to enter upon the investigation of a subject of such vast importance—yet he had always made it a point, through life, to compel his feelings of ease and convenience to yield to his duty—and nothing, said Mr. M. but a sense of imperative duty. But his intention was, not unnecessarily to occupy the time of the Committee: that it was with peculiar embarrassment that he now would address the Committee. He had scarcely become warm in his seat, and had not, as yet, obtained for himself a complete domicil in this House; and it might, by some, be thought an intrusion, for a person thus situated, to interrupt the lucid current of discussion this subject was undergoing, by gentlemen of great ability. But, unacquainted as he was with the persons, faces, and even names, of the honorable members on this floor, he would give the subject a brief discussion, hoping that due allowance would be made by every person who calmly considered his situation, and who must readily perceive the embarrassment he felt in entering the list with the honorable gentleman who made the learned display just witnessed—he could not say of sound argument: for ability was sometimes more corruscating in wielding sophistry, than in managing sound and practical argument; like a flash of lightning from Heaven, amid the darkness of a night, it rendered the object upon which it fell all luminous, but, a moment thereafter, and it became as opaque and dark as the most Northern point of the Globe. Such was the light in which he considered some of the most ostensible objections of the honorable gentleman from Virginia. Though the powers of eloquence, the pleasing address, and the imposing attitude, in which that honorable gentleman had placed his argument, would and must have, for the moment, considerable weight on the mind, yet, when it comes to be looked into and examined with care, it will fly your grasp; it is untangible, and would, in his opinion, be as evanescent as the alluring colors of the rainbow. What was it, Mr. M. asked, that the bill on the table contemplated? Was it an attack on the Constitution, (as had been intimated) or was it rather, not an extension of equal rights and privileges, so clearly inculcated by that Constitution, which the gentleman imagines attacked? For what end was your Supreme Court established? Was it not to ascertain and determine the disputes amongst the People of this Government, without regard to particular localitiies, and to exercise its limited and known jurisdiction over all persons and things given to it under the Constitution; or must these general benefits be limited to a small portion of your country, and not extended to the twenty-four States, and to the Territories which would, ere long, become so?—were, to his mind, grave and important qestions. He had been raised in that republican school which believed and inculcated the doctrine, that the Government of this Union was formed on the principles of the purest equality. And he had always held it as a self-evident truth, that there should be no extension of privileges to one point of the Government, without extending them equally to every other. Mr. M. said, near forty years of his life had rolled away in this opinion, and, if he was mistaken, it was high time that he should be undeceived and corrected; and that near fifty years of this Government had run into the ocean of time, a period sufficiently long, he thought, to have taught all the true bonds that tie and unite the People of this transcendently great nation. Mr. M. said, he had been raised in the same State with the honorable gentleman who had last addressed himself to the Committee. In Virginia the light of Heaven first burst upon his sight. It was there he received his early nurture—it was there he reached his manhood: and, as for education, he had received none, excepting what he had acquired by the industry of his own untrained mind, and the exertion and labor of his hands; but still he felt his Virginia pride, which seemed so much the boast of the gentleman, and he was, therefore, the more concerned to hear an avowal of some of the doctrines advanced by that gentleman. He seems to imagine that, by this bill, the People of the West are about to make some unjust encroachment upon the privileges of the Atlantic States, and endanger the Constitution. Mr. M. said, he could most solemnly assure the honorable gentleman, and this House, that the People of the West were asking or wishing for nothing that would, in the least, affect the Constitution or the constitutional rights of the other members and parties to the great national compact. The People of the West see their brothers in the East in the happy enjoyment of especial benefits and privileges; they seek not to lessen the stock of your happiness, but only freely to participate with you in the ocean of benefits in which the other People of the Republic are revelling; and they have never believed that the Alleganian Ridge was a sufficient barrier to shut them out. They do not complain that the Government has given too much to the People of the East. Upon this score, they see and believe that they are not in the possession of more than they ought to be. But they have and do complain of the situation in which they are placed, wholly without a representative in the Supreme Tribunal of the country; which benefit (and a great one it is) has been extended to all the States East of the Apalachian range of mountains. The People of the West do not envy you—they only wish to participate the blessings you are enjoying. They wish a representative on the Supreme bench, who knows their policy, feels their interest, and understands their laws. This is all-essential for the protection of their rights, and the preservation of their lives, their liberties, their property, their characters, and their sacred all. The gentleman from Virginia has attempted to show, from a little schedule he has produced here, from the docket of the Supreme Court, of the causes brought into that Court from the West, that the quantity of business in that country does not justify the extension of the system, and that the West have no rights which require additional legislation. Mr. M. said, that each and every State in the Union possessed equal rights in the Judicial as well as the Legislative administration of the Government, without regard to the sparse or dense populations of those States; that it was enough to know that justice, in all instances, had not been administered to the People of the West, and it was, of course, impossible for a great number of causes to be enrolled by appeal from the West, on the docket of the Supreme Court, before they were tried, and it was impossible to have them satisfactorily tried without a proper forum for that purpose; and, from the present organization of the Courts, the People of the West cannot have their causes properly investigated. From causes, over which the People of the West have no control, a perplexing delay of justice is continued upon them.

The gentleman from Virginia has argued that, instead of facilitating business, it would only create delays, by bringing so great a number of members of the Court on the bench. This would partially be true where the Judges

would deliver their opinions *seriatim*, which, to be sure, would but seldom happen. This argument, Mr. M. said, he thought proved too much. The gentleman has not certainly thought of the numerous local laws of the respective States, being but illy understood by the members of the Court, having a greater tendency to retard the business than any thing else; and that difficulty was only to be avoided by Judges intimately acquainted with those laws and the practice of the Courts sitting as a Court of nisi prius under those laws. They would communicate their information to the other members of the bench, and thereby give a spring to their reasoning faculties; and thus business would be accelerated, rather than retarded, by the increase of numbers, as was clearly shown by the honorable gentleman from Massachusetts. Such was the complicated nature of the landed estates, and the tenures by which they are holden in the Western Country, and the laws in relation to those estates, that no one could become well acquainted with them without much legal learning and great research, and by an absolute view of the legal principles applying to them put into practice before a jury of the country. But the gentleman from Virginia seems to think very lightly of disputes in relation to landed estates, and the estates themselves. He says they involve mere matters of fact. Nothing can be more fallacious in point of fact: for, on the reverse of what he supposes, they are entangled in all the mazes of legal learning. But the same measure of justice ought to be applied to all. Mr. M. said, for his part, he had always believed that real estates had, and would be regarded, in a Government like ours, with more interest than any other kind of estates. For, sir, remove a man from his home—that name ever dear and sacred to an American citizen—and his personal effects become as nothing to him. The laws of Kentucky are difficult to be understood, (and, the gentleman has said too much so to be remediable.) Thence the great necessity of having a Judge, who, from the depths of legal learning and experience of their practice, may correctly understand them, placed on the bench of this great dernier resort. This knowledge, so necessary, is only to be acquired by long and laborious study, measurably abstracted from the *lex loci* of the surrounding States. This also applies to Tennessee, as well as Kentucky; and those laws are only to be understood by lawyers of that section of the country. If, said Mr. M. I am correct, the increase of the number of the Judges will have the effect to facilitate, rather than retard, the despatch of business, by associating proper materials with proper information in that great judicial and political department of the Government. The gentleman from Virginia has said, he was obstinately opposed to the increase of the numbers of the Court. He wished it to remain in the same situation in which it was placed eighteen years ago. If this argument be correct, there ought never to have been an accession of States; the old thirteen States ought to have remained in *statu quo*, and they ought not to have admitted any other States into the Union; and those People of the West, of faction, of fire, and smoke, as mentioned by the gentleman from Virginia, as being so remarkably combustible, ought to have been permitted to roll on Westwardly to the Pacific Ocean, wholly neglected by the mother States, and to have remained a separate People, unless a full participation by this Union is to be extended to all. But, a word more, as to the necessity of these new circuits, and the consequent increase of the Supreme Court, contemplated by the bill on your table. Your twenty-four States are all equal as sovereignties, and have an indubitable right to the benefits under the institutions by which they are united; and it will not, I hope, be contended, that, because one of these States is not as prosperous and as populous as the States of New York, Pennsylvania, and Virginia, that their grievances are not to be heard and redressed, and that certain municipal regulations for the society of the larger States may be made, but that the smaller States shall not be partakers: and this, too, is to be done by a general Congress, professing to be dispensing equality to all. God forbid that such a sentiment should ever prevail. [Here Mr. M. from increasing indisposition and hoarseness, was obliged to desist from speaking.]

The Committee then rose, reported progress, and had leave to sit again.

And the House adjourned to Monday.

WEDNESDAY, JANUARY 9, 1826.

On motion of Mr. WEBSTER, the House again went into Committee of the Whole, Mr. TOMLINSON in the chair, on the bill "further to amend the Judicial system of the United States."

Mr. MITCHELL, of Tennessee, said, that if he could obtain the attention of the committee, he would resume the course of remarks he had suspended on Friday last. He would endeavor to be as brief as possible, and, with that view, should not attempt to answer many of the points in the argument of the gentleman from Virginia, several of which he conceived to be of such a description as did not need reply—he alluded more particularly to what that gentleman had said respecting the number of a quorum. That was a subject which he conceived not to be now before the committee at all. The point was, therefore, as a lawyer might say, *coram non judice*. Arguments of this description could certainly claim no attention, and to attempt to answer them, would only be giving them a consequence which he felt confident the gentleman himself did not wish. But there were, in the speech of that gentleman, things which did require an answer. It contained doctrines of the most alarming kind—doctrines which forcibly brought to his own recollection the situation of our oppressed, but high-minded ancestry, when they petitioned the British Government against the grievances then hanging over them. In answer to every argument they could use, it was said, by the unfeeling mother country, "We know your interests much better than you do, and we shall take care of them for you. Your judicial tribunals are perfectly competent to perform every duty we have assigned to them, and you have no right to complain." When the State which that gentleman so nobly represents, complained to the parent State, in distinct and manly language, of arbitrary exactions, and priest-ridden oppression, that tender mother replied, "You must not complain if your tobacco has been taken or your plantations burnt; it is not for you to take any steps in the affair. We are competent to manage all your concerns—we will provide a suitable remedy for you." Mr. Chairman, it was such doctrines as these which occasioned our fathers to break the rivets which bound them to such a mother. It was language like this which compelled a free and independent People to assume their rights, and which has caused them to become a nation, shining, like a luminary over the rest of the world. And are such doctrines to be tolerated here? Are we to be told that a proposition, which has the united support of the members of the Judiciary Committee, was a project to throw a fire-brand on the bench of the Supreme Court, and to apply the torch of discord to the most sacred department of this Government—a bill whose great object is to bind closer the ties of our Union, and perpetuate the friendship of the different portions of the People? I had expected that Virginia, the high-minded and ancient dominion, would have been the last to object to a measure of this description. Knowing, as I do, the sincerity of her benevolence; her, spirit of honor, and her generous liberality—knowing her, too, to be considered rather as a stickler for formalities once established, I did expect, Mr. Chairman, from

one so proud of her own privileges, the most liberal and willing extension of them to all her sisters and successors in the Confederacy. Sir, we of the West ask nothing of the mother States but what they can give us without, in the least degree, impoverishing themselves. All we demand of them is, that they would suffer us to participate in the benefit which they have so long and so richly enjoyed. We ask of them in this matter, only for a judicial equality. Is our demand unreasonable? I conceive not, sir. Of what avail are all our agricultural pursuits; of what value are the finest acquisitions of the mechanical arts; or those still more refined enjoyments to which still further improvements promise to lead our social life—if, for all that we possess, we have no security? Of what value is the greatest extension of our commerce, if, for its gains, we have no security? Without this, all possessions lose more than half their value. But the gentleman insists that we have no necessity for such a court in the West. This I consider the most important point of his argument, and it is that to which I shall direct my chief attention.

Let us first recur to the opinions he has expressed about the cases which the court will have to determine. He says they are causes chiefly of landed estate, and the matters to be settled are mere matters of fact. Mr. Chairman, I am sorry the gentleman appears to know so much about some of our affairs, and, at the same time, so little about others. Would to God the causes to which he alludes were merely causes of fact. Was the gentleman better acquainted with them, he would know that they are the most difficult and intricate cases of law, involving an acquaintance with an extent of local as well as general law principles, such as is attained but by few. That gentleman, I am persuaded, sir, has never had to inquire what is meant by a locative, descriptive, and directory roll of an entry; what a special and what a general entry; what are the prominent and what the subordinate calls of an entry; what are the natural, and what the artificial boundaries of an entry, or a grant; how far the grant may be good, though it does not cover the land actually entered; how far a grant is good when given for a piece of land not actually entered. All these, and many others which might be mentioned, are points that require a particular kind of knowledge; such knowledge as can be obtained by practice only. But even these, though complex, are little, yea, nothing, when compared to the numerous and complex kinds of conveyance practised by our ancient loving mothers towards the land of their daughters and younger sisters. Sir, there are twenty different conveyances sometimes to the same spot of land; and it sometimes happened that the same piece of ground was *patched* (to use an expression common in the West,) with twenty different kinds of conveyances, to as many different persons, and at as many different times. The gentleman, perhaps, might, at the first blush, say that this presented no difficulty at all, because the first conveyance must of course hold; but he will find that the inquiry leads into the whole labyrinth of British law, as well as of statutory regulation, in our own country. Nor will the British law, however excellent or perfect in itself, always apply to landed questions in this country. Judicial decisions are not of a strictly abstract character, but have an adaptation to the country in which they are given, and to the peculiar state of things which exists there. Every Court, when about to give its judgments, ought to know and consider the political situation and circumstances of those on whom its decisions are to operate. Its decisions should be made to fit the country as well as the particular thing in dispute. We may look into books, and there we may see doctrines laid down with great harmony and consistency, and in a manner that seems very unexceptionable, and yet, when these doctrines are brought and applied to a country of freemen, they are often found attended with the most mischievous consequences. A Judge, however deeply read, ought to know this, and should govern himself accordingly. The gentleman deprecates every thing like representation in matters of a judicial kind; but, sir, whatever that gentleman may suppose, this Government is as much a representative Government in its courts, as it is in this House or in the other. Our courts form an essential component part of our political system, and the rights of the People should be guarded there, with as much care as upon this floor: and I trust our Supreme Court will ever adjudicate by giving such a construction to our acts as shall be best calculated to remedy evils by the People. Now, sir, it is perfectly impossible that any judge can make himself master of the *lex loci* of these twenty-four Independent States. He cannot do it. The human mind is not sufficiently expansive. Our Supreme Court, therefore, ought to be made up of Judges from all parts of the country. They ought to have an opportunity of learning the policy prevailing throughout the Union. They ought themselves to hear the arguments of the bar, that they may learn how to decide, so at not to injure the rights of others. But, sir, the Western country is possessed, not only of the finest soil and climate, (a soil which seems so to have attracted the attention of our guardian mothers, that they still seem very willing to snatch some of our land,) but it is obtaining an internal commerce also, which some of our elder sisters now begin to think of sufficient importance for them to join in.

Her thousands of bales of tobacco, her hemp, her cotton, and that which we use morning and evening—I mean sugar, sir—all these, with her hundreds of steam boats, to bear them over her winding rivers, present a scene of activity, and a mass of bustling commerce, out of which grow a variety of intricate causes, not of land titles, but of all the various forms of commercial law.

But the gentleman might say, that all these involve the same principles with causes on the Eastern side of the mountains, and that, therefore, the same decisions will cover them. Agreed for the present—but let us see how this doctrine will work. It seems, then, that you are to legislate for us. We believe you to be perfectly honest in your intentions, and we know you to be very capable, and so you say to us, Go quietly home; you may put entire confidence in us; we will do your legislation for you.

Sir, will this satisfy us, do you think? No, sir, it will not satisfy us. We want to be with you on the floor, and whatever our confidence in your talents or integrity, we still prefer to see and hear for ourselves. And so, sir, in this matter of the Supreme Court: the People of the West want to have a finger in the pie; they wish to bring to that tribunal their share of learning and talent—not, as has been intimated, of faction and cabal. It is important, indeed, that we partake in your legislation—but what signifies it in what laws we join, unless you allow us to have Courts competent to administer them? It is said by the gentleman, that the Supreme Court, as a Court of Appeal, is large enough; but he proposes to change the system, and multiply Circuit Courts, leaving the Judges of the Supreme Court to remain at home. Sir, this is a change to which, though I should remain a member of this House till I am as old and gray as a Norwegian rat, I will never give my consent. Sir, it would be the greatest change that ever happened under our Government. While you have a Judge of the Supreme Court on the Circuit, he has an opportunity to see and hear the witnesses in every cause; he becomes possessed of the entire case; he charges the jury according to the facts; he listens to the arguments of the ablest lawyers. Can any man bring these things in a written record to the Supreme Court? Sir, it is impossible in the nature of things. I call upon the experience of more than two hundred lawyers, who now hear me, and who know that what I say is

true. Hence arises the necessity of having the same Judge sit both upon the Circuit, and also on the bench of the Supreme Court. No, Mr. Chairman, let us have no such change, Rely upon it, sir, in the day you adopt such a plan, you pull down the pillars of the fair fabric of our political liberty. You ruin the machine which conducts our social affairs. You stop the balance wheel which restrains the licentiousness of legislation, (if I may use such an expression.) That balance wheel, sir, is your Supreme Court. No, Mr. Chairman, it is not the adding of two or of three Judges to the bench, so long as knowledge and virtue continue to adorn it, by which that noble tribunal is to be injured or destroyed. Its ruin will never happen till vice or ignorance obtain their seat there. The gentleman tells us of the West, "You may have intelligence enough to manage your own little concerns, but you must not presume to climb to the height of our Supreme Court." He speaks of the intestine broils of Kentucky, as though they were the leading concerns of the nine Western States: and seems to suppose that no Western Judge can be appointed on the bench without bringing the spirit of faction there. Yea, he even charged the West with a want of moral integrity; and with great avidity seized upon the little political turmoil that momentarily disturbs the internal repose of Kentucky. But God forbid that Kentucky should stand on such a sliddering brink as the gentleman has assigned to that State!

From my own knowledge I can testify, that a spirit of faction is not the spirit of the West. There was, to be sure, a little bank once blown up there; but it appears to me, sir, that a great deal of this part of the gentleman's observations, seemed to have in them a little sneaking after the lands of Kentucky. If you have Western Judges, it may possibly happen that some thousands of dirty acres may be swept away from an applicant who comes from the ancient dominion; but if it must be so, let us still continue to import our Judges; send them to us, if you like it: all we ask is, that we may have a participancy; and we ask it, not only for Kentucky and Ohio, but for all the Western States. The gentleman tells us, that not a word of complaint has been heard till now: but, sir, the gentleman is mistaken; complaints have been made; they have long been made; they have long been made on this floor; they have long been made from all the Western States.

Among other local evils which we have to suffer, are the numberless trusts and mortgages, which are multiplied beyond degree, and which require investigation before a legal tribunal. Sir, it is not more lamentable than true, that, in those States, a creditor can scarcely get his right. Such are the multitude of trusts from one to another, that the creditor, if once compelled to pursue a legal remedy, may bid farewell to his right on this side the grave. Nor need he appeal, unless it be to the court of Heaven. Sir, this is an answer to that "little scrap" which the gentleman from Virginia seemed to think so valuable, and which he declared he would prefer to all the statements of the chairman of the committee. Sir, this explains the "little scrap," and shews why there are so few appeals from those districts.

Mr. Chairman, I hold it as a clear principle, that, wherever words and things do not correspond, there a Government does not, and cannot proceed as it ought to do. In the speech of that gentleman, things do not quadrate with his words. He speaks of the Supreme Court as exercising great *influence* in the country. Now, sir, there is no man who views the members of that tribunal with more unfeigned and heartfelt respect than the humble being who now addresses you; but then, sir, their light is hid under a bushel. Suppose, Mr. Chairman, you let us draw Mr. Marshall (of whom the gentleman speaks with such deserved eulogy) over the mountains; "you, sir, in Virginia, do not need him—yours is a plain tobacco business; it involves no law intricacies; and beside, I at least know you to be honest to a proverb; but over there, where we are so corrupt, we need him greatly: send us Mr. Marshall; you have District Courts enough; do your business there." Sir, should I address such language to the gentleman from Virginia, you would soon hear a most tremendous knell; notes and tones would come from the gentleman, very different, and far more plaintive, I am persuaded, than any of the melting notes to which we listened on Friday. But, sir, it appears to me that the good old way of judging is the best: that is, to put ourselves in the same situation with another, and try how we should like the measures which we propose to him. If the gentleman will do this, and take to himself the doctrines he is preparing for us, I feel satisfied that he will be more convinced of the justice of our complaints.

Mr. Chairman, in the few observations I have now submitted, I have endeavored to avoid, if possible, travelling over one inch of the ground so ably occupied by the gentlemen from Massachusetts and from South Carolina, (Messrs. WEBSTER and DRAYTON.) I have endeavored to put the subject in altogether a different point of light. In conclusion, I thank the gentleman from Virginia for myself, and on behalf of my constituents, for his extremely good intentions toward the West. The gentleman will remove mountains—he will cut canals—he will give us money—he will do any thing for us but give us a participation in the benefits of the Supreme Court. I thank him for his deserved and well drawn eulogy on Judge Todd, and, above all, I thank him for his tears on old Moultrie.

Mr. BUCHANAN said that he should make no apology for troubling the committee at this time; his situation as a member of the Committee on the Judiciary, rendered it his duty to occupy their attention. The able speech of the gentleman from Virginia required an answer: for that gentleman had brought forward nearly every thing which could be urged with any sort of weight against the measure proposed in the bill. He should endeavor to follow the course of his arguments in such a reply as he might be able to offer. In doing so, he would first be under the necessity of directing the attention of the committee, for a short time, to a part of the judicial history of this country. In the year 1802, Congress had this subject before them, (he would not carry the committee to a period further back) and, at that time, the present Judicial system had been established. The entire territory of the United States was then divided into six circuits. A Circuit Judge was assigned to each of them, and these six Circuit Judges constituted the Supreme Court of the United States. The question to be determined at that time, was between what was called the Circuit Court System, and that which was adopted, and which at present prevails. The respective merits of the two systems were fully compared, and the question of preference deliberately settled—nor has a whisper of disapprobation, for many years past, been heard against the result. The plan adopted has received the seal of experience; a vast number of important controversies have been submitted to the adjudication of the tribunal then established; and the principles involved have been decided in a manner which has secured to the Court the entire confidence of this whole People.

The next event worthy of notice which occurred in our judicial history, was in 1807, when Congress again had the subject before them. The question then was, whether they should depart from the system adopted in 1802, or should extend it, in its existing form, to the increased wants and exigencies of the country. The result was, the passing of an act, by which a seventh Judge of the Supreme Court was added to the six already on the bench, and a circuit was assigned to him, consisting of Tennessee, Kentucky, and Ohio.

I was therefore greatly astonished to hear from the gentleman from Virginia, that the principles contained in this

bill were new. So far have the committee been from recommending any new project, that, on the contrary, they have but proposed to extend to other portions of the Union, the benefits of a system, the wisdom of which has been already tested by the experience of all the Atlantic States. In 1802, Ohio was only a Territory—but in 1807, she had become a respectable State, and Kentucky and Tennessee were then fast rising into importance. Congress, therefore, resolved, at the latter period, to extend to these important members of the Confederacy, the benefits already enjoyed by their sister States. In consequence of this determination, the Judge who has been so highly, and so deservedly eulogized in the speech of the gentleman from Virginia, was put upon the bench. This system has continued without alteration, addition, or complaint, for a period of eighteen years: and the question for the committee now to decide is, whether the country shall go on in this prosperous and happy judicial course, extending the present well-tried system to meet the wants of the People, or whether we shall commence a career of new and untried and hazarded experiments.

The first inquiry to be answered is, Does the judicial situation of the United States require the change?

And, on this point, the gentleman undertook an Herculean task. He attempted to prove, that the present bill is not required by the necessities of the country. The argument of the gentleman, has, however, in this particular, contradicted itself: for, although he set out with declaring, and adducing arguments to prove, that so cumbrous a machinery as three additional Judges was not necessary, he concluded his speech by pledging himself that he should offer as a substitute, if the committee would consent to strike out the first section of the bill, the establishment of ten circuits, and the appointment of *ten new Judges*. If, as the gentleman endeavored to persuade us, the present organization of the system is adequate to supply the wants of the country, how can he reconcile it to himself to offer such a proposition as he has bound himself to do, in case his motion should prevail? Surely the gentleman cannot wish to establish so many sinecures.

But, Mr. Chairman, it is not a fact that the present number of Circuit Courts is adequate to the wants of this nation. The complaints of the whole Western Country are spread before you. The citizens of that part of the Union are clamorous for some change, or some extension of the system; and, in my opinion, they have the justest reasons for urging their demands. Sir, the administration of justice, as has been justly observed in the course of this debate, goes home to the bosom of every society. The wisest and most wholesome laws are passed in vain, unless they are so administered, and executed, as to carry the benefits they contain to the People for whom they are provided.

Your statute book may be loaded with wise and judicious regulations; but if, from a defect in the organization of the judicial system, they never reach the great body of the People, they are but as a sounding brass and tinkling cymbal. The office of Judge is one of the greatest dignity, and of the greatest importance to the country. The Judge has it in his power to do more good or evil than any other officer of your Government, because he, and he alone, is to carry those laws into effect, which directly bear upon the interests of the great body of the People. With reference to these considerations, Mr. B. undertook to prove, not only that the Committee on the Judiciary were justifiable in reporting this bill, but that they would have neglected the most solemn obligations of duty had they neglected to do it

What, Mr. B. asked, was now the situation of that portion of the country, included within the Seventh Judicial District—the States of Tennessee, Kentucky, and Ohio? In the year 1807, Congress extended to them the benefits of the Circuit Court system; and what had since then occurred? Look at the position and extent of those States, on the map, said Mr. B. and consider that the Judge of that Circuit has to travel over them, and hold Courts in each of them twice in each year, and that, in addition to the performance of all these important and laborious duties, he is obliged to attend, annually, the session of the Supreme Court in this city. A man must be more than mortal who could perform all these duties. Suppose it were in his power, for a time, to despatch all this judicial business, yet, unless his constitution were equal to that of Hercules, the labor to which he would be exposed, must, in a short time, destroy him. Such was, in fact, the case, with the respectable Judge of whom the gentleman from Virginia had spoken in terms of such high and just eulogium. Is not that Judge, at this moment, stretched on his sick bed, in consequence of his attention to the discharge of his judicial functions? Has he not experienced that the labor you impose upon him is unmerciful, and such as you ought not to impose upon any Judge in this country? Mr. B. asked of the gentleman from Virginia to consult his feelings, and say whether this faithful and valuable public servant should literally be killed by the imposition upon him of duties which it was impossible for any human constitution to perform? Although this was a strong argument, appealing to the feelings of members in favor of the bill, because we ought not to act toward others as we would not to ourselves, yet, said Mr. B. let us look at it in another point of view.

Is justice, then, administered according to law, in the three States referred to? For, Mr. B. said, he spoke of them now, particularly as the gentleman from Virginia had particularly directed the attention of the committee to them. He held in his hand, he said, the memorial from the bar of Nashville, signed by G. W. CAMPBELL, as Chairman, and FELIX GRUNDY, as Secretary; gentlemen whose standing was well known to this House and to the country. The memorial detailed such facts in relation to causes depending in the Federal Court in that part of the country, that, so far from being astonished at what have been called the clamors of the West on this subject, Mr. B. said he was astonished that their clamors had not been more loud, and oftener reiterated on this floor. In addition to the facts which have already been stated relative to this part of the subject by the Chairman of the Judiciary Committee, the memorial declares, that "the Seventh Circuit, consisting of Kentucky, Ohio, and Tennessee, is too large for the duties of it to be devolved on one man; and it was absolutely impossible for the Judge assigned to this circuit, to fulfil the letter of the law, designating his duties. Such has been the delay of justice in the State of Tennessee, that some of the important causes now pending in their Circuit Courts, are older than the professional career of almost every man at the bar. What answer can the Committee make to this memorial? These men, whose interest and inclination it was to have the business before the Court determined, have come forward, and pledged their veracity for the truth of such facts, as, if believed by the Committee, will conclusively prove that the delay of justice has become so great as to amount to its denial. Was not such a state of things a mere mockery of justice? Was it not holding up a delusion to the People of that State, disappointing them of the reality? Was it not the greatest injury, he asked, that could possibly occur in a new country, to have its land titles held in suspense for so many years? If this memorial is to be credited, it puts the question at rest, as to the necessity of a new organization of the present system, as regards the State of Tennessee.

And how was the fact in the State of Kentucky, another District in the same Circuit? The Chairman of the Judiciary Committee had stated that, in that Circuit, two

thousand causes had been disposed of within the last three years—of which statement the gentleman from Virginia had made a very ingenious use. But the gentleman from Massachusetts, at the head of that Committee, had not stated that the two thousand causes had been *tried* and determined in that Court. Mr. B. appealed to any lawyer, in this House, or to any gentleman experienced in the business of Courts, whether it was not the fact that nine-tenths of all the cases depending in Courts never require a trial, being cases involving no question either of law or of fact. A very large portion of the two thousand causes decided in the Kentucky district were of that description. Of what description were the causes which remained on the docket of that Court? A great part of them those which were for trial, such as the Court have not been able to hear and decide. The causes depending at this time in the State of Kentucky, are between nine hundred and one thousand. If there were a State in the Union in which it was important that the judicial business should be promptly and certainly transacted, it was that State. With regard to the District of Ohio, Mr. B. said, he had also in his hand a memorial from the Bar of that State, on the same subject and to the same general effect as the representations from Tennessee and Kentucky. He would not detain the House to read it; but any gentleman might do so who chose, and he would see what was the situation of that State in respect to the administration of justice, under the laws of the United States.

Let us, then, said Mr. B. inquire what are the evils which arise, under the present system, from the delay of justice.

The Constitution of the United States has limited the powers of the Federal Judiciary: that instrument has declared that the Courts of the United States shall have jurisdiction of causes arising between citizens of different States. The act of Congress has further limited this power, and declares that the Federal Courts shall have no jurisdiction in any such case, unless the defendant live within the bounds of the State in which suit is brought. And for what purpose have the constitution and the law given this authority to courts of the United States? That a citizen of one State *might* enjoy the same privileges as the citizens of any other States. The framers of the Constitution foresaw, that, from local causes, jealousies might spring up in the different States against the demands or the titles of foreigners and citizens of other States. Whilst, therefore, they left the citizens of the same State to settle their controversies before their own Courts, they have wisely provided tribunals, to be called into existence by the authority of the Federal Government, to settle those existing between foreigners and citizens. Under the system now in operation, the citizens of the State in which the suit is instituted, are, in almost every instance, the defendants.

Who are then particularly interested in a reformation or correction of the defects in the Judiciary System? Is it the citizens of the Western or Southwestern States? Are they to derive particular advantages from the prompt determination of causes in these Courts? Certainly not: because no man can, unless in a few cases, institute a suit in the Federal Judiciary of any Western State, unless he be a citizen of some other State, or an alien. For whose benefit, then, would the proposed change in the system principally operate? Would it not be for the benefit of the citizens of other States than those in which the administration of justice, under the laws of the United States, is now defective? They, and they chiefly, would avail themselves of the advantages which a reform of the system would afford to suitors: and, of course, said Mr. B. by omitting to establish a Federal Judiciary competent to execute the laws of the United States in the Western States, you do not so much injure those States, as you deprive the citizens of other States of their legitimate remedy. Then, sir, this mighty bugbear which the gentleman has raised up to your view, when tested by the principles of reason, vanishes into thin air.

What was now the situation of a man bringing a suit in the Circuit Court for the District of Kentucky? Suppose a suit to be brought in that court by a merchant of Philadelphia against a citizen of Kentucky. The greatest temptation was held out to the defendant, to set up an unjust and a fraudulent defence; because, from the situation of business in that Court, the case could not, perhaps for years, be brought to trial. So that the benefits to arise from the proposed amendment of the judiciary system, would go chiefly to citizens of other States than those in which the change in the system would take effect.

So much, Mr. B. said, for the wants of Tennessee, Ohio, and Kentucky. How was it with regard to other portions of the Union? What was the situation of Louisiana, including New Orleans, the emporium of the West? The commercial intercourse of that City with the rest of the Union and with foreign nations gives rise to causes of great variety and importance. In that portion of the country, there is but a District Judge, with no Judge of the Supreme Court to assist and enlighten his judgment, or to bring to the Supreme Court the requisite knowledge of the laws and practice of the Courts of that State. There was a peculiar reason, imperatively requiring that there should be a Supreme Court Judge to hold a Circuit Court in that part of the country; which was, that the civil law regulates the proceedings in the Courts of that State—a law, different in its origin and principles from the common law, which prevails throughout the other States of the Union. Mr. B. considered it beyond all controversy settled, from these facts, that there was an absolute necessity for the adoption of some legislative measure to remedy the evils growing out of the defective system now established.

I now come, said Mr. B. to what I believe to be the great point of the speech of the gentleman from Virginia—one which demands, and certainly will receive, the deliberate attention of the members of this Committee. He is apprehensive that, by means of this bill, the Supreme Court is to become a political tribunal, for the purpose of propagating opinions now peculiar to the West, and of over-ruling determinations already made by the Supreme Court, and of changing the system of constitutional law as it has been established by that Court. If, sir, I could believe, for a moment, that such is the intention, or would be the consequence, of this measure, I would be one of the last men in the United States to support it. If I were to believe that that firm and beautiful fabric, which the Supreme Court has already erected, would be seized by rude hands, and prostrated in consequence of the passage of this bill, I would myself, at once, enter my solemn protest against it. But I think the committee will perceive that the apprehensions of the gentleman were the visionary phantoms of his own imagination, having no existence in reality. If such were the intention or expectation of the People of the Western States, in seeking this amendment of the system, it had eluded the vigilance of the Committee on the Judiciary. That Committee had never dreamt of such a project. Sir, said Mr. B. I consider the integrity and independence of the Judiciary as the Palladium of our political system, and that, if we should ever be deprived of it, either by fraud or by force, it would be a vital stab to our political institutions. Therefore, Mr. B said, if he did not make it as plain as light that the gentleman's apprehensions on this score were ideal and visionary, he would not for a moment ask the favor of the committee for this bill.

Suppose, for the sake of argument, what no one could

believe, that it was the intention of all the West to overturn the settled decisions of the Supreme Court, and that three additional Judges were to be brought upon the Bench, in pursuance of that determination. There are now seven Judges on the Bench of that Court. Does the gentleman seriously believe, said Mr. B. that the three Judges to be appointed will be able to overcome the firmness, the inflexibility, and the learning, of the other seven? He must first shew that the new Judges would have the disposition, and then that they would have the power, to rejudge the cases determined by the Supreme Court, before he can establish his argument of danger from that quarter. The danger does not exist in fact: the shadow is conjured up merely to deter the House from passing a bill, the expediency of which is unquestionable.

But the gentleman had also introduced into the discussion of this bill, what was wholly irrelevant matter. He had connected with it the subject introduced by a gentleman from Kentucky, requiring a certain number of the Judges of the Court to unite in deciding particular cases, on which proposition, whenever it came before the House, Mr. B. said he would go heart and hand with the gentleman from Virginia. He should be opposed to any measure which might be suggested in the form or to the effect of that which had been proposed. One ounce of experience, Mr. B. said, was worth a pound of theory. The institutions under which we have flourished—under which we have grown from infancy to manhood, ought never to be lightly forsaken or abandoned. The perfection of our system is, that, whilst one State may fume and rage against the General Government, or establish wild positions within its own particular government, the other States are cool and at rest. This had been the case within the State which he himself had the honor in part to represent. The States on every side of her looked on without participating in her feelings. The People of Pennsylvania did not long war against the Federal Judiciary. They were soon restored to tranquillity, and now were in harmony with the General Government. Another State was now in a similar position to that which Pennsylvania had once occupied; and he trusted that the cloud which now hangs over her would soon dissipate, and that she would come out brighter than ever, and that, in proportion to the severity of her present experience, would be the progress of her future prosperity. Mr. B. said, that he was never for disturbing the institutions of the country, or its settled policy, to gratify the feelings, however manly they might be, of the People of any particular part of the Union. He would let them go on, perfectly satisfied himself that, however wrong or excited for a time, they might be, the People of every part of this country will always come right in the end. No new fangled project, such as that which the gentleman from Virginia had combatted, should ever have his sanction, so long as he had a seat on this floor. But what connection had it with the propositions contained in this bill? None at all. No such principle was to be found in the bill; and, unless it was, the bill ought not to be opposed on account of what it did not contain.

But the gentleman had proceeded upon the principle that the three new Judges, to be appointed on the passage of this bill, would entertain peculiar notions of the Constitution, the effect of which he seemed to deprecate. Is there, said Mr. B. any danger of this kind? The President of the United States may, if he thinks proper, select these Judges from any portion of the Union, other than the Western. But what is the probability? There are able men scattered over all the Western States, abundantly capable of doing honor to the bench of the Supreme Court. How, then, will the selections of new Judges be probably made? Partly from one portion of the country, and partly from the other, within which the new Courts will be established. Kentucky, whom the gentleman appears so much to dread, has already her Judge. She is a part of the Seventh Circuit, and will continue to have for her portion, the firm, enlightened, and independent Judge, who has, for several years, been arranged to that circuit. Even if Kentucky, therefore, had the inclination, which Mr. B. said he did not believe, of prostrating the decisions of the Supreme Court, she would not have it in her power. When did Tennessee, Ohio, Indiana, Illinois or Missouri, set up any peculiar constitutional notions? or Louisiana? Whoever heard of Alabama, of Mississippi, contending with the Courts of the United States for occupying claimant or replevin laws? The presumption, therefore, was, that the three new Judges, to be selected from those Western States, would not be infected, as the gentleman supposed, with strange doctrines, but would move on as harmoniously and independently as the members who, at present, compose the Supreme Court. Kentucky, at least, of whom the gentleman from Virginia had so many fears, was supplied with a Judge, whose judicial life had been opposed to her peculiar notions. The probability was, that, in the selection of the new Judges, not a single one would be taken, possessing the same opinions and notions which the gentleman had attributed to the State of Kentucky. He asked, then, where was the danger that, after the passage of this bill, the Supreme Court would become a political tribunal? I do not pretend, said Mr. B. to have more confidence than I ought to have in this or any other administration. I am not disposed to bestow on the Executive of the country more confidence than the institutions of the country requires; but I have not the least apprehension that this Executive, or any other, would be so far forgetful of his duty, as to throw a firebrand into the Supreme Court, and create a faction there. He was of opinion, upon the whole, that the gentleman had entirely failed in the attempt to show there was the least danger that the Supreme Court, organized as proposed by this bill, would become a political Court.

Another objection which the gentleman from Virginia made—and, Mr. B. said, he must compliment his speech by saying, that he really appeared to have introduced into it every thing which could be an objection to this bill—was, that Courts of Appeal, in all the States except one, consist of a number of judges not exceeding five; and, from this practice, he had drawn an argument, that nine or ten judges would be too many to compose the Supreme Court of the United States. In the first place, Mr. B. said, he denied the fact; and, in the next place, admitting the fact, he denied that there was any weight in the argument. The Judges of the Supreme Court of the States, are selected from the mass of the Bar of each State: They are generally men who have grown grey in practice, and who have been all their lives accustomed to the peculiar laws of that State. They come upon the Bench, bringing with them all the knowledge necessary to cast judicial light on the subjects they may have to touch.

How are the Judges of the United States chosen? They are selected from an extent of country embracing four and twenty distinct and independent systems of law. The common law, to be sure, is the root of nearly all of them; but, for a long period of years, each State has gradually been establishing a local policy and a local system of laws, peculiarly adapted to its situation and the habits and morals of its People. Does it follow, then because five Judges are a sufficient number to constitute the Supreme Court of any one State of the Union, that a Supreme Court for the whole Union, embracing these twenty-four distinct systems of laws, can be properly constituted of five Judges? If five Judges are not too many for a Supreme Court of a State, it is a convincing argument that nine or ten are not more than sufficient for the Supreme Court of the Union.

Another consideration ought also to be taken into view.

The systems of law of many of the different States, are radically variant; and a man who had practised all his life in Maine, going to Louisiana, would find himself wholly unacquainted with the practice in that State. So far from strengthening his case, Mr. B. therefore thought that this argument of the gentleman from Virginia was wholly against him.

But, Mr. B. further said, he denied the facts assumed by the gentleman, both as to England and to this country. Is not the Supreme Court of New York composed of the Senate of the State?

[Mr. MERCER explained. He meant a court composed of judges, not of Senators. He, knew also, that the House of Lords was the appellate court in England.]

Mr. BUCHANAN thanked him for the hint. He said, the House of Peers in England is an appellate Court nominally, and only nominally. Whenever a writ of error of the least consequence is before them, the twelve judges are summoned to give their attendance; and the twelve judges are thus, in England, in fact, the Court of Appeals. In my recollection, there never has been a case in England, in which the House of Lords has decided in opposition to the opinion of the judges.

In England, there is also the Court of Exchequer Chambers, consisting of the twelve judges, and nothing is more common in that country than, when the judges find a case before them is difficult, to adjourn it to the Exchequer Chamber previous to its being decided from the bench. So that, in England, the Court of Errors, in the last resort, consists, virtually, of twelve judges. One thing, Mr. B. was willing to admit, that, if the Supreme Court were not to be composed of Circuit Court Judges, the number often would be too great. The perfection of a judicial system is this: that each judge shall, in the discharge of his duties, feel the weight of personal responsibilty resting upon his shoulders. He agreed that, in a crowded court, men who want talents or application are in danger of becoming mere ave and no men, voting with the minority or majority; and there would be the additional danger, in that case, that the Executive, from personal preference, might place on the bench men of subordinate qualifications, supposing that they might be lost sight of among the number. The great advantage of our system and of the English system is, that the judges of their Superior Courts and of ours are compelled to try causes on the Circuit. The judiciary of England, like ours, stands thus on high ground. In cases of civil rights, there is no country in the world in which they are better protected than in England.

Nor was the gentleman correct in the distinction which he had drawn between the Nisi Prius Courts of England and the Circuit Courts of the United States—in drawing which he had mistaken what had fallen on that point from the Chairman of the Judiciary Committee. Most of the important cases decided by the Superior Courts in England, Mr. B. said, are first decided in the Courts of Nisi Prius, where the principle of law is first argued. He believed this, from knowing that a large portion of the most valuable reports of the cases published in England are of proceedings at Nisi Prius—precisely as in the Circuit Courts of the United States. The most striking difference is one more of form than of substance. The Circuit Courts under our system render a final judgment, but in England this is rendered by the Court in Bank, from which the Judge of Nisi Prius proceeds.

Each Judge of the Supreme Court of the United States has highly responsible and important duties to perform throughout his circuit. The eyes of the world are upon him, in a court in which he must, from his station, act the principal part. He is closely scanned by the members of the Profession, who, of all men, are best calculated to decide upon the abilities of a Judge. The standard by which they decide upon his merits, is of the highest character; because it is expected, from his elevated station, that he shall possess great talents and unbending integrity, and a perfect knowledge of the laws of his country. This situation, and the duties attendant upon it, is an ample security both against the appointment of incompetent judges—and against indolent habits after they are appointed, which might otherwise result from the number of members of the Court.

Let us now, Mr. Chairman, said Mr. BUCHANAN, take a view of the comparative merits of the two systems proposed for our adoption. The system proposed by the gentleman from Virginia, will call into existence ten new judges, and will place them on the benches of the Circuit Courts, to perform the same duties which are now devolved upon the judges of the Supreme Court. It contemplates that the judges of that Court shall continue as they are for the present; but shall be eventually reduced to the number of five, and their jurisdiction be exclusively appellate.

Why, sir, should this important change be made, when it is manifest that the addition of two or three judges to the Supreme Court will be abundantly sufficient to supply the judicial wants of the country? No complaints have ever reached my ear that justice has been improperly delayed in the Circuits East of the Alleghany mountains. On the contrary, we have the best reason for believing, that the Courts answer every purpose intended by the Constitution and the laws. Indeed some of the circuits might be enlarged if it were necessary. For example, the fourth circuit consists of the States of Maryland and Delaware only, and the Judge resides within a very short distance of this Capitol. Why, then, should a system be adopted, neither called for by the wants nor the wishes of the People of the Eastern portion of the Union, merely because the present system is inadequate to do justice to the People of the West? Sir, said Mr. B. if it were necessary for the prompt and efficient administration of justice to incur the expense of supporting ten new Judges, I would not hesitate one moment in voting for the proposition; but, when there is not the least occasion for such a measure, its adoption would be a most unjustifiable squandering of the public treasure. It would be creating sinecures in the six Eastern circuits, and would leave both the Judges of the Supreme Court and the Circuit Judges without sufficient employment This would be directly contrary both to the institutions and the habits of this country.

The gentleman from Virginia has argued that some of the present Judges of the Supreme Court are now becoming old; that they will soon not be able to endure the fatigue of riding their circuits, and that they will thus be compelled to resign. Mr. B. said, there was no man in the country who felt more respect, nay, more veneration for the Judges of that Court, than he did himself. He trusted, therefore, no person within the sound of his voice, would for one moment suppose, that the declaration he was about to make had been dictated by any want of a proper regard for the Judges who composed that tribunal. He was, however, firmly of the opinion, that the result which had been so much dreaded by the gentleman, was a strong argument in favor of the existing system.

It is a general law of our nature, that, when age prostrates the vigor of the body, the mind loses its power and its energy in the same proportion. As a general rule, the Judge who becomes physically incapable of travelling over his circuit, will not be competent to discharge the high intellectual duties imposed upon him by his station. There are, without doubt, many exceptions to this rule; but Legislatures, in framing a general system for the benefit of society, must be governed by the rule and not by the exception. If the tendency of this system, then, shall be, to drive Judges from the Bench, who have ceased to be able to perform their duties to the country, it will be a fortunate result

Mr. B. said, he had always been of opinion there was much wisdom in that constitutional provision of the State of New York, which prevented Judges from holding their seats after a certain age. It is probable it extends too far; but if, occasionally, it should deprive the People of the services of men who would still be useful, in many more instances it will preserve the country from suffering all the evils which flow from the administration of justice by an incompetent and a superannuated judge.

The gentleman from Virginia, in reply to the argument of the Chairman of the Committee on the Judiciary, has stated that he admitted it might become necessary, in twenty years, to establish a Circuit Court system, independent of the Judges of the Supreme Court; and, from this admission, has deduced an argument that it is proper to establish it at present. Sir, said Mr. B. I cannot feel the force, though I may acknowledge the ingenuity of this mode of reasoning. A statesman, looking forward to the future destinies of his country, and anticipating the time when its population may be doubled; when its foreign and domestic commerce may be vastly extended; and when a greatly increased intercourse among the People of the different States shall give birth to many new subjects of litigation, predicts that it may then become necessary to establish the judicial system recommended by the gentleman from Virginia; that gentleman takes advantage of this declaration, and asks, because it may become necessary *then*, that we shall establish it *now*. This is not the manner in which our predecessors have acted. They provided for the wants of the People as they arose. The gentleman from Virginia, however, would wish us to reverse the rule, and provide now for a state of things which may not exist for half a century.

In my own opinion, said Mr. B., the time will come when the Judges of the Supreme Court shall not be able to perform both their appellate and Circuit Court duties: necessity will then compel their separation. The day, however, I trust, is far distant. I am willing to delay that event as long as possible—not to anticipate its arrival. Let posterity provide for themselves.

[When Mr. B. had proceeded this far in his observations, the hour being late, Mr. WEBSTER asking Mr. B. to give way for the purpose, moved that the Committee rise for to-day.]

The Committee rose, reported progress, and obtained leave to sit again; and

The House adjourned.

TUESDAY, JANUARY 10, 1826.

The resolution yesterday offered by Mr. CAMPBELL, for the admission of Stenographers, not exceeding three in number, to occupy seats in front of the Clerk's table, having been taken up—

Mr. CAMPBELL observed, that, in calling up this resolution, it might be considered proper that he should submit a remark or two. He did not think that the resolution was indispensable for the purpose of enabling the Speaker to make the arrangements adverted to, as he believed, for his own part, that the Speaker already possessed the power; but the practice of the House having assigned to the Reporters a different situation, unless it was disposed to impose on the Speaker the responsibility of changing the practice simply by his own authority, the alteration in the rule ought to be made. Mr. C. here quoted the rule of order on this subject, which is in the following words:

"Stenographers wishing to take down the debates, may be admitted by the Speaker, who shall assign such places to them, on the floor or elsewhere, to effect their object, as shall not interfere with the convenience of the House."

Mr. C. observed, that he could not perceive any inconvenience that could possibly result from placing the Reporters in front of the Clerk's table. It was the only point in the House from which it was possible they could hear so as to report with correctness all that passed, especially since the erection of the partition behind the Speaker's Chair. If gentlemen considered it important to have the Debates and Proceedings reported at all, it was certainly important that they should be reported with accuracy. It had been proposed by some gentlemen, that the Reporters should be placed on each side of the steps ascending to the Speaker's Chair; but it must be manifest, that, if so situated, they will be wholly unable either to see or hear what passes on the side of the House opposite to them. The most expedient place, on every account, was immediately in front of the Clerk's desk.

Mr. FORSYTH said he should like to understand whether this rule was intended to stand in lieu of that which now existed on this subject.

Mr. CAMPBELL replied, that he did not intend it as a substitute, but rather as an amplification of the powers at present given to the Speaker on that subject.

Mr. FORSYTH said, that in that view he was opposed to the rule. He thought it would make an improper distinction among the Stenographers, to give the preference to some over others.

Mr. CAMPBELL replied, that he knew of only two gentlemen who at present reported the Debates of the House to any extent, and there was room before the Clerk's table for three.

Mr. FORSYTH replied, that he did not know how many might be actually reporting; but he was certain that six or seven were allowed to enter the Hall.

Mr. LITTLE observed, that he apprehended that no serious inconvenience was at present experienced by the Reporters, and as no permanent arrangement had yet been resolved on in relation to the partition, which was supposed to stand in the way of their reporting, he moved that for the present the resolution lie on the table.

This motion prevailed—Ayes 82, Noes 52.

HOSPITAL AT LOUISVILLE.

Mr. WICKLIFFE offered the following:

Resolved, That a Committee be appointed to inquire into the expediency of authorizing the collection of a tax upon boats and vessels, and hands thereof, navigating the Ohio and Mississippi rivers, for the support of sick and infirm strangers in the Louisville Hospital, Ky.

Mr. WICKLIFFE, in offering the resolution, said that he wished to state one or two reasons in support of it. The resolution asked only for an inquiry. And one fact which would strongly illustrate the importance and necessity of making it, was to be found in the vast number of strangers which arrived every year at Louisville, from New Orleans and the lower country, during the months of April, May, June, July, and August. Although Louisville was very near his own place of residence, yet he had himself been greatly surprised on learning the actual average amount of arrivals in a single week during that part of the year. It was, by actual enumeration, no less than from three to five thousand. The State of Kentucky and the Town of Louisville, by a voluntary subscription of their own funds, had established at that place a respectable institution for the benefit of sick strangers; and, were he authorized to present to the House the details of distress and suffering of transient persons, which had come to his knowledge, he was confident no gentleman on the floor would be disposed to refuse the inquiry he requested. The support of the institution was a heavy tax on the charity of Louisville, and the fund appropriated by the State for that purpose had been exhausted. The number of arrivals and departures of strangers was incalculably great. Many of them were sick and destitute, and

they had been found literally dying on the open beach, with no sustenance but such as might be supplied by casual charity. Before the introduction of steamboats, New Orleans furnished the great depository and grave of the boatmen on the Western waters, and Congress, at that time, authorized a tax on all who frequented those rivers, and upon all the boatmen upon those rivers, for the support of an hospital at New Orleans. But, since the change produced by steam navigation, the tax, though still levied from these people, is not in fact applied to their benefit, because the boatmen, when taken sick at New Orleans, instead of remaining, and going into the Hospital there, find some friend who will throw them on the deck of one of the steam boats, by which they are brought to Louisville only in time to die there. The institution provided to receive them, at Louisville, was one which had done honor to the philanthropy of the citizens of that town. He hoped the House would at least allow the inquiry into the propriety of aiding it. If gentlemen were opposed to any appropriation of money from the Treasury for this object, at least, let the tax already levied, on boatmen and others, frequenting those rivers, be divided between the Hospitals of Louisville and New Orleans.

Mr. BRENT said he did not rise, at this time, to oppose the resolution just offered, but, believing that the House was not now prepared to go into that subject, he moved that the resolution lie on the table for the present.

The motion prevailed, and the resolution was laid on the table.

JUDICIARY SYSTEM.

On motion of Mr. WEBSTER, the House again went into Committee of the Whole, Mr. TOMLINSON in the Chair, on the bill "further to amend the Judicial system of the United States."

Mr. BUCHANAN again took the floor. Before he resumed the train of observations interrupted by the adjournment of yesterday, he said it would be necessary for him to advert to a few palpable and prominent mistakes in points of fact, which had been made by the gentleman from Virginia, (Mr. Mercer,) in his speech on this subject. He was not aware that they existed to the extent in which they do, until he had an opportunity, last evening, of reading the printed report of his speech. It was necessary to advert particularly to them, lest certain facts, being taken for granted, arguments might have weight which were founded on them.

In the first place then, said Mr. B., the gentleman from Virginia laid the foundation of one of his arguments, on this fact: that, in East Tennessee, there is no Circuit Court established by law. This is not the case, sir. There *is* a Circuit Court established by law in East Tennessee, though certainly the present organization of the Judiciary renders that Court unable to do justice to its suitors.

[Mr. MERCER said, in explanation, that, for every purpose of his argument, the fact which he had stated was not affected by the gentleman's correction. He had been informed, by a gentleman whom he supposed to be familiar with the fact, that the court of East Tennessee was a District Court. He had so understood on further inquiry, at the Clerk's office. Having understood, moreover, that the Judge of that circuit had never attended that Court, he had not thought it necessary to examine the law on that subject, but took for granted the correctness of what he had heard. Having, however, furnished many other cases of District Courts on both sides of the Alleghany, to support his argument, he did not know, that the mistake, into which he had been led, was at all material to the argument.]

Mr. BUCHANAN resumed.

The explanation of the gentleman, (said Mr. B.,) does not militate against what I had to say on this point. The fact is, that there is a Circuit Court established by law, in East Tennessee. He did not now state it as an argument, but as a matter of fact, in regard to which the gentleman was in error.

Another mistake made by him, was in supposing that there could be any appeal to the Supreme Court from the Northern District of the State of New York. The law gives no such appeal. An appeal lies from that District Court to the Circuit Court of the State, and any appeal to the Supreme Court, in cases arising within that District, must, therefore, come from the Circuit Court.

The gentleman, again, had stated that the reason of the great increase of business in the Circuit Court of the United States, for the Kentucky District, was, that the residents of that State were in the habit of making nominal assignments of demands, and of lands, in that State, to citizens of other States, in order to bring the cases within the jurisdiction of the Federal Court, which swelled the amount of causes in that Court. It was impossible Mr. B. said, that this fact could exist. The judicial power of the Federal Government, in this branch of it, extends only to cases arising between citizens of different States, or between citizens and aliens: and, if the law allowed of a nominal transfer of title by a citizen of Kentucky, to a citizen of Pennsylvania, for the mere purpose of bringing his case into the Circuit Court, all the barriers established by the Constitution, to separate the Federal Judiciary from that of the States, were at once broken down and prostrated. On the contrary, the Federal Courts had always decided, that a transfer for this purpose, gave to those courts no jurisdiction whatever. The argument of the gentleman, therefore, founded on a mistake as to fact, could not have any operation on the minds of the committee.

In another part of his printed speech, the gentleman from Virginia had declared that there was *the same* opportunity for an appeal to the Supreme Court from a District Court, having circuit powers, that there was from a Circuit Court. In this, also, said Mr. B., the gentleman has mistaken the fact. In cases where a Judge of the Supreme Court sits with a District Judge, and there is a division of opinion between the Judges on the bench, whether the matter in controversy be great or small, whether it be in a civil or criminal case, an appeal lies from that Court to the Supreme Court of the United States. But such an appeal does not, nor cannot lie from the District Court, because no such case can exist. The decision of the District Court, having Circuit Court powers, is final, in all cases in which the sum in controversy does not exceed two thousand dollars; and that is one of the reasons, and the principal reason, why there are so few appeals from several of these District Courts.

In another part of his printed speech, the gentleman from Virginia had asked this question: Whoever heard of expediting the decisions of a body of men by increasing the number of those who were to make the decision? I answer, nobody. I know of no such argument, said Mr. B. as that to which this question applies. If such an argument were attributed to the gentleman from Massachusetts, to whom the gentleman from Virginia was replying, that gentleman certainly never made it. The object of the Committee on the Judiciary, in reporting this bill, was not to prevent delay in the business of the Supreme Court. On the contrary, a different bill had been reported with that view, the purpose of which was to make the terms of the Supreme Court longer. This bill was not reported to expedite the business of the Court of Errors, but its principal object is to carry justice into those parts of the country in which it is not now duly administered.

There was a tone running through this printed speech, Mr. B. said, which he was sorry to see, and which he did not expect from the gentleman from Virginia. If it did

not contain attacks on the motives of the committee in reporting this bill, he could not comprehend the meaning of the language employed. Mr. B. here quoted the passages of the speech, in the following words: "The object of the bill is *not* to expedite justice," &c. &c. "The alteration of this court is then required for political purposes, and no other," &c. &c.

Is this, said Mr. B. such language as is due from the gentleman to the Judiciary Committee? Does he suppose, for a single moment, or if he do, does any other gentleman suppose, that the Judiciary Committee, in reporting this bill, was governed by the low and grovelling motive of a desire to turn the Supreme Court into a political instrument?

Mr. MERCER rose, and said, he would thank the gentleman again to allow him to explain: and he should not do so, did he not perceive that the gentleman was about to waste a part of that energy he had so well exerted in support of the bill, in defending the Judiciary Committee against a charge, which, Mr. M. said, was neither made, nor intended to be made, by him, against that committee. He should be glad if he were permitted, by the indulgence of the gentleman from Pennsylvania, to consume more time than is usually occupied in explanations, by premising a few observations, which seemed due to himself, as well as to the occasion. Perceiving, he said, that, as he expected, the gentleman from Pennsylvania was disposed to indulge him, Mr. M. proceeded to remark, that the "printed speech," to which the gentleman adverted, had been presented to the public precisely, in the same manner, as that speech, to which it constituted a feeble reply. It must be known to all the members of this House, if not to the public, that those speeches which appear in print are not exactly those which are delivered within these walls; and that a Member of this House, who was disposed not to submit to the most ridiculous misrepresentation and exaggeration of what he says, must go to the drudgery of preparing his speech for the press. In one report made of the same speech, for example, he had been made to speak of the gentleman from South Carolina over the way (Mr. DRAYTON) as a soldier of the Revolution, and to refer to the Supreme Court *of seventy-six*. He had, therefore, assisted to give to the report of his speech, which was to appear on the file of the National Intelligencer, a corrected form. Adverting to the character of this bill, when he intimated that it could lead to but one object, the establishment of a political court, Mr. M. said he had allusion to a distinct, and perfectly intelligible argument of the gentleman from Massachusetts. I did not mean to say, said Mr. M. nor did I say, that the court was to be diverted to any corrupt political purpose, but that I believed an increase of the number of the Judges, in the manner and to the extent proposed, would inevitably imbue that court with a political character. I inferred from the bill itself, and not from the intentions of the committee, the spirit of the measure, because, as I said, I was satisfied such would be the effect of the bill. So far, and no farther, did I mean to intimate that the committee thought to give to the Supreme Court a political character. And the opinion, thus advanced, I founded on the ground that the bill could not answer any one of the purposes which had been claimed for it in argument: for that the only evils proposed to be redressed, were but two; the real or apprehended delay of justice in the Supreme Court—and the accumulation of business in certain other courts to the West. With regard to the first, it was necessary for me to shew that the passage of the bill would not remedy the evil, but rather increase it, by enlarging the number of Judges of the Supreme Court. Again: when speaking of the Western States, said Mr. M. I am told that I have been understood to have impeached the character of the People of that country. If gentlemen would read the speech which he had made, and on which the gentleman from Pennsylvania was about to make what he must call an unwarrantable comment, and regard that speech in a spirit of candor, they would discover nothing but the kindest feelings towards that People. So strong was the language by which those feelings were expressed, that I deemed it necessary to account for the feelings which inspired it, by referring to those frequent journeys which I had made to their country. If there are reflections on them, deduced from that speech, those reflections are the inferences of others, and are not to be found in the speech itself. They certainly were not intended. A gentleman cannot, and ought not to be expected, to weigh his words with the minuteness with which the apothecary does his scruples and grains. Some latitude of expression must be allowed here, or the freedom and purpose of debate will be entirely defeated. Mr. M. concluded, by saying, that he meant to speak of the object or end of the bill, and not to impugn the motives of the committee. The best motives sometimes led to the very worst consequences.

Mr. BUCHANAN resumed. As he wished to finish his remarks as soon as possible, he said he should not again yield the floor for the purpose of explanation. When he did so just now, he did expect the purpose of the gentleman was to make an explanation and not an argument. And now, after all he had said, he felt at a loss to determine whether the gentleman meant to deny or not the imputation cast by his reported speech, upon the committee. Understanding him, however, to disclaim any impeachment of the motives of the committee, Mr. B. said he would not trouble himself any further with that part of the case.

Having thus, said Mr. B., done justice to the committee, and to myself as one of that committee, and having pointed out some of the matters in which the gentleman from Virginia was entirely mistaken, omitting to notice others, the noticing of which might be considered an useless consumption of time, I proceed to make a few other remarks, which it is necessary for me to offer on this important subject.

Mr. BUCHANAN said that he would conclude his remarks, by presenting two additional views of the subject. What will be the probable effect of the system proposed by the gentleman from Virginia, (Mr. MERCER) upon the Judges themselves of the Supreme Court? and what will be the effect upon the authority and weight of their decisions in the estimation of the People? Sir, said Mr. B. there are but few men in existence who would voluntarily, and as a matter of choice, devote themselves to the attainment of that minute knowledge of the common law, which it is indispensable that a judge should possess. Other sciences may have their votaries, who will worship at their shrine for their own sake. I am inclined to believe this is not often the case as it regards the common law. Nothing but a continually operating sense of official or professional duty, can urge men to travel through its dry and intricate mazes.

When, sir, we proceed one step further, it will be admitted that the nature of that man's taste must be most extraordinary who could relish the study of the twenty-four distinct codes of municipal regulations which prevail in the twenty-four States of this Union, and patiently travel over the hundred volumes in which they are contained. And yet it is necessary that a Judge of the Supreme Court should possess this species of knowledge. Establish the Circuit Court system, and how will he acquire it? Would the literary leisure which he will enjoy—would any considerable portion of the ten months in each year during which he may be without employment, be devoted to the task of travelling over this barren waste? I think I may boldly answer, No. His time could be so much more agreeably, and, if he were not a judge, so much more usefully employed, that he would naturally

neglect this kind of knowledge. If he even were to devote a portion of time to its acquisition, it would answer the purpose but in an imperfect degree. The truth is, such knowledge cannot be obtained, and, after it has been acquired, it cannot be preserved, except by constant practice. There are subjects which, when the memory has once embraced, it retains forever. It has no such attachments for acts of Assembly and acts of Congress, or for their expositions. This species of knowledge, under the present system, will always be possessed by the Judges of the Supreme Court; because, in the performance of their circuit duties, they are placed in a situation in which it is daily expounded to them, and in which they are daily compelled to decide questions arising upon it. Change this system, make them exclusively judges of an appellate court, and impose no other duty upon them except that of delivering a few opinions in bank each year, and you render it highly probable that their knowledge of the common law will become gradually more and more faint, and that they will altogether lose the recollection of the peculiar local laws of the different States. It is the constant Circuit Court employment imposed upon the judges of England and the United States, which has rendered them what they are.

What effect would the proposed change produce upon the authority and moral influence of the decisions of the Supreme Court, in the minds of the People? It is of the utmost importance that they should hold the judgments of that tribunal in the highest veneration. Next to doing justice, it is important to satisfy the People that justice has been done. This confidence on their part, in the Judiciary of their country, produces that contentment and tranquillity which is the best security against sudden and dangerous political excitements. The Judges of the Supreme Court now enjoy this confidence in an eminent degree. But, sir, change the constitution of the Court, remove the Judges from the public eye, place them here in the City of Washington, and let them compose an appellate tribunal only, and what will be the consequence when this tribunal shall be brought into collision with State laws and excited State authorities? Is there not great danger that it will become odious? The Circuit Judges which you would appoint, will naturally occupy the same place in public opinion now held by the Judges of the Supreme Court.

When this distant tribunal shall find it necessary to overrule their decisions, in cases of deep public interest, that circumstance will necessarily create additional prejudice in the minds both of the Circuit Judges and the People, and thus increase the mass of discontent. It is, therefore, of the utmost importance that your Judges of the Supreme Court shall travel over circuits, that they shall personally show themselves to the country in the able and honest discharge of their high duties, and that they shall thus acquire that public confidence which never fails to follow exalted worth when it is brought home to the personal observation of the community. The Supreme Court, amidst the storms of faction and of opposition, have hitherto pursued a steady and independent course. They have now acquired a most extensive popularity throughout the country; and, even in those States in which their decisions have been most violently opposed, the highest respect has been felt for the judges by whom they were pronounced—because they have had an opportunity of knowing personally that they were both great and good men. No suspicion has ever arisen against their personal or judicial integrity. Would the Supreme Court have enjoyed the same good fortune, if the judges had been entirely secluded from public observation, and been confined, in the discharge of their important duties, to a room in this Capitol?

The gentleman from Virginia has made the language of the gentleman from Massachusetts, on this branch of the subject, to mean that which he never intended, and which a fair construction of it will not warrant; that the Judges should go to the circuit for the sake of seeking popularity, and, with this view, to ascertain what effect their decisions might have upon the People. It was his opinion, and one which he thought could not be shaken, that they should perform circuit duties, that thus the People might see and know and respect them, and they might observe the effect of their decisions on society. That they might know, as men of experience, what was their operation on the community. Of all human creatures, a popular-hunting judge is the most contemptible. His object is generally defeated, because the good sense of the People almost always leads them eventually to discover what is his true character.

The gentleman from Virginia has again and again attempted to excite our fears by declaring that, if the system proposed by the committee were adopted, the Supreme Court was in danger of being converted into a political tribunal. Is there not much greater danger, if the other side of the question should prevail? Would a court, composed of ten judges, scattered over the surface of this vast country, be more liable to the influence of political intrigue, than five judges residing in the City of Washington? Is this atmosphere so pure that there would be no danger from such a residence? A large portion of the People of this country hold a different opinion. They think this atmosphere is more tainted than that of any other portion of the country. If the Supreme Court should ever become a political tribunal, it will not be until the Judges shall be settled in Washington, far removed from the People, and within the immediate influence of the power and patronage of the Executive.

Mr. B. thanked the committee sincerely for their attention. He said the subject was dry and uninteresting in its nature, and it therefore must have required the exercise of much patience, on their part, to follow him, as they had done, through the remarks which he had submitted to them.

Mr. MANGUM rose, and said, that he felt deeply sensible of the difficulty and importance of the subject now presented to the Committee for their deliberation—a subject requiring deep and various research, enlightened by extensive observation, and a long and intimate acquaintance with the course of judicial affairs. He was fully sensible of the very slender resources of which he should be able to avail himself in this discussion, and he felt—painfully felt—the fearful odds with which the opponents of the bill would have to contend, who encountered the Judiciary Committee, supported as it was, not only by the most commanding talent, but, also, by the advantages of a long, mature, and elaborate investigation of the subject. That Committee had presented the subject before the House in a most imposing attitude, of a description to awe opposition into silence, because opposition must come to the encounter with comparatively slender aids. The Committee had brought forward their whole force in support of the bill, with all the accumulated advantages of the long experience and deep and varied resources of the Chairman of that Committee, surrounded as he is by all its light, collected into one bright and burning focus; while we, who are in opposition, approach the subject with defective information, mangled materials, and poor resources, in a manner well calculated to inspire us with awe.

In the examination into which gentlemen had gone, said Mr. M. they had exerted all their powers to satisfy us that the People of the West are not only the most oppressed and neglected of all the citizens of this Union, but that they are really almost put out of the pale of our judicial establishment. The Committee seem to imagine that the entire mass of business, in that widely extended and wealthy country, is constantly precipitated into the Federal Courts, as it arises; and has there so accumulated

that it is impracticable to dispose of it, under the existing establishment.

I propose, therefore, said Mr. M. in the first place, to examine what is the proper and legitimate range of these courts, at present so much glutted; and, from a rough estimate, which of necessity must, in some degree, be conjectural, of the probable *quantum* of business, of which those courts have exclusive jurisdiction. That these points should be clearly and distinctly understood, he conceived to be of great importance to a just decision of this question.

He imagined, that, upon examination, it would be found that the jurisdiction of the Federal Courts was confined within a narrower scope than the general, not to say the loose, views of some of the gentlemen might seem to intimate—and, further, that the subject-matter of the jurisdiction of these courts would be whittled and pared away to almost nothing—except as relates to the three Western States, Tennessee, Kentucky, and Ohio. A little experience will be sufficient to convince us, that the great mass of business, in the interior of the country, will seek the forums of the State tribunals. The State Courts have general jurisdiction, not only of all civil, but, also, of all criminal cases, except as it relates to the narrow class of cases, of either kind, arising under the laws of the United States. It is further manifest, that an overwhelming proportion of the litigation arising from the ordinary transactions of society in the interior, is, in its nature, cognizable by the courts of civil or criminal jurisdiction; or the courts of chancery established by the State authorities within the respective States. And, it is equally manifest, that this litigation will seek the State Courts, because justice is administered by them at every man's door, and they are, therefore, more convenient, both to parties and witnesses. This will hold almost universally true, unless where those courts are suspected of impurity or inefficiency; or are fettered in the discharge of their duties, by the freaks or dishonesty of State Legislation. On these subjects, it is natural that I should speak and reason from facts that have fallen within the range of my own observation. The State from which I come, though not of the first magnitude, has at least as much population, and lies as near the ocean, as either little Illinois, or little Missouri, and is quite as likely to afford employment to courts of admiralty, or maritime jurisdiction, as either of those States. That State, besides District Courts, has a Circuit Court of the United States; and yet, I think, I may venture to affirm, that, for the last ten years, that court has not, upon an average, continued in session more than two or three days at each term. In this State, as in others, the business is driven into the State Courts, because they possess a proper degree of the public confidence, and are found to be more convenient to the suitor. Can it be expected, Sir, that the Federal Judiciary shall be so extended, as to fix a court in every corner of this vast Confederacy? Surely, gentlemen do not propose to go this length; and until they do, it will be found more convenient in practice for suitors to go into the State Courts.

Sir, I would ask of the gentlemen who understand the subject so well, to define, precisely, the jurisdiction of the respective Federal Courts, and designate, in a plain and perspicuous manner, level to the capacity of every gentleman upon this floor, the subject-matters of which they respectively have cognizance. It is in this way, rather than by eloquent declamation, that we may be enlightened by the valuable labors of gentlemen; be enabled to comprehend the extent of the evil, and be prepared to apply a suitable remedy.

The Federal Judiciary is composed of a Supreme Court, Circuit Courts, and District Courts. My present purpose, Mr. Chairman, requires me to advert only to the jurisdiction of the two latter description of courts. The District Courts have, exclusively of the courts of the several States, cognizance of all crimes and offences of a petty description, cognizable under the authority of the United States. The Circuit Courts have exclusive cognizance of all crimes and offences cognizable under the authority of the United States, except in a few cases, never likely to happen in the Western States, and with the further exception of the petty offences of which it has concurrent jurisdiction with the District Courts. Experience proves, Sir, that but few cases are likely to arise in the Western States, of which the Circuit or District Courts have exclusive cognizance. The District Courts have exclusive cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, and trade, of the United States, where the seizures are made on waters navigable from the sea, by vessels of ten tons, or more, burden, as well as upon the high seas, and of all seizures upon land or other waters, &c. Now, Sir, it is obvious that there is no litigation of this description in the Western States.

These courts have cognizance of other matters, an enumeration of which would be both tedious and uninteresting. I will therefore advert to the real sources of litigation in those courts. The Circuit Courts have original cognizance concurrent with the courts of the several States, of all suits of a civil nature at common law, or in equity, where the matter in dispute exceeds the sum of $500, and the United States are plaintiffs, or an alien is a party, or where the suit is between a citizen of the State where the suit is brought, and a citizen of another State. The Circuit Court may acquire jurisdiction in controversies relating to the title of real estate of the value of $500, where either of the parties shall *rely upon title to the land under grant from a State other than that in which the suit is pending*. Whence I infer, Mr. Chairman, that a large proportion of the business done in the Federal Courts of the West, consists of suits brought by Corporations—the United States' Bank for example—and by merchants residing in cities on the Atlantic Coast. That the labors of the Federal Judges, in all the Western States, are principally confined to the plainest business, except in the States of Kentucky, Tennessee, and Ohio. In these States, Sir, it will be found, upon examination, that the existing evils are not permanent, but only of a temporary character.

It is from Kentucky, Sir, that we hear the loudest complaints of the evils under which their citizens are suffering. From the complicated system of their land laws, and the peculiar circumstances under which their lands were patented, a great deal of business comes into the Federal Courts. But the like peculiarities and difficulties do not apply to either of the other Western States, except the three mentioned. The State of Virginia, upon the cession of Kentucky, provided for the location of her military bounty lands in that State, and in the event of deficiency, to go into the Ohio, between the Scioto and Little Miami. Hence it is, that portions of those States are almost literally *shingled* with patents. This state of things must of course present a fruitful source of litigation. Most of these controversies must have arisen long since, and many of them, doubtless, have been settled. But I again ask, is this evil temporary or permanent? Is there no healing virtue in the statute of limitations? Can causes from this source long continue to crowd this forum? I apprehend, Mr. Chairman, fruitful as are these sources of litigation, that the Federal Courts would not have been glutted with it, but for the operations of other causes, as inimical to the peace, as they have been disastrous to the best interests, of those beautiful regions. Tennessee, as well as Kentucky, have deeply participated in the pecuniary distresses, common in a greater or less degree, to their sister States. These distresses gave rise to freaks of legislation, leading to the destruction of mutual confidence. Their judicial tribunals, especially in the latter States, were so fettered, and so many obstacles were supposed to be

thrown in the way of correct judicial determination, that, wherever a case could be forced within the scope of Federal jurisdiction, those courts were called upon to determine it. I do not advert, Mr. Chairman, to these ungracious topics from any disrespect towards those States; but they are facts necessary to be taken into view, in order to arrive at right conclusions. In Tennessee, the land system is also complicated; titles involved in difficulty presenting a fruitful source of litigation: but I am misinformed if the evil is not rapidly disappearing under the auspices of efficient State Courts. As to Ohio, except as to the small portion set apart for bounty lands, the mass of business consists of causes in which the debtor is pursuing the creditor upon mere matter of pecuniary claim. In Alabama, Mississippi, Missouri, Illinois, and Indiana, the evils of the land system do not exist, as their lands were patented in a different and better mode. And, Mr. Chairman, if you take away the business of this description, what remains? Simply the collection of debts due to foreigners. As to Louisiana, perhaps there may exist more necessity for the interposition of Congress, nor am I averse to interpose, provided it be done in a manner to meet their exigencies, and yet preserve the Supreme Court in its present form.

When we are called upon, Mr. Chairman, to make an inroad such as that proposed, into the Supreme Judicial Tribunal of this country, it is proper that we should look upon the whole ground, consider the frame and organization of our judicial polity, and its adaptation to the wants and exigencies of the times. While on this part of the subject, we cannot exclude from our minds the number and variety of State Courts of inferior, general, and supreme jurisdiction; nor can the fact be disguised or controverted, that these State tribunals, from necessity, and from convenience, will absorb almost the whole of the business arising in the interior of these States. The wise men of 1789, acting upon this knowledge, sketched the vigorous outline of the Federal Judiciary, obviously designed for purposes peculiarly Federal, and excluding the idea that those courts, instead of the State Courts, were to be resorted to for the determination of questions arising in the ordinary transactions of society: and also, with a prudent foresight, they conferred jurisdiction upon these courts, competent to reach and check certain aberrations of the State authorities; yet, from the small number of judges appointed, it is clear that their duties were then supposed to lie within a narrow compass.

I do not design, Mr. Chairman, to deduce the history of our legislation on this subject, and weary this committee with a "thrice told tale." The gentleman from Massachusetts, as well as my honorable friend from Virginia, have favored this committee with a clear summary, sufficiently accurate, and sufficiently minute, for the purposes of this debate, and the information is in the possession of every member. I could not but remark, however, Mr. Chairman—and I remarked it with surprise—that the gentleman from Massachusetts, (Mr. WEBSTER,) in the rapid touches and masterly strokes with which he pourtrayed our judicial history, passed over the far-famed act of 1801 with a strange rapidity. I had supposed, sir, that the honorable gentleman would have paused an instant, to pay the cheap tribute of a tear, to that beautiful, that venerable ruin; or, if the honorable gentleman be not addicted to the melting mood, I should have thought that he would stop a moment to bestow some other mark of respect upon the ruins of that edifice which was reared by the fathers of the Federal church, in the days of their peril, their tribulation, and their humiliation, and which has been consecrated to the respect of posterity by the genius and the eloquence of their Bayards, their Griswolds, their Hemphills, and their Hendersons. But it seems that, in relation to some of the views entertained at that period, "some change has been wrought in the opinions" of the honorable gentleman. *Tempora mutantur.* We may find evidences, Mr. Chairman, if any were wanting, of the sincerity of that declaration, in the approbation which the honorable gentleman was pleased to express in relation to the act of April, 1802, passed under the more favorable auspices of Mr. Jefferson's administration: for the act of 1802 changed the whole frame and organization of the Federal Judiciary, as contemplated by the act of 1801.

Here I may stop to remark that, although the Federal Judiciary had been in operation thirteen years, and, although the commercial concerns of the country had been increased, extended, and diversified, in an infinitude of relations; and, although the whole subject had been under the revision of two Congresses, and two Administrations; yet, so far from any disposition being evinced to extend the system to meet the increasing exigencies of the times, one of the acts contemplates a reduction of the number of the Judges of the Supreme Court, and, in *both*, there is a diminution of facility in the SPEEDY administration of justice. And here, Mr. Chairman, I may further remark, that, from the act of 1801, *abolishing* the District Courts of Tennessee and Kentucky, upon the happening of a certain contingency, we may deduce the most incontestable evidence of the opinions entertained, at that day, of the supposed increased and increasing masses of business in the West, of which those courts had original cognizance; and, though the business of the West is more peculiarly adapted to Circuit Court jurisdiction, yet the provisions of that period show, that it was never conceived that the business was to increase to the extent which it has recently attained. The act of 1807, however, at the moment that it gratified the pride, was supposed to be broad enough to satisfy all the wants of Tennessee, Kentucky, and Ohio, as long as their State Legislatures and State Courts should perform their respective duties. Congress has since, from time to time, extended the District Courts, with Circuit Court jurisdiction, to the other States and Territories of the West, in a spirit of liberal policy, and in a manner supposed to be commensurate with all the wants of a People in the interior. And here, Mr. Chairman, another view of the subject presses upon the mind with great force. Notwithstanding the palm of greatness to which the Atlantic States have attained, in all the multifarious concerns of commerce, both interior and exterior, the original system of the Federal Judiciary, struck out by the act of 1789, with but slight alterations, has been found commensurate with all the wants springing up with their increasing prosperity: while in the West, in the West alone, cut off as they are from all foreign commerce, all maritime pursuits, we hear loud complaints of the inefficiency and inadequacy of the present system. Sir, the speculation may not be wholly unamusing to gentlemen; I would, therefore, ask them to account for this strange state of things, upon any principle predicated upon a supposed state of soundness pervading all the bodies politic of the West.

Sir, permit me to turn your inquiry for a moment to that country from which we derive the most of our notions in relation to judicial establishments, and the administration of justice; that country which we have reproached so often with the splendor of her establishments, and the costliness and magnificence of her institutions. The inquiry may be useful, as it may lead to the conclusion, that, even that country, with all her greatness, her patronage, her extravagance, and her profusion, has not contrived near as much judicial machinery, in proportion to the magnitude and extent of the labors required, as these same plain, simple, money-loving republicans of the United States. And yet, the gentleman from Pennsylvania (Mr. BUCHANAN) concedes the fact—I am obliged to him for the concession—that the "judiciary of England stands upon high ground; that, in cases of civil rights, there is no country in the world in which they are better protected than in England."

Sir, within the last fifty years, a prodigious impulse has been given to the affairs of the world. Ancient systems, and ancient prejudices, have been yielding to the force of reason, and the power of mind; establishments founded in the pride of power, and venerated for their antiquity, have been disappearing, like frost work, in this "high noon" of liberty and science.

During this period, England has borne no mean, no common part. In science, in the arts, in arms, in the extent of her commerce, and the immensity of her wealth, her resources are astonishing. Her commercial efforts have put in requisition the whole physical, the whole intellectual power of that kingdom; they are felt in every quarter of the globe, they pervade every community, and are sustained by a mass of wealth, exceeding, perhaps, the aggregate of the rest of the civilized world. And yet, in England, they are able to dispose of the vast mass of business, incident to this state of things, with the same courts they had centuries ago.

It will be found, sir, though they have many subordinate and auxiliary tribunals, yet, that they do not absorb a greater proportion of the whole amount of business than do ours. Their common law courts, of general jurisdiction, are three, with four judges in each. The Common Pleas, the King's Bench, and Exchequer; and these courts, aided by the *Nisi Prius* courts, held by one of the judges, or a commissioned sergeant, with the superintending court of Exchequer Chamber, and the House of Peers, dispose of the whole common law business of that kingdom, both civil and criminal. I of course, sir, exclude the inferior tribunals, their chancery courts, courts of maritime jurisdiction, and others, proceeding otherwise than according to the usages of the common law. Never, since Edward the Third founded the Exchequer and Exchequer Chamber, has any principal court been added. Now, Mr. Chairman, what have we provided in this country for the extended mass of our law concerns? In our State Courts, of general and appellate jurisdiction, we find upwards of *two hundred Judges;* besides *fifty* on the benches of the Federal Courts. This view of the case, is, surely, sir, sufficient to shew, that the number of our judges needs no augmentation. If there be any defect, I presume it results from a partial distribution of judicial labor. In what other manner can we account for the disparity in this country and in England? Is it true, sir, that the human animal is incapable of as much labor here as there? Is the vigor of the Saxon race confined to the mother Isle? Or is the difference to be found in the habits of the People? How else can it be that the English Judges sweep off the vast masses of business in that country, while here it is constantly accumulating?

But, Mr. Chairman, granting that I am wrong in all these views, and that there is a necessity for legislation in this matter, I again put the inquiry, Is it proper to proceed on the principles of this bill? Where shall we stop, sir? We must at length come to a point where we must stop in the augmentation of the numbers of the Supreme Court. When the Western Territories shall have grown into States, and other Territories shall have become other States, will it be practicable to extend the system upon the principle of this bill? Is it designed, as has been intimated, to introduce the representative principle into our judicial tribunals? If so, why is the principle not openly avowed? Why is the principle not carried out to its results? Why not appoint twenty four Supreme Court Judges at once, and make that tribunal almost as numerous as the other branch of the National Legislature?

I wish, sir, to see a principle adopted that will go into all future time, and not one which we shall be obliged to abandon in a few years.

In 1807, we added *one* new Judge—in 1826, we are called upon to add *three* more. Where are we to stop, sir? Will not these continual augmentations of necessity introduce the spirit of faction—a spirit so certain to creep into every numerous body? I understand it to be admitted by the honorable chairman of the committee, that this additional number will not expedite business. The gentleman frankly admits that the Supreme Court, "for some "causes, will be inconveniently large, for such especially "as require investigation into matters of fact, such as those "of equity and admiralty; and, perhaps, for all private "causes generally." Sir, if this is so, and we can give to the West all it absolutely needs, without this increase, why shall we pass this bill? The perfection of legislation consists in combining the most good, with the admission of the least possible evil. And that the good is attainable in this instance, to the exclusion of the apprehended evil, is obvious and incontrovertible. Wherefore, then, sir, shall we pass this bill? But, sir, it is said that the proposed increase is necessary to give character and moral force to the decisions of the Supreme Court upon great and momentous questions of constitutional law.

Sir, upon this subject, as a mere theory—a mere abstraction—it is impossible to arrive at any satisfactory result. Mind cannot be gauged and measured like a material commodity; nor can it be subjected to the vulgar tests of arithmetic. We must abandon our theories for the more certain results of practice and experience. Has there been a want of confidence in the Supreme Court under its present organization? I have not heard such a sentiment even whispered during this debate; on the contrary, gentlemen, when speaking of that tribunal, seem to vie with each other in the elegance and extravagance of their panegyric. Whence, then, do you derive the argument in favor of an increased number, to give *that* which it is admitted on all hands, it now pre-eminently possesses? Sir, the moral force of the Supreme Court can never depend upon its numbers. It rests upon a deeper and a firmer foundation—its profound learning, its pure intellect, and its incorruptible integrity. While it possesses these qualifications, the stream of its intellectual power will find its way to every portion of this Confederacy through a thousand channels.

It is said, however, that the Supreme Court must be thus enlarged, in order to secure a mass of local knowledge, which cannot otherwise be obtained; and if he rightly understood the gentleman from Pennsylvania, he said that an accurate knowledge of those volumes of statutory regulation, which he believes to be so dry, could not be acquired except by residence and practice in various parts of the Union. Sir, this argument proves too much, and therefore proves nothing: for, is not each State different from every other in its local laws? and if these must be known, and cannot be known but by residence and practice in the States, we must, instead of *three*, have nearly *twenty new* Judges.

But it is said, that, if we appoint new Circuit Judges, and exclude them from the bench of the Supreme Court, it will be an anomaly—that it will destroy the symmetry and beautiful proportions of our system—*de gustibus non est disputandum.* But no attention has ever been paid to exact uniformity on this subject. No, sir, not even in the act of 1801. For, even that act, which made the most uniform provision that has ever been introduced into our system, placed Tennessee and Kentucky, in regard to District Courts, upon a different footing from the Atlantic States. But, sir, it is said by the gentleman from Pennsylvania, "that, if five Judges are not too many for a Su- "preme Court of a State, it is a convincing argument that "nine or ten are not more than sufficient for the Supreme "Court of the Union."

I neither perceive the logic, nor feel the force of this *convincing argument*: for, if there be any direct relation between the subjects, it would furnish as *convincing an argument* that the Supreme Court ought to have one hundred and twenty Judges! Sir, what has been the tendency of legislation on this subject? Has it not been to reduce the number of the Supreme Court Judges, both in the

Federal and State tribunals? Did not the act of 1801 contemplate a reduction? And has not the whole tenor of legislation in the United States, been opposed to the division of responsibility until it shall weigh as but a feather? But the gentleman from Pennsylvania, to reconcile us to the proposed increase, informs us that, in England, the court of errors, in the last resort, consists, virtually, of twelve Judges; nor, content with this example, the gentleman carried us to the House of Peers itself, for an instance of a numerous Court of Appeal; yet, sir, he took care to inform us that the House of Peers never decided against the opinion of the Judges. But, sir, why did the gentleman travel into the House of Peers at all, if, after all, the *Judges*, and *not* the *Peers*, decide upon appeals? Yet, sir, if the honorable gentleman from Pennsylvania had been as industrious in looking into the judicial determinations of England, as he has in hunting out the distresses of the West, he might have found, that the House of Peers *had* decided against the opinions of the Judges. He might have found, in the 6th of William and Mary, the case of Reeve and Long, upon a point purely municipal, a case of executory devise, was decided in the Court of Common Pleas, affirmed upon error in King's Bench; and, notwithstanding all this authority, reversed in the House of Peers, which reversal gave rise to the statute 10th and 11th William 3d. Retrospections, however, seem disagreeable to the gentleman. In his history of our own judicial system, he did not venture further back than the year 1802. Why, sir? The act of 1801 lay in his way. At the very next step he would have found a coiled adder amongst those ruins.

Sir, this question has been constantly argued on the assumption that the General Government has been illiberal and parsimonious towards the West—that they have been denied an equal participation in the benefits of the Federal Judiciary. What is the fact? The Western States and Territories have but a little more than a fourth of the population of this Union, as indicated by the representation on this floor; and yet, of *fifty* Federal Judges, they have *twenty*, being nearly half of the whole number. Does this view of the case support the assumption of illiberality towards them on the part of the General Government?

[Here Mr. M. not having concluded his remarks, gave way for a motion for the Committee to rise.]

WEDNESDAY, JANUARY 11, 1826.

On motion of Mr. GARNSEY, it was

Resolved, That the Committee on the Judiciary be instructed to inquire into the expediency of providing by law for holding a Circuit Court in the Northern District of the State of New York.

In offering this resolution, Mr. GARNSEY said, that, by an act of Congress, passed 9th April, 1814, the State of New York was divided into two districts. The counties of Rensselear, Albany, Schenectady, Schoharie, and Delaware, and those counties South, formed one District, to be called the Southern District; the remainder part of the State, the Northern District. By a law passed the 20th April, 1818, District Courts in that State have common law, admirality, and maritime jurisdiction, and causes arising in the Northern, may be tried in the Southern District Court; but the original jurisdiction of the Circuit Court of the Southern district shall be confined to causes arising within that district alone. By a law passed 3d of April, 1818, *the counties above-named* were added to the Northern district. By the act of April, 1814, Circuit Courts were to be held in the Southern district *only*. Causes commenced in the District Courts of New York, can *only* be removed into the Circuit Court of that State, but cannot be removed from thence into the Supreme Court of the United States. The Supreme Court cannot take jurisdiction of a civil cause carried from a District to a Circuit Court. The object of the resolution is, the passage of a law, giving to the Northern district a Circuit Court, which will authorize causes therein commenced, to be removed into the Supreme Court.

Mr. PHELPS offered the following joint resolution, which was read a first time, laid on the table, and ordered to be printed;

Resolved, &c. That the following amendment to the Constitution of the United States be proposed to the Legislatures of the several States, which, when ratified by three fourths, thereof, shall be a part of the said Constitution:

"That the Electors shall meet in their respective States, on such day as Congress shall designate, which shall be the same throughout the United States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign, and certify, and transmit, sealed, to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But, in choosing the President, the votes shall be taken by States, the Representatives from each State having one vote. A quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. If, after said House shall have ballotted twice, no person have a majority of all the States, the names of the two persons having the greatest number, and if no two persons have the greatest number, then the name of him who has the greatest number, and the names of all others who have the next greatest and equal number, shall be written upon separate pieces of paper, and be put into a ballot box, in the presence of the Senate and House of Representatives, and in their presence the Speaker of the House of Representatives shall draw one piece of paper therefrom, and he whose name is written thereon shall be the President. In every case after the choice of the President, the person having the greatest number of votes of the Electors, shall be the Vice President; but if there should remain two or more who have an equal number of votes, the Senate shall choose from them, by ballot, the Vice President."

JUDICIARY SYSTEM.

On motion of Mr. WEBSTER, the House went into Committee of the Whole, Mr. TOMLINSON in the chair, on the bill "further to amend the Judiciary System of the United States."

Mr. MANGUM resumed his argument in opposition to the bill. He said, from the views which he had yesterday had the honor of submitting to the Committee, and the facts which he had been able, under very disadvantageous circumstances, to collect on this subject, he thought himself warranted in coming to the conclusion, That the Courts of general jurisdiction of no other country, contained as many judges, in proportion to the business of the country, as the Courts of the United States. And, if this conclusion be not erroneous, he thought it but a fair deduction from it, that, by a judicious application of the Judicial talent of the country, the wants of all parts of it might, without difficulty, be abundantly supplied. That the defects complained of did not arise so much

from any parsimonious application of the treasures committed to the General Government, as from the partial arrangement, or injudicious distribution of Judicial labor. And further, he felt warranted in coming to the conclusion, That the *quantum* of business in all these Western States, except Tennessee, Kentucky, and Ohio, within the exclusive jurisdiction of the Federal Courts, was exceedingly small, and in its nature very plain. And again, he thought the conclusion warranted, That, in Tennessee, Kentucky, and Ohio, the evils complained of would be but temporary in their duration.

Here, Mr. Chairman, (said Mr. M.) permit me to remark, that the population of Tennessee, Kentucky, and Ohio, as indicated by their representation on this floor, is precisely equal (fractions, of course excluded,) to the population of Virginia and North Carolina. And in point of territory, the former States have, as well as I remember, only six or eight thousand square miles more than the latter. Carrying this idea of equality into Judicial affairs, this Government has given to Tennessee, Kentucky, and Ohio, precisely the same number of Federal Judges that they have given to Virginia and North Carolina, and of precisely the same dignity. I know, Mr. Chairman, that the Judicial wants of a community, bear no assignable relation to its territory, or its population; but this view of the case is offered, as in some degree auxiliary to others, to repel the imputation of a feeling of illiberality on the part of this Government towards the West. As to one of those States, Mr. Chairman, and the State too where the evil is said to be most severely felt, I feel assured that it has arisen principally from the deranged state of its own tribunals. So soon as reason shall have resumed her throne, and put the demon of faction to flight, and public confidence shall have been restored to the Legislative and Judicial departments of that State, I fell persuaded that the State Courts will again absorb the great bulk of the business. The remainder which would then be left for adjudication in the Federal Courts, could not surely be very large or unwieldy.

But, Mr. Chairman, suppose I am wholly wrong in each of my conclusions, and admit, that the exigencies of the Western country do require further aid at our hands, again I ask, shall we grant our aid upon the principles of this bill? I know, Sir, the idea to be a popular one, that there ought to be some operation of the principle of representation in our Supreme Court. I know that the opinion has been avowed on this floor, that "the principle of representation was not more important in legislation itself, than in the administration of justice." And this, too, by a gentleman, whose eminent standing, in the Western country, confers upon all his opinions, deliberately formed, if not the weight of conclusive authority, yet great and respectful consideration. I cannot shut my eyes, sir, to the indications of a like sentiment, that have been constantly exhibited during this debate. Then, sir, we are to have a representative court! a great, representative, Supreme Court, consisting of ten judges!! Sir, the idea of a representative court, if it be conceivable at all, is exceedingly equivocal. If it means that the Court, in its representative character, shall feel the influence of the prejudices, the passions, or the *principles*, peculiar to any portion of this Confederacy, I am free to avow, that, in my opinion, it would be abominable; and it would be difficult to determine whether it would be more terrible or contemptible.

But, I am sure, Mr. Chairman, that it is not in this connection that any of the gentlemen use the term representative court. It is meant, then, I presume, that the members of the Court should be representative, so far as to combine in that tribunal a comprehension of the various codes, and the forms of practice, peculiar to the different States. If this be the idea of gentlemen, it is clear that the present bill will not enable the Court to attain that end. You must go on increasing the numbers of your Court, Sir. You must have twenty-four Judges. But, Sir, the idea is chimerical. To me, Sir, the very idea of representation, in matters of a judicial character, is not only very strange, it is more—it is alarming. I need not, surely, advert to what is known and admitted to be a characteristic, inseparable from our form of government. I mean its decided preponderance to the popular side, in all matters of doubtful arbitrament. So strongly is it marked with this feature, that some of its best friends have doubted whether it could ride out the storms of popular commotion. Aware of this tendency, the wise framers of the Constitution introduced various checks and balances. It is the original sin of all Governments, that there must reside somewhere, an absolute authority. Where the power of Government is derived from a fundamental compact, as in ours, this authority still exists, but is rightfully exercisable only, *within* the pale of this compact, but within those limits it is absolute. This power has been wisely vested in the Supreme Court of the United States—it decides the most momentous questions of Constitutional law—it restrains the National Legislature, and it "controls Sovereigns;" should it not therefore be elevated far, far above party feeling, and sectional prejudice?

Yet, Sir, the senses of every individual are sufficient to satisfy him, that this struggle is not so much for greater facility in the administration of justice, as it is for the possession of an equality, on the Bench of the Supreme Court. Some parts of the country, perhaps, do not feel sufficiently dignified with only one Supreme Court Judge, out of seven among them. This sort of pride may be very laudable, but shall we legislate on any such principle? I hope, sir, I may have been mistaken in the impression I have received. The sentiment, I know, is not openly avowed; I would willingly hope it is not felt. But I fear that such is in reality the source of much of the complaint which prevails on this subject.

But, Mr. Chairman, if I had no other reason for disapproving of this bill, I am opposed to all great and sudden innovations upon any of the principal departments of our Government, as unwise and dangerous. Sir, can the fact be denied or disguised, notwithstanding all the talent of the Judiciary Committee, so warmly enlisted in behalf of this bill, that its adoption *may*, I say *may*, destroy the whole tenor of decision heretofore made by that Court, on certain constitutional questions? This alone is enough to deter me from giving my assent or support to the bill. We know there already exists a diversity of opinion on the Bench in relation to a question of deep interest, which may be revived again—a question on which the Legislature and Judiciary of one of the States, has hererofore been *controlled* by the Supreme Court. We know that that State feels the deepest interest in the increase of the Court, and we have reason to believe, that she and many members of this House, would require a concurrence of more than a majority of the whole Court to declare void a statute of a State, in contravention of the Constitution of the United States. With all this knowledge, can it be prudent or wise to pass this bill? Who can foresee all the disastrous results to this Country, should all the views of gentlemen be gratified? If this bill shall pass, will not these new Judges be selected from a country, known to have been heretofore adverse to the Supreme Court? I take it for granted they will; and although the appointing power is unfettered by the Constitution, in the range of selection, yet, under the influence of the new fangled doctrine of representation, the West cannot and will not be satisfied, unless the appointments be made among them.

But, sir, I have another reason for being opposed to this change; I do not believe that the country is, at this moment, in a situation fit for great and hazardous experiments. Is it in a state of such perfect calmness, as to invite experiments? Do we not perceive, that, in some of the States, all the elements of tumult and revolution are

stirring and heaving in the wildest agitation? And is it not a fact, that, in some of these very States, you hear the loudest complaints against the present organization of the Judiciary? Sir, we have just arrived at a new order of things; we have a new Chief Magistrate; and, however loyal and devoted may be his loving Commons, discontent is abroad; and he is not as yet scarcely firm on his throne.

The resolutions and propositions which thick and three fold are coming up from all parts of the country for an amendment of the Constitution in relation to the election of President, contain internal evidence of the existence of anxiety and discontent in the public mind. These propositions are not confined to any particular region of country, or any one particular party: even Illinois, though North of the Tweed, and harmonizing with the "powers that be," seems to indicate, by her resolutions, apprehension and alarm at the interposition of this House on the Presidential Election—or it may be, that she deems she has not sufficient weight in the election, having *only* thirty-four times as much in proportion to population, as the great State of New York. Sir, while feelings of this kind are running their wild career through every part of this Confederacy, I am unwilling to make an assault upon this great rampart of liberty—this last citadel of the Constitution. These views may be considered, and will, no doubt, be represented by some of the advocates of the bill, as wild and chimerical. But, sir, I have long been taught to believe that, when any fundamental change was about to be made in any of the Departments of this Government, it should be calmly, discreetly, and, what is more, sir, it should be *gradually* made. How is it, sir, that this bill has suddenly become so popular? How is it, sir, that this administration and its friends are crowding in masses to its support, and vying with each other in deeds of chivalry? And how is it, sir, that, for the last seven or eight years, it has languished in the Committee-room, or come into this House to sleep in quiet upon the Clerk's table? Has the last year produced such astonishing developments of the wants of the West? Why is it that the East should mingle in the struggle, and fight, side by side, with his Western Brother, against all comers? Sir, when a Prince has just come to his throne, with powers greatly crippled, by particular circumstances, in his accession, it may be deemed prudent to strengthen his alliances and court the popular favor. It is history, sir, and, therefore, I may repeat it, that one administration, in this country, raised up a new set of Judges to cover their retreat and shelter their retirement from the supposed vindictiveness and eager vengeance of a triumphant enemy. So it *may become history*, that another Administration raised up a new set of Judges—not to shelter their retirement, for retirement was the last of their wishes—but that patronage might sprinkle its delicious manna in the West, ay, even in the wilderness, to cheer, to gladden, and secure, what otherwise might have been more than doubtful. But bold men and bold measures are not to be interrupted by such opposition as we can offer.

Sir, my opposition to this bill proceeds not from selfish motive, or invidious feeling towards the West. So far from it, I respect the boldness, the enterprise, and gallantry of that People. In the hour of peril, I doubt not, they would be again, as they have been, the first in the front of danger, and that they would bear themselves as became men and Americans.

I am willing to legislate for their wants in the creation of Circuit Judges; but neither for them, nor for my own State, would I consent to augment the numbers of the Supreme Court to ten Judges.

If, however, Mr. Chairman, they shall think themselves unequally represented in the Supreme Court, death, sir—may its stroke be long averted—yet death, sir, must ere long, produce vacancies there; then there will be an opportunity to gratify their sectional pride. Nor should I apprehend injury to the court or to the country, from that circumstance: for I know they have talents equal to any station. Sir, I have been compelled to offer my views in a very imperfect manner; not being in possession of the requisite information so abundantly enjoyed by the Judiciary Committee. Those gentlemen who have consulted every statute, thumbed every paragraph, and I doubt not pondered every line that relates to the subject, may very readily detect every error into which I may have fallen; and those errors, when perceived, I will promptly correct. Those slight inaccuracies into which my friend from Virginia (Mr. MERCER) inadvertently fell, and which were seized on so triumphantly by the gentleman from Pennsylvania (Mr. BUCHANAN) had, however, about as much relation to the subject-matter in dispute, as a patent for lands in Kentucky, has to do with a patent for lands in the moon. Sir, the conduct of the gentleman in reference to those little mistakes, strongly reminds me of the days of my boyhood. Mr. Chairman, did you ever fish for minnows with a pin? If you have, you must have noticed how those little fellows continue to nibble at the particles of the bait which hang below the pin, but take special care never to approach the point where all the danger lies. Sir, when the gentleman shall fairly meet and reply to the argument of my honorable friend from Virginia, I also may possibly come in and support what is so acceptable to the powers that be. As to the territories, or those States that have recently been such, it is natural enough that they should murmur, and range themselves on the opposite side of this question. They have ever been favorites—they have been dandled on the lap of the General Government, and had every want supplied. They, sir, are not unlike fretful and impatient heirs, eager to assume the port and bearing of manhood, yet still inclined to lean towards the knees that so long sustained them, and the parental bosom that so long nurtured them. When I think, sir, of their course in relation to this bill, association with irresistible force calls up the recollection of the fable of the snake and the porcupine.

Sir, I entirely concur with the gentleman from Massachusetts, that, in giving to the Supreme Court of the United States, dignity, efficiency, and stability, matters of expense are subordinate considerations. But, while I concur in that opinion, I will not consent to give one farthing of the public treasury for an object which I believe may be deleterious to that tribunal. Sir, I look to the Supreme Court as the last hope of this country, when wild misrule shall deface every other institution, and throw down every other bulwark of the constitution. I, for one, will never consent to impair its strength or dignity. I believe its present organization adapted to all the ends of its institution. Nor would I remove a pebble from the broad foundations on which it stands. But let us once make it a representative body, and, before we are aware, the evil day may come—and when it shall come, this last citadel may yield itself to the enemy, and become conveniently instrumental to the purposes of ambitious *and unhallowed power*.

Mr. WICKLIFFE then rose, and said, that, after the remarks of the gentleman from Virginia, (Mr. MERCER,) and the gentleman from North Carolina, (Mr. MACON,) he should offer to this Committee no other apology for claiming their attention than the annunciation of the fact, to such of the Committee as might not know it, that he hailed from the West, and was an unworthy son of that State to which reference has been made, so often made, by both gentlemen.

Upon the discussion of this bill, said Mr. W. it was desired by its friends, that the time and attention of the House should not be consumed by investigating other questions not necessarily embraced by its provisions. It was certainly not anticipated by me, sir, that reference should have been made to the local politics of my State,

nor will I permit myself, by any consideration, so far to violate that good order which ought to be observed in debate, or to insult the intelligence of the Committee by any reference to them, further than to set the gentleman from Virginia right, as to some of his facts, which I understood to be given to this House upon his individual knowledge.

The gentleman from Virginia had commenced the opposition to this bill, and had undertaken to prove two positions:

1st, That the evils complained of did not exist; and

2d, That, if they did, that the bill did not furnish the remedy.

My friend from Pennsylvania certainly well remarked, the other day, that, as to the first proposition, the gentleman had assumed to himself an Herculean task. I am sure he was as successful in the one as the other; for, with due deference, he totally failed in both.

What are the evils complained of Mr. Chairman—and how have we heard those complaints? I answer, that nine States in this Union are denied the benefits of that judicial system, which is extended to the other portion of the Union; that, in consequence thereof, justice is delayed and unequally administered, which produces individual injury, (I may be permitted to add oppression) I hold, sir, that a delay of justice is tantamount to oppression. It is oppression masked. How do we come to the knowledge of these complaints? And what are the evidences to sustain the correctness of them? The gentleman from Virginia has, upon the authority of a certificate of the Deputy Clerk of the Supreme Court, ventured to contradict the facts stated in the various memorials from Ohio, Indiana, Tennessee, Mississippi, and Louisiana; aided and supported by the individual knowledge of the members from those States. He whose mind could be convinced of the verity of the first proposition of the gentleman, that the evil did not exist, against the testimony on the other side, would not be convinced, "though one were to rise from the dead." And to such I may be allowed the trite saying—

"Convince a man against his will,
"He's of the same opinion still."

The gentleman will not be convinced, and I must leave him to the "sin of his unbelief;" and invite others of the committee, who have not had reference to the documents to which I allude, to read them; and, I hesitate not to say, their verdict will be against the gentleman's first position.

I may be allowed to speak of the state of business in the Federal Court in Kentucky, of which I have some personal knowledge. We are furnished with a statement by the Clerk of that Court, that there remains on that docket 950 causes, and that 2000 causes have been disposed of during the last three years. And here we are invited by the gentleman from Virginia to apply the simple Rule of Three, in order to ascertain how long it will take the Court to dispose of the 950 causes which remain upon the docket. Upon the hypothesis that no more causes were to be instituted, it is possible we might *guess*—otherwise his sum propounded is as difficult of solution as that one set to a pupil by a country schoolmaster, which required him to ascertain the worth of a horse by giving to him the cost of a piece of calico.

The gentleman from Virginia said, that there were two causes why that court had been crowded with business—if I heard them right, (I mean to trust to my own recollections, and not to what I have seen printed,)—that he knew the citizens of Kentucky, since the adoption of their relief system, had been in the habits of assigning away their notes and choses in action to non-residents, in order to avoid the effects of their replevin law.

[Mr. MERCER rose, and desired to explain. (Mr. W. gave way.) Mr. M. remarked he had not said he *knew* the fact; that he had inferred that such was the case.]

Mr Chairman, said Mr. W. I do not refer to the report of the debate, but to my own recollection; and I have for an apology, if I have misunderstood the gentleman, a note of the remark taken down, by myself, at the time. I will stand corrected, sir, and the gentleman is in no better situation. Upon what data has he based his inference? which inference is both against the fact and the law. Had the gentleman consulted the law prescribing and regulating the jurisdiction of the Federal Courts, he would not have thought it necessary, in his speech, by inference, to charge the citizens of Kentucky with a practice inhibited by law, and which could not avail them so far as to give the Federal Court jurisdiction. The law requires the assignor, as well as the assignee, to be residents of some other State, before the Federal Court can take jurisdiction.

Another fact (the result of inference, as I *now* understand the gentleman,) is alleged, why the business upon the docket of the Federal Court in Kentucky has accumulated. The citizens of Kentucky are in the habit of transferring their titles to land to non-residents, in order to avoid the effects of the occupying claimant laws of Kentucky. I should like to know the evidences upon which the gentleman feels himself authorized to make this inference. Is the gentleman apprised of the existence of a law, of many years standing, in the State of Kentucky, which declares void such a conveyance? Will he undertake to prove that a grantor can, by assignment, and transfer of title, transfer the privilege of sueing in the Federal Court, which privilege, by law, *he* had not himself?

We have, Mr. Chairman, a description of men in our State, which may be called John Doe and Richard Roe men; who have, in some instances, bought the equitable title to the lands of non-residents, and harassed our honest citizens in the name, and under the flag of a non-resident; but, thank goodness, that species of fraud and artifice has, by an act of the State of Kentucky, been inhibited and forbidden.

Mr. Chairman, for the information of the gentleman, whose knowledge of the true causes of litigation in that court, and their accumulated increase, is not as accurate, I discover, as one would have supposed, from his repeated visits to that State, and that desire to be informed of them, which is natural to every one in his situation, I will trespass upon the time of the committee so long, with their indulgence, as will enable me to state a few facts, which, at the same time, may serve to illustrate the absolute necessity of granting the relief which is proposed by the bill.

The diversified state of land titles in Kentucky, imposed upon the Legislature of that State the necessity of an effort, by the enactment of statutes of limitation and repose, to terminate those controversies which had, for so many years, afflicted the community, retarded the improvement of the country, and which seemed likely to blast the best hopes of the statesman.

In 1809, a law was passed which provided that, after the 1st January, 1816, no one who had a title, in law or equity, derived from the Commonwealth, should be dispossessed after he had resided upon the land seven years. This law had a tendency, I have no doubt, in some degree, to increase the number of suits both in the State and Federal Courts. It is a law to which we, who feel a deep interest for the State of Kentucky, are desirious should have the effects which were desired by its framers.

But, sir, by the delays incident to the present system of your courts, we have, in effect, been deprived of the benefits of its provisions. The citizens of that State, those men, and the sons of those men, who rescued it from the savage and the forest, have been compelled to

dance attendance upon that court, time after time, and term after term, until they have expended more money, in some cases, than the matter in controversy was worth; and they have often been driven, by these causes, to a compromise and a purchase of title, which, if investigated, could not have been sustained, and many of the defendants, who had the means and the resolution to wait at the judicial sanctuary "until the troubling of the waters," have only met their antagonist to witness his retreat out of court; but before they had the pleasure of announcing the fact to their families and friends, they would be again summoned to dance attendance another five or six years upon the progress of the Federal Court. Sir, I have known this practice to prevail to a very considerable extent; and men have been swindled out of thousands, when, if your administration of justice had been speedy and prompt, no such consequences would have ensued. What I say, Mr. Chairman, is not matter of *inference*; it is matter of fact. The delays incident to the trial of land causes, in the Federal Court, have given rise to scenes of fraud and oppression, which it is the bounden duty of Congress to prevent, so far as a speedy administration of jusice is concerned. The argument of the honorable member from Pennsylvania, (Mr. BUCHANAN,) was correct as far as it went, when he said that it was the citizens of other States, whose business came into the Federal Court, and required a speedy administration of justice, and it was they who had a right to demand of us the passage of the bill. In the class of cases to which I have alluded, sir, it is as important, nay more so, to the defendant to have a speedy trial, as for the plaintiff; and, in their name, I ask the passage of this bill. As it relates to the collection of debts, by citizens of other States, when there was no controversy, not much delay existed. Generally, judgements were rendered at the appearance term.

The two gentlemen, (Mr. MERCER and Mr. MANGUM) had, whenever they referred to the local policy of Kentucky, either prefaced or succeeded their remarks by professions of the profoundest friendship and respect, nay, a "loving kindness" for the citizens of the West. It would be ungracious in me not to thank them. I must beg leave to say to the gentlemen, that, so far as they have referred to the state of affairs there, in order to justify the remark that, by the passage of this bill, a "faction" will be introduced upon the Supreme Bench, that the professions of friendship are more than counterbalanced by the injury inflicted—and some gentlemen were fortunate in the habit of inflicting pain in a very polite manner. It is but a poor return to the man who is knocked down, to be told that it was done in "perfect friendship and profound respect."

For what purpose, Mr. Chairman, did the gentleman introduce into this discussion the occupying claimant laws of Kentucky? The Representatives from that State, are forbidden, by every consideration of respect to the committee, to enter, at this time, upon a vindication of the principles, the policy, and justice, of those laws. At a former Session of Congress, when their attention was invited to those laws by the respectful memorial of the Legislature of Kentucky, an opportunity to discuss that subject was presented, nay, sir, discussion was invited—but then the voice of the gentleman from Virginia was not heard. One reference to matter of fact, Mr. Chairman, made by the gentleman from Virginia, deserves notice. He had referred to a pamphlet printed in Kentucky. How far the usages of parlimentary debate, and the practice of this House, justify the reference to newspaper and pamhplet publications, I am not able to say. Certainly a reference to them ought to be specific, if the facts which they contain are contradicted. I understood the gentleman to say, that he had seen a pamphlet in Kentucky—

[Mr. MERCER explained—and said he had not, since the battle of Tippecanoe, been in Kentucky. He did not say, or mean to say, that he had seen the pamphlet. He was told by a Judge of the Supreme Court that such a pamphlet had been published in Kentucky, containing the statements which he had made.]

I did not mean to say, Mr. Chairman, said Mr. W. that the gentleman had said that he was in Kentucky when he had seen the pamphlet. It was stated that the pamphlet charged the Supreme Court with withholding their opinion because they were *ashamed of it*. For the last five years, I have paid some attention to newspaper and pamphlet essays in Kentucky, upon most of the subjects which have agitated that State, and especially in reference to the laws in question, and I have never seen or before heard of such an one, and I am happy to inform the gentleman no such was published in the State.

[Mr. MERCER here said, in explanation, that the remark he had made was this: That he had been informed, from unquestionable authority, that much of the discontent and excitement which now prevailed in Kentucky, had been inspired by a pamphlet, accusing a Judge of the Supreme Court of having withheld a copy of his written opinion when applied to for it, because he was ashamed of it, or, because the Court was ashamed of it.]

Mr. Chairman, said Mr. W. permit me to inform the gentleman, that again his information is incorrect. Another remark of the gentleman from Virginia was, I think, gratuitous. If I recollect it aright, he stated, that it was not the plaintiff who asked an extension of this system in Kentucky, and it was not the kind of *relief* which the defendants desired or asked for at home. I do not see by what data the gentlemen had arrived at that conclusion. How he could distinguish between the wishes of the plaintiff and those of the defendants, by any evidence which had been furnished the Committee, I am at a loss to see. I have heretofore endeavored to represent to you the necessity of extending this system, in order to administer justice promptly to the defendants.

But the gentleman from Virginia says, new parties have have arisen in the country, and new doctrines are afloat; and they are now introduced into this House; and, if this bill passes, they are to be introduced upon the bench of the Supreme Court. What parties does the gentleman allude to? and what are the new doctrines at which he is so much alarmed? He has not furnished the Committee with that evidence which will authorize them to arrive at the conclusions which he desires. I will not, sir, refer to the remarks of the gentleman, as understood by myself, when he spoke of the objects which were to be attained by the passage of this bill. I certainly did understand him to say they were political *merely*; and that, by its passage, and the selection of the Judges from the West, "a faction" would be introduced upon the bench of the Supreme Court.

Yes sir; "a faction," I am certain was the gentleman's own words. In this I am not mistaken. What, sir, has it come to this, that, because nine States of this Union ask you to extend the system of national jurisprudence to them, in order that justice shall be equally and impartially administered, and you extend it, consequently "faction" is to be introduced in the deliberations of that highly respectable and all important tribunal of this Union? He has acquitted the Committee from all such intention; but says, it is an inference which he is justified in drawing from the provisions of the bill. I submit to the consideration of the gentleman the correctness of his inference. I do not admit the propriety of that part of the gentleman's arguments, upon a proposition not before the Committee. I allude to the proposition submitted at the last Congress, so to modify the Supreme Court, that, upon all question involving the validity of a constitution or law of a State, or of the United States, that a concurrence of a certain number of justices should be required in the judgment

which vacated either. It was a principle which I had advocated before, and should vote for it whenever it was presented unconnected with the provisions of this bill; and the objections which were entertained by many to that principle, ought not to militate against the passage of this bill. Upon that subject, I differ with many gentlemen, for whose opinions I have the greatest respect; and when I am so unfortunate as to differ with them, it is with becoming diffidence that I advance my own opinion. To that part of the remarks of the gentleman, I will say, "sufficient unto the day is the evil thereof."

The objects most relied upon by both of the gentlemen who have favored us with their views, is, that it is impolitic and inexpedient to increase the number of the Judges upon the Supreme Bench. This is an argument fairly addressed to the Committee: it deserves, and I think has already received, an answer. I have not yet been satisfied, by any illustration which has been furnished by either gentleman of its correctness. The gentleman from Virginia (Mr. MERCER,) was, I think, in his attempt to illustrate it, led into an inconsistency of argument which I cannot reconcile. He tells us, at one time, that the labors of that Bench (the appellate labors, I allude to, and I understood him to mean,) are too great for the physical strength of the members of the Court: they are far advanced in years; still his plan to lessen their labors, is, by reducing their numbers as vacancies shall occur. Why is it that the appellate business cannot be as promptly done by ten honest and intelligent men, as seven? Is there any magic in the number seven, which is peculiarly adapted to the despatch of business? Is the number ten so great as likely to produce discord and confusion in the examination of a record, and in the hearing of the arguments of counsel? The volume of intellect is increased, and more confidence will necessarily be inspired. I do not wish to be understood as insisting upon a further or an indefinite increase of the numbers; and when the time shall arrive for a radical change of the system, I am for leaving it to those who shall come after us, to devise the best. It is not likely, from the remoteness of the points to which the Justices would be called to the discharge of circuit court duties, and the very advanced age of some of the present incumbents, that more that eight would be convened at the capital of the nation at the same term.

As it relates to the ordinary cases which may come before the Supreme Court, a less number than seven would not fail to administer justice, and to give satisfaction, and inspire confidence in the decisions of that tribunal: but, sir, when I reflect upon the political character of that court—that political character alluded to by the gentleman from Massachusetts, (Mr. WEBSTER,) and not the one which the gentleman from Virginia has given or ascribed to the expression used by him—I am satisfied that the number proposed by the bill is not too great.

For myself, I would be willing to trust the decision of any case of my own, involving life, liberty, or property, to the decision of any Justice upon that bench; and if perchance he should err, the injury inflicted would be limited in its effects—it would be the misfortune of a single unimportant individual. But, sir, when questions are drawn before that Court, involving the sovereignty of States, upon the durability and integrity of which depends the blessings and stability of the General Government, I am not one of those who think that a court, enlightened, pure, as they should be, consisting of ten judges, is too large. The greater the number who shall concur in any opinion touching the great political concerns of this Republic, the greater the confidence, and less is the danger of discontent, and that faction which the gentleman so much deprecates.

Sir, I think I am justified in saying that, had a greater number of Justices of the Supreme Court presided in the case of Green and Biddle, the citizens of Kentucky, however much afflicted by its principles, would have submitted with becoming respect to the decision of that tribunal which their fathers had constituted for the trial and determination of constitutional law, and which tribunal they will always defend against the assaults of party or faction. These people, sir, are not opposed to that system of Government which they have inherited from their fathers—they will defend it, no matter when, where, or by whom assailed. But, sir, the case alluded to was only the opinion of three justices against one, and not of five, as the gentleman from Virginia has stated—and that opinion in opposition to the opinion of the Supreme Court of their State. And was it unnatural that they should express dissatisfaction? The necessity of extending this system is not only illustrated by the facts which have been referred to, but from other considerations. It has been correctly remarked by the Chairman of the Committee on the Judiciary, that, upon the Courts of the United States, as at present organized, there has been conferred a greater variety of jurisdiction than pertains to any judicial tribunal known. This jurisdiction was conferred by the States in the Constitution of the United States. It then becomes the duty of Congress to provide further tribunals to administer justice *equally* and impartially to all the citizens of the United States. I say equally—by which I mean, that the streams of justice shall flow in undisturbed channels, from the same source, throughout the whole extent of this Union, commensurate with the multiplied concerns of our citizens. And, sir, I think the present system is the best calculated to answer that end. It is the work of the Republicans of '98 (though I am sorry to say they have become rather scarce of late.) Shall we now abandon it, and take up "the Poison Adder" of 1801, as the gentleman from North Carolina (Mr. MANGUM) called it in debate, on yesterday?

The admission of the States of Ohio and Tennessee into the Union, prior to 1807, made it necessary—nay, sir, I repeat it, it was then thought by the Republicans, the duty of Congress—to extend the system to those States. Six other States have arisen in the West, whose wants require an extension of the system. Upon what principle of justice and equal political rights can you refuse it? You have already withheld it too long. Yes, sir; by refusing to reduce the labors of the Judge of the 7th circuit, who has been so justly eulogized by the gentleman from Virginia, by requiring him to travel 3,360 miles per annum, you have prostrated his constitution, you have literally murdered him; and, when he is no more, some other as good and as amiable as he, may be sacrificed in the discharge of public duties "too onerous" for the physical energies of any man of sufficient age to be elevated to the Supreme Bench. Whether the gentleman from Virginia will be able to find such an one in the *West*, I do not know. If not, we will have to hunt for him in the mountains: and, peradventure, he may be only found on this side. I beg him to reflect, then, before he will continue a system which must kill up, one by one, our best citizens, lest we, on the West of the mountains, may be left as the city of old, which had but one righteous man to be found within it.

Shall I stop here to answer the gratuitous offer of the gentleman from North Carolina, that, to satisfy the wants of the West, he tenders to us the chief justice who presides in his State? I will not accept the tender, because I do not recognize the authority of the gentleman to make it. I think I hear the gentleman say that he did not tender him, but he was willing to give him up. Sir, I would be proud of such a judge in the West—he has, by his talents, shed a lustre upon the American Bench, which will be the pride of unborn millions; but, sir, this is not the time or occasion to make a bargain with the gentleman—

it is not a subject-matter of contract—it is a great political right which we claim.

Is the business of a character, in the new States, which may be investigated in the Federal Judiciary? I answer it is. Yes, sir, even the *little* State of Illinois, as the gentleman from North Carolina is pleased to call her, will be visited by litigation arising from land title.

[Mr. MANGUM explained. The gentleman from Kentucky, by his remarks, makes me cast a reflection which I did not intend. I meant no more by the term little Illinois than little Missouri or little Mississippi. I intended to convey the idea that, as these patents were not granted as they have been in Kentucky and Tennessee, controversies about land were not likely to arise, as they hold their grants from the General Government.]

Mr. WICKLIFFE resumed. The very fact, Mr. Chairman, that the residents of these States claim their lands by virtue of laws of the United States, whenever controversies arise about them, gives to the Federal Court, jurisdiction. Titles to lands, sir, in some of those States, have emanated from other sources than the General Government. In Louisiana and Mississippi, controversies of a commercial character, of admiralty jurisdiction, arise, and continue to increase. The contiguity of New Orleans to the West Indies, and other Foreign Powers, necessarily requires Courts of the Nation competent to decide causes arising under the laws of the Union, the laws of Nations, and the municipal laws of the State.

The trial and punishment of offences on the high seas is not unfrequent in the State of Louisiana, and this remark leads me to one which I had intended to have made before. You have given to the District Judges the power to try and punish minor offences against the laws of the United States, and the trial of offences of a higher order, you have assigned to the Circuit Courts; and, in those States where there is no Circuit Court, you have given the District Judge sole power to try and punish. I am opposed to any system of courts, where a single judge holds "the power of life and death." Offences against the laws of the United States, have been considerably increased by the legislation of the last Congress, and they are not confined to any portion of this Union. Do you deal out equal justice in the administration of your laws, when you commit the life, the fortune, and the reputation of a citizen of Louisiana to the will and judgment of one man, when, for a similar offence in Virginia, you require the union in opinion of two judges to convict him? Let us extend our system equally, and we will then, and not till then, comply with the high constitutional obligation which we have voluntarily imposed upon ourselves.

I am compelled, Mr. Chairman, to notice a position which has been combatted with so much warmth by the gentleman from North Carolina, (Mr. MANGUM.) He has seized hold of an expression of a former colleague of mine (Mr. CLAY) who is not here to defend his argument, (if defence it required,) in which he urges the necessity of gradual representation upon the Supreme Bench. I do not know what that gentleman meant by judicial representation; I cannot believe he intended it should have been of the character described by the member from North Carolina. What I mean by it, sir, is easily to be understood. An extension of the same description of judicial tribunals to all the States; justice administered by the same description of judges; and, if there cannot be found in every part of this Union men qualified, the appointing power will confine his selection by the base of the Allegany or the Blue Ridge of Virginia. I do not mean, nor did the gentleman alluded to mean, that all the passions and party feelings, and factious notions of all or any part of this Union should be represented upon the Supreme Bench. How far it is proper to refer to the arguments of a gentleman by name, not now of this House, for the purpose of combatting them, I will leave to the better judgment of the gentleman, upon reflection, to determine. Mr. Chairman, I am pleased with our present system—that feature of it which sends our Judges to the various sections of the Union to discharge Circuit Court duties The remarks of the gentleman from Massachusetts (Mr. WEBSTER) has been misconceived by the gentleman from Virginia. He did not advocate the propriety of this system, because it sent the Judges among the People "popularity hunting." The system is advocated upon the principle that it gives activity and action to the mind, and it places the Judges of the Supreme Court in a high and individually responsible situation. It brought them in contact with the members of the Bar, and, by these means, they were better able to understand the principles settled by themselves, and the operations thereof upon society. In this way we will have good judges.

I am not one of those, Mr. Chairman, who believe that a frank and liberal association, by our judges, with the honest Republicans of the country, will taint the judicial ermine. It is by intercourse with man we learn the nature of man; and a knowledge of human nature will never make a man the worse judge.

Need I detain the committee by a recapitulation of the arguments of the gentleman from Pennsylvania, (Mr. BUCHANAN) to show the absolute necessity of requiring the Judges of the Supreme Court to discharge Circuit Court duties? A reference to them is all that can be required. But, sir, the gentleman from North Carolina, (Mr. MANGUM) says it is utterly impracticable, without you increase the number of Judges to the number of States, for them to acquire a knowledge of the different laws of the States by the performance of Circuit Court duties. This argument assumes the conclusion that, as you cannot make all fully acquainted with the local laws, it is not necessary to make any.

One argument more, of the gentleman from North Carolina, or rather a question. He asks, "Is there no virtue in the statute of limitations of Ketucky? May we not expect that they will cut off the mass of litigation which now exists in that State?" Sir, this calls to my mind the efforts which have been made, and are now making, by the non-resident land-holders, to procure a decision of the Supreme Court, by which we may be denied the privilege which should be exercised by every State—the enactment of statutes of repose. Should they succeed in their efforts, the evil will not be temporary. We shall still have litigation, without mercy, and without limit.

I was not a little surprised, Mr. Chairman, to hear the gentleman from North Carolina, (Mr. MANGUM) in his concluding remarks, refer to the late Presidential election, and tell us that there was discontent abroad with the powers that be. In other words, I must understand the gentleman to mean, that a want of confidence is felt by the community in the Executive of the Union, and that it would be impolitic *now* to increase this Court. Mr Chairman, I must be allowed to question the facts, in these days of infidelity. I have no doubt, however, that the gentleman believes them true. For one, I am free to confess, though the present incumbent was not my choice, among the distinguished gentlemen who had high claims to that office, I have not lost confidence in the rectitude of his intentions; nor will that confidence be withdrawn until I can see some direct act of dereliction of duty. I will condemn when condemnation is due, and will support his measures when I believe them calculated to promote the prosperity and happiness of my country.

The gentleman told us, that he was opposed to the increase of the Judges of the Supreme Court, because there was a question of vital interest to this Government, upon which he understood there was a diversity of opinion among the Justices of that tribunal. What question, sir?

The gentleman did not tell us—he left us to conjecture Did he mean that political question which was marked by Mason and Dixon's line?

[Mr. MANGUM remarked, in explanation, that he did not mean any such thing. His allusion was to the occupying claimant question of Kentucky. He had not named it, because gentlemen from Kentucky seemed sensitive upon the subject.]

Mr. WICKLIFFE resumed. I am happy, Mr. Chairman, that I misunderstood the gentleman After the remarks of the gentleman (Mr. MERCER,) from Virginia, giving us his individual knowledge, that five Judges concurred in the opinion upon that question, and that the Chief Justice was of the same opinion, I did not suppose that any gentleman could have inferred there was much diversity of opinion now existing, among the Judges of that Bench. I have heard some vague rumors as to opinions upon the subject to which I referred, and therefore was led into the error.

The gentleman from North Carolina (Mr. MANGUM) is astonished to find that this bill has more advocates now than heretofore, and indirectly inquires whether it arises from the instability of the Executive Chair. Is it thought necessary to increase his patronage, that he may distribute his manna in the wilderness, and, thereby, gain new strength? Does the gentleman suppose that the People of the West will yield support where support is not due, to any administration! Does he believe them capable of surrendering their independence for the paltry consideration of Executive patronage? They will never be seduced from that high and firm Republican stand which they have taken, by motives so base; nor will they become the blind and foolish opposers of an administration, for the mere honor of being in the opposition. They will support the President of the Union, no matter who he may be, so long as he deserves support, and no longer. And when his acts deserve condemnation, then, and not till then, will they condemn.

Does the honorable member from North Carolina believe, that any friend of the President in this House yields his support to this bill with the view to increase his pattonage and power? If he does, Mr. Chairman, I do not envy him his credulity, or the pleasure of his reflections. If this bill has an accession of friends at this time, it arises from a very different cause—it is the spontaneous effusion of that justice and liberality which should always characterise the Congress of the United States. It is the exercise of that spirit of justice which is due to their sister Republics.

On motion of Mr. DORSEY, the committee then rose, reported progress, and obtained leave to sit again.

And then the House adjourned.

THURSDAY, JANUARY 12, 1826.

JUDICIARY SYSTEM.

The House then again resolved itself into a committee of the whole, Mr. TOMLINSON in the Chair, on the bill "further to amend the Judicial System of the United States."

Mr. DORSEY took the floor, in opposition to the motion to strike out the first section of the bill. In support of that motion, he said it had been argued, that the wants of the American People do not require any amendment of the Federal Judiciary; Secondly, That the theory of the bill departs from the Judicial polity of the Government, and is calculated to destroy that independence of mind, so essential in a Judge, by tending to make him "all things to all men," by sending him throughout his circuit "*popularity-hunting;*" Thirdly, That the Supreme Court of the United States, if the bill should be adopted, would be too numerous; Fourthly, That it will convert the Supreme Court into a "Political Court;" and fifthly, That the bill does not attain the object which it professes to reach, in distributing a Judge of the Supreme Court in *every Judicial Circuit.* Under these five divisions, all the arguments in opposition to the bill might be classed; and if his strength held out, Mr. D. proposed to review these objections.

I have, uninformed myself, (said Mr. D.) in consequence of my entire abstraction from the courts of the United States, been compelled to call to my aid, in enabling me to come to the conclusion, whether "any amendment be necessary," all the lights that I could procure on this interesting question; and they consist either in the opinions of enlightened men, who have professionally been called to observe the defects of the present system, and of those whose duty it has been to notice the wants of the People, and to make them known to their Representatives for their consideration, and of facts, disclosed to the Committee on the Judiciary by the intelligent members, as to the state of the dockets in the several courts West of the mountains.

President Madison, at the moment of retiring from office, called the attention of Congress to the necessity of some legislation on this subject; and the present Chief Magistrate, in his Message, reiterated the same sentiment, that the constitution of the Judiciary, at the present moment, is "inadequate to the administration of national justice."

The expression of these two enlightened statesmen, formed from an attentive observation of the progress of the courts, is entitled to high consideration. The opinion of the members of this House from that portion of the Union whose condition it is proposed by the present bill to improve, is unanimous in the expression of the like sentiment. If the public journals, and the proceedings of the other branch of the Legislature, are referred to, we must all be convinced of the general belief, that some amendment of the Judiciary system is required. Indeed, the honorable gentleman from North Carolina is the only one, who, in debate, has expressed an opinion that no amendment is necessary; and this view of his is sustained by an argument, predicated upon the combined power of the States' tribunals, with those of the Federal Court, to perform all the business. But it is not the theory of the Constitution, or laws, to invest the State tribunals with jurisdiction over questions arising under our treaties, the Constitution, under the acts of Congress, over controversies between a foreigner and a citizen, between the citizens of one State and those of another, or between citizens of the same, in questions involving the title of lands granted by another State; or to call to the aid of the nation the assistance of our State Courts, to enforce the observance of our revenue system, or to punish offences committed against the United States.

The Constitution, as an inducement to the citizens of this country to adopt it, promises that Congress shall create courts, charged with the protection of the interest of the People of one State, against the partialities of another naturally to be anticipated in favor of its own citizens—it promises to the holder of lands, that it will not compel him to submit his interest to the adjudication of a Judge, appointed by the very State whose interest it may be to invalidate his grant.

The experience of our own days fully demonstrates the inexpediency of relying on our domestic tribunals to enforce our obedience to the laws of Congress. In times of great difficulty, and when there is a strong division of opinion as to the policy of national measures, it may be expected that, in some one State of the Union, an indisposition to enforce the provisions of an act of Congress, may exist in the State Courts. This, however, Mr. Chairman, ceases now to be conjecture; it is a matter of history. Thus, then, the promises of the Constitution, the interest of the People, and the necessity of having tribunals unchecked by State sensibilities or State policy, impose upon the Congress of the United States, the necessity of creating National Courts.

The gentleman from North Carolina wonders at the suggestion of the impracticability of fifty judges, now in office under the Government of the United States, performing all the duties growing out of the jurisdiction exercised by our Federal Courts, when the twelve judges of England are capable of deciding that vast number of cases, continually swelling by the increase of her wealth and her commerce.

Your Judges *have* the physical ability to discharge all these claims on the Federal Courts, if you will give to your courts the same organization as those of Great Britain; establish here, at the seat of this empire, a great Officina Brevium, with a jurisdiction extending over the Union, and drag your citizens from your most remote provinces to seek justice here. But such *has not* been, such *ought* not to be, the policy of your Government. It was created, and it has been administered, for the *convenience of the People*. That requires that "justice should be carried home to the door of every man."

A system adapted to the limited territory and the dense population of England, where process may reach every part of its immediate jurisdiction within twenty-four hours, is but illy adapted to this country, where process could not be served and returned within fifty or sixty days. This difference between the territorial limits of the two countries shews that the argument, derived from the facility with which the Courts of England perform their duties, cannot apply in opposition to the expediency of the system provided for by this bill.

The gentleman from North Carolina argues, that the State of Louisiana, rich from the products of her agriculture, "clamors not for a participation in the loaves and fishes of the National Government." Rich as that State may be, whenever this Committee shall hear the voice of the gentleman from New Orleans, that suggestion will appear to be founded in misconception. He will tell you, if the circuit system be not a *good* to the States to which it has been extended, you ought to abolish it; if it be a *good*, you ought to extend it alike to every State; that experience has tested it, and proved it to be a wise and efficient system, and, therefore, that you are in justice bound to expand it equally to every State. He will ask you for an equal participation in the present judicial establishment of the United States, in return for the allegiance which you demand from her citizens, for her loyalty and attachment to the Union.

You will recollect with what triumph the gentleman from Virginia produced an abstract from the docket of the Supreme Court of the United States—with what emphasis he read from that extract, the number of appeals prosecuted from the Circuit and the District Courts; and how he paused and paused again, while he stated and stated again, that there were nine appeals from the Circuit Court of Ohio, and but one from a District Court; "facts which, he stated, required the most grave consideration of this Committee."

These facts, he contended, went to demonstrate that the suitors in the District Court were satisfied with the administration of justice, as it is now given to them, and that no fairer test could be resorted to of the estimation in which courts are held, than the paucity of appeals from their decision.

Mr. Chairman, it frequently falls to the lot of the public speaker to use, in the hurry of a debate, an argument which reflection and reason reject. The gentleman cannot, upon reflection, venture to place his political standing, so deservedly high in this nation, upon his position, that a suitor reposes with more confidence on the judgment of a single Judge in the District Court, than that of an associate Judge of the Supreme Court, united with that of a District Judge. Our knowledge of human nature forbids us indulging in such a supposition. Mankind, in controverting their claims, seek for intelligence and experience, and prefer an adjudication of their rights by men of the highest professional attainments. To suppose that the District Courts are preferred by suitors, is to suppose that they prefer ignorance to learning, inexperience to experience. That they prefer a District Judge, generally selected in consequence of the low salary attached to their appointments, from the third or fourth grade in the profession, and whose means of enlarging his judicial acquirements are confined to his own district, to an associate Judge, selected from the whole population of the Union, and from the highest ranks of judicial excellence, and bearing with him to the circuit the extensive learning gathered in every court of his circuit, and the highest judicial court of the Union, is a position which neither the learning nor the eloquence of that gentleman can establish to the satisfaction of this committee, or of this nation.

But the authority of the gentleman himself may be invoked to the confutation of this hypothesis. He tells us, if the proposition to strike out succeeds, he *shall move* to recommit the bill to the Committee on the Judiciary, to report a bill establishing Circuit Courts with different Judges from those of the Supreme Court.

Why adopt a circuit system, if the People are satisfied with a district system? If their satisfaction in the district system is demonstrated from the paucity of appeals, and their dissatisfaction is evidenced to the circuit system from the frequency of appeals, why change from that with which they are satisfied to that with which they are dissatisfied?

No, sir; the gentleman believes in the superior excellence of the circuit system; and under the influence of such an impression, he acts consistently with his known devotion to the happiness of his country, in recommending it in aid of the district system.

But I cannot admit that the state of the appeal docket at any one time, can be referred to as affording conclusive evidence of general satisfaction in the administration of justice, by the tribunals of the country. Professional men well know, that although dissatisfaction may exist as to the organization of the judicial system, and as to the learning and general fitness of the judge for his office, yet appeals are not always made from the judgment of the court, and that the appeals are much more numerous in some years than in others. But it is not necessary to theorise on this view of the question. The learned gentleman from Pennsylvania has informed the committee, in the most conclusive manner, of the causes to which this seeming inequality, in the appeal from the different courts, may be traced. I will therefore omit to offer any further considerations on this head.

The gentlemen object that the bill reported by the committee breaks up the judicial polity, and attacks the Supreme Court, "that citadel of the Constitution."

It is here we are constrained to admire that legislative dexterity which seeks, by the power of eloquence, to place the advocates of this bill in hostility to the Supreme Court, and, by political legerdemain, to change the relative position of the advocates and the enemies of the bill. While they portray in glowing and true colors, the advantages which this nation has enjoyed, at home and abroad, from the elevated character of the Supreme Court, they claim for themselves the character of its champions, and, with the gallantry of chivalry, profess themselves willing to die a political death in resistance of our unholy assaults on "this citadel of the Constitution." They know full well the deep affection which this People entertain for this Court, and the aversion that a great portion of the American People feel for all sudden revolutions in the organization of any department, whose utility is tested by experience. They seek, therefore, to gather for themselves those plaudits which may be justly anticipated, from a spirited and gallant defence in favor of the "beloved" of the People; while they consign us

the odium and curses of the nation—the fair inheritance of those who plan inroads on the settled order of things. *We* are painted as Radicals—as reformers, seeking innovation. *They*, the friends of order, the enemies of speculations threatening the destruction of the most venerated portion of the National Government. Is this true, Mr. Chairman? Who are the innovaters? We, who are only for expanding the present system over the Western States, while we retain the present organization; or they, who are for abandoning the present system, by separating the Judges of the Supreme Court from circuit duties, and appointing numerous Circuit Judges?

We say, that the celebrity of the Supreme Court may be traced to the constant and active employment of the mind of the Judge in the discharge of circuit duties; that by this he retains the knowledge which he has acquired, and adds to his stock of judicial learning; that, separate him from that duty, his mind will not be roused to action, except in the particular cause which shall come before him in the Appellate Court, and that, being thus without any immediate excitement for the exercise of his mind, he will become rusty in the knowledge of the law which he had acquired, and which led to his appointment. We are, therefore, for adhering to the present system; they are for the experiment of a separate and independent Court of Errors. Let the committee now pronounce their judgment, who are the innovators, who the radicals, who the defenders of "the citadel of the Constitution"—they or we.

We say that the Supreme Court is like unto a majestic tree, shooting its roots through, and deriving its sustenance from, all the surrounding soil, by which it has attained full vigor; putting forth its foliage and branches, under which the American People repose with confidence and safety. We are, therefore, for not destroying its roots. They are for separating the roots from the parent tree, and depriving it of its healthful nutriment, which, if they succeed in, I fear, Mr. Chairman, that this tree, the pride of the American People, and the admiration of the civilized world, will soon be barren of good fruit, and remain as a withering and blasted memento of the danger of legislation springing from the love of change.

But, they say it is a "popularity hunting system," "making the Judge all things to all men." *It was not so in the beginning; it has not been so, and I trust it will not be so.*

Many of the framers of the Constitution, after that holy work was consummated, sought a seat in the first Congress which assembled under it, to aid in passing the various laws necessary to carry into operation the Government. Under the influence of such men, the first law organizing the Courts of Law was passed. Such enlightened and intelligent men were not likely to recommend a system which, in its theory, promised such debasing results on the judicial character. It has never "made the Judges all things to all men." In some of those beautiful episodes in which the gentleman from Virginia has exhibited the firmness of Judge Marshall's judicial character, he tells us that, in Virginia, the place of Judge Marshall's nativity and residence, a high excitement has more than once pervaded that State, upon the powers assumed by Congress; yet Judge Marshall partook not of that sensibility, and, unswayed by the public voice of his own State, fearlessly decided the Constitutional law, in opposition to the known will of his State. Yet the gentleman says, "it is a popularity-hunting system, making the Judges all things to all men."

Other illustrious examples of the firmness of the judicial character are to be found in the juridical history of this country.

The sensibility of South Carolina, and of the whole Southern country, in which I include the State from whence I come, upon a question of home policy, is known to this committee. *It is a question in which we disclaim all intrusion by others;* yet Judge Johnson, residing in that State, and partaking in all the sensibilities likely to be produced from his associations and residence, had firmness enough to declare inoperative an act of its Legislature, springing from what was conceived necessary for the security of its own citizens, because, in his opinion, it was in opposition to the treaties made by the United States with foreign Powers, and thus was in opposition to the treaty-making power of the United States. Yet the gentleman says it is a "popularity-hunting system."

Soon after the Bank of the United States went into operation, the measures it was coerced to resort to, operating upon the individual Banks, produced a great depression in the value of property, and reduced the price of agricultural products. The State Banks, and those who felt the immediate and direct pressure through the medium of the public presses, alarmed the nation, and traced these movements of the national Bank to a settled hostility to the State Banks, and determination to effectuate their ruin. The People of the State of Maryland, from the representations of the causes from whence sprung their pecuniary embarrassments, became highly indignant against that institution. The elections came on, and the members elected partook of the general excitement, and passed a law, taxing the branch of that institution located within the State. If that tax had been submitted to under the feelings which then influenced the deliberations of the General Assembly, and of which I was a member, and in which I partook, the doors of that branch would have been soon "occluded." Yet, when the Bank resisted the law, and the Supreme Court was called to give a judicial sentence on the law, Judge Duval, living in that State, yielded neither to the pride of State, nor to the sensibilities of a People, who had, from his entrance into public life, given to him every evidence of the high respect they entertained for his talents and public virtue, but, uniting in the opinion of the Court, pronounced the act of Maryland void, because it attempted to restrain an act of Congress, passed in virtue of powers conferred by the Constitution. Yet "it is a popularity-hunting system;" it "makes the Judges all things to all men."

Let us travel further to the North—have we not seen Judge Story uniting with the Supreme Court of the United States, in declaring to the People of New Hampshire, You have violated the prohibitions of the Constitution by attempting to divest Dartmouth College of her vested rights? Yet Judge Story had a Circuit in that State, and was connected by all the ties of party and personal considerations with the members of the State Legislature who passed the unconstitutional law. Still the gentleman says, that "it is a popularity-hunting system."

These things, however, have arisen in the Atlantic States—a Western Judge may not be made of such stern materials. Yet, at a time when Kentucky, feeling the wretched and prostrate condition of her currency, attempted to relieve her citizens by the interposition of her relief laws, do we not see Judge Todd, although sympathising with the sufferers in the prostration of their fortunes, taking the Constitution and law as his guide, uninfluenced by suggestions of the desolating ruin which would overspread that country, if the debtor was alone to look for mercy to his creditor, inexorably pronouncing the whole relief system to be prohibited by the Constitution? Yet this system is called "a popularity-hunting system."

It has not produced the effect heretofore—will it produce it hereafter? That vile love of popularity springs either from the love of fame, or is studied with a view to promote our pecuniary interest. A Judge of the Supreme Court is the subject of remark on whom it is to operate. To a mind fond of permanent power, there can be nothing more attractive. Invested by the very charter of his commission with the power of saying to the Executive of this Union, "so far shall you go, and no farther;" to pro-

vincial legislation, keep within your orbit; and to the power of this House, you shall not transcend the fundamental law of this Empire: An enumeration of authorities, conclusively shewing, that, to a mind in search of power, there is nothing within the grasp of an American citizen so tempting, save that of being the Chief Magistrate of this nation, coupled as it is with a high salary, and a tenure of office during life. What is there in the jura regalia of a State equal to this? What appointment can a State confer equal to this? He has, therefore, no pecuniary interest to be promoted in flattering State pride, in yielding to popular impulse, and in gratifying those gusts of popular passion, which spend their force within the circumscribed limits of the State.

If love of fame be his ruling passion, he will seek to acquire it, not by bending to the adulation of a State, but he will throw himself on the virtue and discernment of the American People, by a rigid adherence to the Constitution, and arriving at that independence and elevation of character which neither regards

"Vultus instanti Tyrannis
"Nec ardor civium, prava jubentium."

A Judge of the Supreme Court has nothing, in this Government, capable of exciting his aspirations, save the limited monarchy of this country.

If it shall ever enter into his policy to aim at that distinguished eminence, he will strive to attain it, not by yielding to every impulse of the State feeling of his Circuit, but by that judicial firmness which shall leave no doubt of his integrity, ability, and devotion to the general happiness. The system, therefore, has not been "a popularity-hunting system," but, on the contrary, it is armed with all the seductions which can elevate man above the low and vile passion for popularity.

It is objected, that ten is too numerous for a Court. I could have wished a less number, but perfection in human legislation is unattainable. No Abbe Sieyes in his closet can devise a system perfect in all its parts—you must take it as a whole, and adopt or reject it as good or evil predominates. The theory of the bill is predicated upon the justice and expediency of extending into every State of the Union, a Circuit Court, to be held by the Associate Judge; from the dispersed situation of the United States, a less number than ten, it is conjectured, will not answer.

The great object to be obtained was, to carry upon the bench of the Supreme Court of the United States, a knowledge of the local laws and usages of each State. No arrangement could be made, with a less number than ten, to ensure this great object. We view its obtention a greater desideratum, than the keeping the Court to its present number; we have, therefore, reconciled ourselves to the number of ten. But the addition of three will convert the Court into a Political Court.

In noticing these observations, I am compelled to notice some unpleasant remarks which fell from the gentleman from Virginia, in reference to the motives which produced this bill. He stated that the object sought to be obtained, was a reversal of the opinion of the Supreme Court, in the case of the occupying claimant law of Kentucky. [Mr. MERCER here explained, and assured the Committee that he had no intention to impugn the motives of the Committee.] Mr. DORSEY then continued: I am aware, from my own short parliamentary experience, that language is often used in debate, innocent in itself, but liable to be misconceived; and of the reputation which the gentleman has obtained, for his courteous demeanor to all, and his distinguished decorum in debate, I felt confident that he designed no imputation, but it was heard by others, and capable of constructions which required to be noticed.

In another part of his remarks, he stated, "that the war was gone by; old parties had disappeared;" new combinations of views had taken place; and, this measure, after being agitated out of the House, had been brought in to distract its deliberations. This, Mr. Chairman, I thought, had "an awful squinting" at that which the gentleman from North Carolina presented in broad relief to the view of the Committee. According to him, "the Prince is not firmly seated on the throne;" the Executive wants support, and the patronage of the Executive Department is to be extended.

I know nothing of the People of the West; I have never travelled "sixteen times" to see them; I never saw three of them, to my knowledge, till I took my seat on this floor. I am impelled by no "love," in my course, for them. I have not that ardent attachment for them, which the words imply, in preference to others of this nation. I have heard, that, in the last "border wars," they abandoned the soft couch of peace, and endured fatigues and hardships to which they were unaccustomed; hurried into battle, and bore the emblem of your national sovereignty over the prostrate ranks of the foe, winning for their country, battles, productive of the greatest national results, and, for themselves, imperishable renown. I had also learned, for I had never witnessed it, that, in debate, with the powers of their eloquence and ardor for the public good, they charmed listening Senates and swayed the deliberations of Congressional wisdom. Yet, with all these recollections of their usefulness, the *West* cannot declare the "Emperor." The stubborn character of the American People will judge for itself.

"The Executive seeks, however, to distribute the sweet manna of its patronage to sustain itself;" and expects to ensure its continuance in power, by appointing three Judges!!!

Corruption never seeks to attain its end by such limited views. To pour out the whole phial of corruption in the West, would not be the wiley course of the corrupter. He would distil a drop in every section of the country, and thus poison the whole community. And the gentlemen themselves are willing, if I understand their views, to give to the Executive the increased patronage resulting from the selection of ten to sixteen Circuit Judges. What blindness moves us to reject the proffered means of wielding a larger portion of patronage tendered to us by the enemies of the bill, if the extension of the influence of the Administration was sought for by the advocates of the bill? A bill sustained by the rival States of Kentucky and Tennessee, by the Houses of "Capulet and Montague," forbids the conclusion of any such motive.

How this Court will be converted, by an addition of three Judges, into a Political Court, I am at a loss to conceive. I know not what definite idea to attach to the term. I could have wished the gentleman to have given to us a more full detail of his apprehensions on this subject.

If he means, by a Political Court, a Court interfering in the management of public affairs, I can see no such grant of power in the bill. They have not, like the Parliaments of France, a veto on our legislation; they are to decide what the law is, and not what the law ought to be. If they shall arrogate to themselves the power of interfering in our national affairs, in the Constitutional power of this House they will find a corrective.

I am warned, by my weakness, to close as early as I can. There is only one remaining objection to notice. It is said that the bill professes to assign to each judicial district an Associate Judge, and it assigns none either to the Western Circuit of Virginia, the Western Circuit of Pennsylvania, or to the Western Circuit of New York.

The gentleman is mistaken. The bill is based on no such principle. It *professes to send into every State in the Union an Associate Judge*, to *become* acquainted with the

local laws and usages of the States. Virginia, Pennsylvania, and New York, had the circuit system, and it was departed from, in the Western parts of these States, at their own request. Is it right for the gentleman from Virginia to object to the system, because a portion of his State declines the benefit which was provided for it?

One remark more, and I am done. I have been kindly sent to this House by a district distinguished for its respect for the Judiciary of the United States. It has stood by it in the times of its greatest difficulty; and I should be truly unfortunate, if, in the first act of my Congressional life, I should advise its destruction. I have strived to shew, as well as my health would permit, that I am its defender—not its foe.

Mr. WILLIAMS next rose, and said, he had never, perhaps, attempted to address a Committee of the House, under circumstances of greater constraint, than at this time. Standing in friendship to the bill, (he feared) in a minority of the Delegation of the State from which he came, it seemed to devolve on him, as a peculiar duty, to submit the reasons which would govern him in the support he should give to the measure proposed. This consideration was rendered the more imperious, by the extended views of the subject offered to the House by his friend and colleague, (Mr. MANGUM,) from North Carolina. His reply, however, to what his colleague had said, would be brief: for it seemed to him, that the merits of the question, important as it was, were embraced within a very narrow compass, and susceptible of very ready and prompt decision.

What, let me ask, (said Mr. W.) is the question before the House? A bill is before us, reported by one of our most intelligent Committees—a Committee, in whose recommendations, experience teaches us, great confidence may be placed—proposing to extend the present Judicial System of the United States, by adding three Judges to the number already in existence. Now, the question simply was, whether or not this measure should be adopted? And here he would take occasion to remark to his honorable colleague, that he was frightened by the phantom of his own imagination, rather than any object proposed to his view, or suggested by this bill. The gentleman seemed to think, nay, he had positively asserted, that we were about to change the present Judicial System of the United States, and, against this change, he had protested with his usual vehemence and zeal. But, if he had attended for a moment, even to the title of the bill, and more especially to its details, he would have been satisfied that no change whatever in our Judicial System, is contemplated: it is only proposed to extend or enlarge the system which already exists; and, between these two acts, the mind of the gentleman could not fail to perceive an immense difference. To change a system is wholly different from enlarging a system that already exists. Many of us might, and no doubt would be, opposed to a change; but none of us, it seems to me, under the circumstances of the case, ought to resist the proposed enlargement. If a system be in itself good, we should not hesitate about extending it, because, by extending it, the good effects resulting from the system will be more widely diffused, and more generally felt. Any argument, therefore, against extending a system on account of the evil which might flow from it, proves, said Mr. W. (if it proves any thing,) that the system itself is not good, because, if it be good, no mischief whatever can arise from its extension.

A good law is not made more beneficial in its effects by confinement to a narrow space, or to contracted limits; on the contrary, the greater the space within which a good law is permitted to operate, the greater will be the aggregate of good resulting from that law. So far, then, from wishing to confine the present Judicial System (if it be a good one) to a few, or only a portion of the States, we should most anxiously wish to extend it over the whole country. By extending it, we do all the good we can; by confining it, we do only a partial good. Now, sir, whether is it the duty of the Legislature to act generally, for the good of the whole, or partially, for the good of a few—for the benefit of one third, one half, two thirds, or any other portion, less than the whole number, of the People of these United States? My colleague, hostile as he is to this measure, might be safely trusted with the answer to this question. He must admit, that the path of duty could not here be mistaken; that we are bound, by obligations the most solemn, to extend a good system over the whole country, so that every one may participate in its benefits. If, then, the gentleman thinks the present system a good one, and, that he does, we have his positive and repeated declarations, he will be constrained to admit, that every part of the country is entitled to enjoy its benefits, and, consequently, that it should be extended in the manner proposed by this bill.

But, the gentleman has said, that, by extending the present system, we endanger its existence, and, therefore, he is opposed to the measure. A little examination will, however, convince us, that this objection is more imaginary than real: for, sir, said Mr. W. I hold it to be a self-evident truth, that the Judicial power in any country, (by judicial power he meant moral power, or intelligence,) must, in the nature of things, be co-existent and co-extensive with the Legislative power; that a People, invested with the power, and having the capacity to legislate for themselves, must also have the power and the capacity to decide for themselves, judicially, the laws which have been enacted. It would be a solecism, indeed, an absurdity in terms, to say, that a People may have wisdom enough to legislate, but not enough to act judicially; that, in the mere making of laws, they may be independent, they may exercise all the rights of self-government; but, in the judicial execution or administration of those laws, they must be deprived of their rights, and held in subjection to, or dependence upon, some foreign power. If, then, it be true, that the Judicial is co-extensive with the Legislative power, it follows, as a necessary consequence, that the Western People have a right to *demand* an extension to them, of the benefits of the present Judicial System. They have a right to elect Members of Congress, invested with the same powers, privileges, and immunities, as other Members; they meet here, they discuss and vote freely upon all questions, as do the Representatives from any other quarter of the country. In regard, then, to the Legislative branch of the Government, the same organization prevails, the same privileges obtain, throughout the Union. But it is not so in regard to the Judicial Department. Herein, the People of the West say, they are degraded; they feel themselves aggrieved, and apply to Congress for a remedy. Shall we reject their application? Shall we say to them, in substance, if not in so many words, We cannot grant your request, because we have not confidence in your integrity or intelligence? We know you to be equal to us in the Legislative sphere of the Government, but, when it comes to the Judicial, you must submit to a little degradation; you must consent to be deprived of some of your rights, and remain where you are, on a footing of inequality with the rest of your fellow-citizens? This, sir, would be adding insult to injury. What would be the language and sentiments of the whole American People, if such distinctions were introduced into the Legislative sphere of the Government; if, for example, the Members of Congress from that quarter, were placed, by law, on a scale of inferiority, corresponding with that which obtains in the Judicial Branch? Every one must admit, that the People would be degraded; that they would be deprived of their rights; and, in such a state of things, I should not expect to find in them any very ardent attachment or sincere devotion to the princi-

ples of the Union. Now the same feeling will prevail, when the inferiority relates only to their judicial condition, so to speak. If, in the administration of justice, they see themselves in a position inferior to that in which the rest of the People of the United States are placed, it will abate their attachment to the Union in the same way, though, perhaps, not in the same degree, as if they occupied an inferior position in the Legislation of the country. This feeling is inevitable—in the nature of things, it must and will be so—and you ought to abolish the present system, in relation to yourselves, or extend it to others. One of these two things must be done, or you act upon a principle which is partial, and calculated to diminish the regard the People ought to have for the Government of their country. This consequence is more alarming—the evil is of much more frightful magnitude than any which my colleague, and the gentleman from Virginia, (Mr. MERCER,) have, in the fertility of their imaginations, been able to apprehend.

Again, the Government of this country, in relation to the Western States, is at this time imperfect and incomplete. This position, Mr. W. said, he hoped he should establish. When the People, in the fullness of their wisdom and strength, created the Legislative, they also, at the same moment of time, spoke into existence the Judicial branch of the Government. The latter, to give efficacy to their designs, is as necessary as the former. To deprive the country of one, would be as great an inroad upon the Constitution, and as violent an outrage upon the rights of the citizen, as to deprive it of the other. What would be our condition, if no courts had ever been established in the United States? The Government would be a mere caput mortuum—a lifeless, inactive mass, incapable of dispensing any good whatever. It is through the Judiciary alone, that the laws are made to operate, to have any effect upon the community. Without the Judiciary, you had as well be in a state of nature, or of anarchy. To give effect, then, to the designs of the Government—to maintain those blessings of life, liberty, and property, which it proposes to accomplish, the judicial department is essentially necessary. The legislative branch can do nothing without it; nor can the judicial do any thing without the legislative; both being requisite to preserve the harmony and efficiency of the system.

Convinced of this, said Mr. W. Congress had, from time to time, endeavored to mature and perfect the system as much as possible, in the various modes pointed out so perspicuously, the other day, by the gentleman from Massachusetts, (Mr. WEBSTER.) For the Atlantic States, it is declared that a certain organization shall prevail, and be carried into effect, which, continued Mr. W. he would call the perfect system, because we had preferred and adopted it for ourselves, and were unwilling to change it. But, for the Western States, a different system prevails, less exalted in its character, and less authoritative in its sanctions. Here, then, are two systems, both of which cannot be perfect; one must be better, or more accordant to our ideas of perfection, than the other. By our own act we have declared a preference for the one adopted among ourselves, and our belief in its perfection, because we are *unwilling to change it;* while, by the same act, we declare our belief in the imperfection of the system which prevails in the Western States, because we are *unwilling to adopt it* for ourselves. What stronger proof can be wanted of the imperfection of the system in those States, than our unwillingness to make that system our own? None whatever. Then it follows, that, when we admit, at the moment we declare, in the face of the world, that the judicial system in the new States is imperfect, some of us on this floor most anxiously and zealously oppose any amendment, and say that a better system should not be introduced among them.

As the Representatives of the People, we are, for the time, clothed with their attributes, and must be considered as influenced by all their wise and benevolent emotions, when acting in a sovereign capacity. What spectacle, then, shall we exhibit, if we should reject this bill? A most extraordinary one indeed. It is this—that at one time we choose what we believe to be perfect, for ourselves; but at another time we choose what we believe to be imperfect, for others—for our neighbors. The attributes, then, with which we are clothed, must be at war with each other: we must be urged on by contradictory impulses, which display, in their progress, a selfishness of motive, and a want of wisdom and benevolence, in our enactments. To avoid this imputation, to sustain in purity that sovereign character with which we are invested; to show to the world that we deal out justice with an equal and impartial hand, let us pass the bill, and extend to every portion of the country the benefits of a system which we believe to be perfect, because we have chosen and adopted it for ourselves.

My friend and colleague from North Carolina, says, it is impossible to act up to this view of the subject; that no system can be made absolutely perfect, and, therefore, we are under no obligation to adopt the measure, even upon the principle I have endeavored to inculcate. But this objection, I think, said Mr. W. cannot stand the test of scrutiny. The argument involved in the objection, if indeed it contains any argument, is this, that, because we cannot *do all the good* which may be desirable, we are, therefore, at liberty to do *no good;* that, because we cannot be *perfect*, we are at liberty to be as *imperfect* as we please. Now, sir, this is not the rule, either of right reason or correct legislation. The true doctrine is, that we should do all the good we can, and be as perfect as possible. Hence, if only a mile square of the territory of the United States be deprived of the benefits of a judicial system, we are bound to extend the system to it, if it be practicable. No Government or People can be required to perform impossibilities, nor is any such demand made of Congress at this time. We are only asked to do what is both convenient and practicable, and none can refuse on the ground that it would be impossible to comply. Some anomalies, to be sure, would remain in the system, after the passage of the bill; but this was not a sufficient reason for refusing to support it. The gentleman from Virginia (Mr. MERCER,) had eagerly seized on this objection, and wielded it dexterously in the argument he urged. He had said, You cannot send a Judge of the Supreme Court into the Western District of Virginia, the Western District of Pennsylvania, or the Western District of New York; and, therefore, it is vain to legislate on the subject for the sake of uniformity. But the gentleman ought to have known, that we shall correct some of the anomalies which exist, if not all of them, by the measure we advocate; and he certainly would not refuse any remedy, because he cannot apply one which is universal. Besides, no complaint has been heard from those quarters of the country, which will not be embraced by this bill; and shall we, on account of evils of which we have not heard, determine not to correct those of which we have heard? This would be a very extraordinary rule, for the Government, either of legislative or individual conduct, and would, if carried to the full extent, prevent us from acting in any manner, and on any subject. For, I repeat, said Mr. W. if we are not at liberty, nor shall be required to correct an evil until we are satisfied that *all* similar evils will likewise be corrected, we never shall have the power to act in any case, nor to remedy any mischief whatever. In this way, an end would be most effectually put to all legislation. Such was the consequence of the gentleman's reasoning, but how he was to get along with it, would be left to the determination of the House.

It has been alleged, as a further reason against the bill, that the great extent of our country would forbid the pe-

licy of its passage; that it would be impossible for the Judges to convene at this place from such a distance, to hold the sessions of the Supreme Court. At a former period in the history of the country, and, when the notions of a particular day prevailed, it was said, by many persons, and perhaps believed by some, that the purchase of Louisiana would endanger the existence of the Union; that the distance was too great to be travelled even by the Members of Congress. But experience had most amply refuted this idea, and we find the Members from Louisiana and Missouri as regular and constant in their attention to duties on this floor, as the Members from Maryland or Virginia. Now, a Judge could travel with as much ease as a Member of Congress. There was nothing in his natural or official constitution to prevent it; and, if the Members attend to their duties here, the Judges can do the same. The objection, then, must be considered as refuted and overcome; and he trusted it would not have, as he knew it ought not to have, any influence upon our minds in deciding the question before the Committee.

He should proceed, Mr. W. said, to notice, very briefly, some more of the objections urged by his friend and colleague. The gentleman had said, the judicial machinery of the United States was already more extensive than in any other country upon earth; and he thought the bill objectionable, because the number of Judges was to be increased. I am not, replied Mr. W. possessed of the requisite information to affirm or deny his statement. What is the extent of the judicial system in France, Germany, Russia, or Sweden, is to me wholly unknown. But, admitting the statement of the gentleman, what does it prove? It proves only, that the Governments of those countries are different from our own. The same objection could be applied, with equal propriety, to the Legislation of this country. There were between two and three, perhaps between three and four, thousand persons annually employed, in the business of legislation, in the United States. In no country "upon earth" could there be found such a host of law-givers; yet, according to the forms of polity which prevail among us, we say the number is not too great, and we are not willing to change our institutions for those of any other People. We expect, from the number of legislators, to have better laws, more adapted to our wants and wishes, than are enjoyed in any other country. It is perfectly reasonable that the judicial machinery should correspond with the legislative; and, if the latter is not to be altered or abolished, because it is more extensive than any other in the world, why should the former be deemed liable to the objection? As the Legislators will make better laws, so will the Judges execute those laws more promptly and satisfactorily to the community. It is the result, then, of the peculiar nature of the political institutions in this country, that the judicial machinery is so extensive. We profess to carry justice to every man's door; to administer it to him upon cheap terms, and in the most expeditious manner; and, so far from considering this an evil, or lamenting its existence, he was, Mr. W. said, disposed to boast of it; to hold it up to other nations as a splendid example, showing the wise and beneficent nature of our Government, and highly deserving their imitation.

He was himself but imperfectly acquainted with the English system of jurisprudence, of which his colleague had spoken in terms of such exalted, perhaps merited, commendation. But a gentleman, as well known to his colleague as to himself—one perhaps as thoroughly qualified to make observations on such subjects, and to give an opinion respecting them, as any person he had ever seen, had informed him that, in all transactions of an ordinary character, a common man had as well abandon his right, as to attempt its enforcement by legal process; that the accumulation of expense, in that country, was so great as to forbid the policy of resorting to their courts of justice. Now, if this be true, of which he had no doubt, he was unwilling, Mr. W. said, to imitate, in this particular, the system of England, with all its boasted pre-eminence; he would infinitely prefer that of the United States, notwithstanding its extensive machinery.

But the objection coming from his colleague was rendered more singular by the circumstance, that in North Carolina there are nine Judges employed in the administration of justice, according to our forms of Government. That State contained about a twentieth of the whole population of the United States; and, if we find it necessary to employ nine, surely the number proposed by this bill cannot be too great for the whole Union. The only matter of surprise is, that the United States have hitherto been able to progress in their business with so few Judges: for, if we assume as a basis the number necessarily employed in North Carolina, it will be found the United States should have, not fifty, as mentioned by the gentleman, but between one and two hundred, or perhaps more: for I have not made any precise calculation. The number would certainly be far beyond that which the gentleman would assign as the correct standard. In Virginia, I have just been informed, they have upwards of twenty, say about twenty-five Judges. She contains, probably, about one-fifteenth of the whole population of the country, and, on the basis of the number of judicial functionaries employed by her, it will be found the United States ought to have a still greater number than that beforementioned. In short, sir, the whole Government, every thing of a political nature in this country, belongs to the People; and, for their convenience and accommodation, any number of Judges, no matter how great, ought to be created.

In the next place, my colleague has said, the wisdom of a court does not consist in its numbers. But, when he maintains the proposition that the wisdom of a court does not consist in the *greatness* of its numbers, let me ask if he is willing to adopt the converse of the proposition, and say that the wisdom of a court consists in the *fewness* of its numbers? If he does, he must be prepared to assert, that a court, consisting of one single Judge, is the most wise, and, consequently, the best able to transact business.

But, sir, I will not do my colleague the injustice to believe, for a moment, that he entertains any such opinion as this. If, therefore, he agrees that a court, composed of a single Judge only, is not so wise as one composed of two Judges, I then take his admission, and am authorized to assert, that, by the same rule, three Judges are wiser than two, four wiser than three, five wiser than four, and so on. In this method of progression, the gentleman and myself would probably not disagree, till we arrive at the number seven. To this point he cheerfully accedes, because it is the number of the present Court, and he has declared to us that he prefers it. But, beyond this point, the gentleman will not advance one step. I must, then, ask him, how it happens that he adopts the rule at seven, and rejects it at ten? What principle of logic has he discovered to justify the inconsistency of admitting it in one case, and renouncing it in the other? The same rule which has enabled him to ascertain that a court composed of seven Judges is better than a court consisting of one, or two, or any other number less than seven, would, I should think, authorize him to go a little further; and here I call upon him to state any good and satisfactory reason why he should not advance to ten. It is true, sir, this is a kind of abstract metaphysical question, incapable of being reduced to great precision or indubitable exactness. But, I think it may be shown, by as good evidence as the nature of the case will admit of, that ten is the very number of which the court should consist, and that the gentleman is alarmed by visionary fears, when he supposes a court thus numerous will acquire a tumultuary character, or lose its adaptation to business.

[Mr. MANGUM explained. He said, on this point, he

had spoken in reference to an admission made by the gentleman from Massachusetts, (Mr. WEBSTER,) who stated, that, as to the decision of Constitutional questions, the court might not be too large; but, for the transaction of current ordinary business, the number might be too great and unwieldy, &c.]

Mr. WILLIAMS replied, that the explanation offered would not vary the answer he was about to give to this part of the argument of the gentleman. If the member from Massachusetts had made the admission imputed to him by his friend from North Carolina, it was unfortunate and gratuitous. It was not necessary to sustain any view which the gentleman from Massachusetts might have in relation to this bill: for, said Mr. W. I do not perceive that a greater number ought to be required for the decision of Constitutional questions, than in any other matter. The judgment of the Supreme Court, in all cases, is presumed to be founded upon the principles of reason and the laws of the land; and it was just as necessary that it should be right in cases of inferior as of transcendant magnitude. If a bare majority of the court was liable to decide erroneously in one case, it was equally so in the other.

But, returning to the question, he would ask the gentleman if twenty such men on the bench, as Chief Justice Marshall, would impede the progress of business? He thought not—on the contrary, it would facilitate and hasten, rather than retard business; and, to this point, he begged the attention of the Committee. Why is it that the Supreme Court is now composed of seven Judges? It is because they are wanted to hold, not only the Supreme Court, but also the Circuit Courts in the several Atlantic States; that they may bring together, on the Supreme Bench, that particular knowledge of the laws and institutions of the States, which will enable the Court to decide correctly and promptly on all questions submitted to their adjudication. This knowledge will accelerate, while the want of it will retard business. The Court, then, ought to be composed precisely of that number, which, with certainty, ease, and convenience, can acquire that knowledge universally deemed to be essential. So important is it, that, in the Atlantic States, seven Judges are required to ride the circuits, in order to obtain it. But, why should it be considered necessary in the Atlantic States, and not so in the Western? If we have seven for this purpose among ourselves, it is not unreasonable that, for the same purpose, four should be allowed to the Western States. Not only will the number of ten, from the reasons stated, be more adapted to business, but will be more likely to give satisfaction by its decisions. He concurred fully, Mr. W. said, with the gentleman from Massachusetts, that mankind necessarily, and by common consent, attach greater weight and authority to an opinion given by many, than when rendered by a few. It is the dictate of nature, and must inevitably be so. For his part, he was a believer in the truth of the old maxim, that, "in the multitude of council, there was wisdom—there was safety." But there are extremes in all things; virtue itself may be carried to disgusting lengths, and, while a court should be sufficiently numerous to add weight to its decisions, it ought not to be so augmented as to impart to it a tumultuary character, or destroy its fitness for prompt but grave deliberation. This consequence, however, could not be apprehended from the proposed increase. So long as the Judges had Circuit Court duties to perform, there was no danger of the Court becoming unwieldy from its numbers, and this was the only limit which could be assigned, in theory or practice, to the extent of its augmentation.

In the next place, his colleague had urged, that the system was incapable of expansion; that there was a point, beyond which we could not go. In this respect, the gentleman had gone a little wide of the mark. The question was not, whether there is a point beyond which we cannot go, but whether we have already arrived at that point?—not as to the expansibility of the system, but whether it is now sufficiently expanded? For his own part, he would as soon undertake to limit the Legislative as the Judicial branch of the Government. In the nature of things, they must be co-existent and co-extensive with each other; and, wherever the one goes, the other must go likewise. As the gentleman had not stated the point to which he thinks the system may be carried, whether to the Western shore of the Mississippi, or to the base of the Rocky Mountains, I will give him my opinion on the subject, and say, that I think the system capable of expansion to the Rocky Mountains. If the Legislative branch can extend itself thus far, I have full confidence in the belief, that the Judicial can do so likewise. Beyond that point we probably could not go; but such a state of things will not arise in fifty or a hundred years, and it would be wholly useless in us to anticipate it, so as to prevent the adoption of this measure. No one can say the points proposed in the present bill are unattainable; and it is only necessary to know that fact, to secure our approbation.

Another reason, still more singular, had been urged by his colleague. He had said, it was proper to look, not only at the bill itself, but likewise to every other measure to which it might possibly give rise. He could not, therefore, vote for the bill, because he apprehended it had originated in something like a principle of judicial representation, and, if adopted, that it would lead to the introduction of some other measures, requiring two-thirds of the Court, or some other number, greater than a majority of the quorum, to decide against the validity of a State law. As to the principle of representation, against which the gentleman protested, he did not know, Mr. W. said, that it was to be regarded as dangerous. The gentleman had said, that, hereafter, as vacancies occur, by death, resignation, or otherwise, he would not be opposed to appointing Judges in the Western country. But, upon what principle, let me ask, would he do so? Certainly upon that very principle of representation which he now condemns. If, then, the gentleman will act upon the principle of representation when vacancies occur—and, that he will, we have his own declaration—why not do so now? It surely cannot be right in future, but wrong at the present, to act upon one and identically the same principle. If it be correct, in principle, to gratify the Western People with judicial appointments hereafter, it is equally so at this moment. The gentleman has involved himself in a dilemma, from which it is not easy to be extricated.

But why entertain any such apprehensions? In deciding a measure, it was proper to look at the thing itself: to judge it by its own intrinsic merits, rather than by what was said of it, by friends or enemies. The bill before us was a distinct, independent proposition, having no connection, expressed or implied, with that other measure of which the gentleman has spoken. Should it be introduced, he would, Mr. W. said, cheerfully unite with his friend in opposing it. No discordance of opinion between us will exist on that occasion, I can assure him. In deciding this question, however, I do not feel it my duty to go into every committee room, or other sequestered apartment of the House, to ascertain whether some objectionable measure may not possibly be brought forward hereafter. If the bill before us contains no offensive provisions, it is all we can ask or require concerning it.

A friend near him had suggested, Mr. W. said, and he thanked him for it, that the bill of which his colleague entertained so much dread, prescribing the number for the decision of Constitutional questions in the Supreme Court, might be introduced, whether or not the bill at present under consideration was passed. It seemed to him that such a regulation was more likely to be made if we reject this bill, than if we pass it. By rejecting it, discontent and uneasiness will prevail throughout the whole Western country—whereas, if we pass it, the People will be rec-

dered tranquil to a very considerable extent. If I, sir, were a citizen of the West, and such injustice had been done to my part of the country, I should be inclined to speak in a tone louder and more efficient than any we have heard coming from them through their petitions and memorials. The gentleman, therefore, had better unite with us in favor of the bill, if he wishes to avoid that other one to which reference has been made. It is as reasonable to require two thirds of the whole Legislature to pass an act, as to say, that two-thirds of the Supreme Court must concur, before their decision shall be held final or obligatory in constitutional matters. But I perceive, sir, I am fighting against shadows. The bill containing these offensive provisions is not now before us. Whether it will come, is uncertain—but, if it does, I can assure my colleague he shall have my hearty co-operation in resistance against the measure.

In what way this idea of judicial representation was so formidable, was not easy to understand. The remarks of my colleague have not left upon my mind any very distinct impression. He admits that the Western country contains talents of the first order—of this fact there can be no doubt, if we look at the efforts of Members on this floor: at the displays in the Legislatures of their several States, or at the decisions pronounced in their courts of justice. As to any faction which may arise to change the course of decision in the Supreme Court, the idea was perfectly fanciful and illusory. If it is thought proper, you can take Judges from Maine or any other State, and send them to the West. But as many differences of opinion, on all subjects, are to be found amongst the People of the West, as in any other portion of the country. You can, therefore, select those men for the bench, whose views will suit your own, if you entertain any fears of factious combinations in the Court. If I have not been misinformed, the Judge of the Supreme Court, now residing in Kentucky, thinks differently from a majority of the People in his State, on those local subjects which have so agitated them. If, then, you have one Judge from that country who thinks, as you believe, correctly, you can easily obtain more. But, if you could not do so, it would be no valid objection to the bill: for, every part of the country has a right to be heard.

It has been stated by my colleague, that the Western People do not want this measure; in other words, that the circumstances of their country do not require it. Sir, I am disposed, said Mr. W. to receive the statement of my friend as good authority, but, in the present case, he must pardon me for saying, that the statement of the Western People themselves is *better authority* than any he can offer. The gentleman and myself reside in North Carolina, five, six, or seven hundred miles from the greater portion of the Western country. I have travelled to that region only a few times; but suppose I have visited it as often as the gentleman, neither of us can be supposed as competent to judge of their affairs, as the Western People themselves; and what do they say? The Members of Congress from that quarter all tell you they need an extension of the system; private citizens, speaking through petitions and memorials, hold the same language; and yet the gentleman is willing to disregard all this evidence, and bring his mind arbitrarily to the conclusion, that the system is not wanted in the West. Unless he inverts the order of credibility usually practised in examining testimony, he must admit that the Western People greatly need, and highly desire, all the benefits of the Judicial System.

It was thought the business in that country would decrease, and supersede the necessity for Circuit Courts. In illustration of this idea, the gentleman mentioned that Judge Marshall was not occupied by the duties of the Circuit Court in North Carolina, more than two or three days. He had been at Raleigh, Mr. W. said, occasionally, when the Court was in session, and he believed the Judge was frequently engaged even a less time than had been mentioned. But the gentleman was not willing to surrender the Court; he was not prepared to say that Chief Justice Marshall, or some other member of the Supreme Bench, should not be required to come into our State and perform Circuit duties.

But, it was said, that, because we, in North Carolina, were a maritime State, and had little business, it was, therefore, to be inferred, that the business in the West was either not great, or would be so diminished as to supersede the necessity for an enlargement of the Circuit system. Now, according to the time occupied by the Court at Raleigh, it is fair to conclude, that much less business was done in North Carolina than in Kentucky. He would not state it as a fact, because he did not know it to be so, but he believed, two thousand cases had scarcely been decided in North Carolina, since the foundation of the Government. If this be correct, it would follow, that Kentucky had fifteen or twenty times as much business as North Carolina: for, we have been told, that, in Kentucky, they have disposed of two thousand causes in two years, and have remaining on their docket about nine hundred and fifty. This would prove, then, that Kentucky has greater use for the system than we have—but still the gentleman is unwilling to give up his own court, or extend the system to the West.

It was said by the gentleman, that the signs of the times—the almost revolutionary symptoms in the West, forbid the policy of venturing upon any great change, or making any grand experiments, such as were proposed by the bill. Of all the reasons which could have been offered, this Mr. W. said, was, with him, the strongest for the adoption of the measure. What, sir, would be said of the pilot, or mariner, who should behold at a distance the rising storm; who should see the lightning flash, and hear the thunder roll, and would take no step whatever, to meet and to brave the impending tempest? Would it not be said, that he was not only unskilful, but was grossly delinquent in the performance of his duty? Most assuredly it would. Then, so far from remaining unconcerned spectators of the scenes of violence in the West, let us do all we can to help and to save our brethren in that quarter. Let the spirit of the nation, through the Judiciary, move upon those elements, so agitated and convulsed. They tell us it will afford them some relief, even if it should not prove a universal remedy. In the name of justice, then—in the name of those rights common to all the country, let those People have the system which may afford them relief; which you have ordained for yourselves; and, hitherto, denied to them.

My colleague, by way of conclusion, has passed much just eulogium upon the Judiciary. In all this I fully concur with him: for no one can be more deeply impressed than myself, with the great importance of that establishment. I believe it to be the firmest rampart, the last citadel of the Government; and, through all the storms and conflicts which may assail it, I trust it will stand "like a rock, unmoved." The bill before us will not weaken the Judiciary; it will tend to strengthen and consolidate it. Believing this to be the case, I hope the motion to strike out the first section will not prevail, and that the measure will be finally adopted.

After Mr. WILLIAMS closed, Mr. COOK obtained the floor, but gave way to Mr. POWELL, on whose motion the Committee rose: And

The House adjourned.

FRIDAY, JANUARY 13, 1826.

On motion of Mr. WEBSTER, the House again resolved itself into a Committee of the Whole, Mr. TOM-

LINSON in the Chair, on the bill "further to amend the Judiciary System of the United States."

Mr. POWELL said, that, when the bill now under consideration was presented to the House from the Judiciary Committee, he approached its examination with a mind totally unfettered by preconceived opinions—free from all bias—and, moreover, with an anxious disposition to be enlightened by facts, explanations, and arguments. Under these circumstances, and in this state of mind, he had listened with profound attention to the lucid and sensible exposition made by the honorable Chairman of the Judiciary Committee, of the general provisions of the bill, and to his detail of the facts upon which the committee had acted. At a subsequent stage of the investigation, he had listened with at least as much interest and attention to the able, and he would say, eloquent argument of the gentleman from Pennsylvania, (Mr. BUCHANAN,) in favor of the passage of the bill, and in opposition to the motion to strike out the first section. Although he confessed he entertained doubts about the policy of one important feature of the bill, upon first impression, he was anxious to be convinced of his error. When his friend and colleague from Virginia, (Mr. MERCER,) with his usual eloquence and force, presented to the Committee his various objections to the bill, his doubts were strengthened and increased; and when, finally, the gentleman from North Carolina, (Mr. MANGUM,) brought his analyzing and powerful mind to bear upon the subject, his doubts and objections were confirmed. He had, from the commencement of the discussion, felt a strong disposition to lend his aid to the object which the Judiciary Committee had in view, if, in so doing, he could conscientiously acquit himself of the duty he owed to himself and to his constituents. He had uniformly felt, and he now felt, the strength of the appeal which the Western States had made to the justice and magnanimity of the House. All these feelings and dispositions had determined him to support the claims of the West to an amendment of the judicial system, as far as he could do so consistently with his duty and a due regard to the great interests of the nation. After the most mature consideration which it had been in his power to give to the subject, he had been compelled to the conclusion that he could not give his sanction to the bill while the feature, to which he had been opposed in the first instance, remained unaltered.

The bill presents to the consideration of the committee two inquiries: 1st, Is an alteration in the judicial system demanded by the circumstances and exigencies of any portion of the United States? 2d, If an alteration be necessary, what are the most efficient and judicious means to the attainment of the object?

As to the first inquiry, he would admit, from the facts disclosed to the House by the proper organ, that a portion of the new States, West of the Alleghany mountains, have claims upon the Government, arising, not only out of the delay, but out of what amounted almost to a denial of justice, under the existing situation of the Federal Courts; and I frankly and readily admit that we are bound to afford an adequate remedy for these evils. Thus, it will be discovered that he did not concur in this view of the subject with his honorable colleague, (Mr. MERCER,) nor with the gentlemen from North Carolina, (Mr. MANGUM,) who had both contended that no evils existed, of sufficient magnitude to require the interference of Congress.

But while he differed from these gentlemen as to this point, he must also differ in opinion with the Judiciary Committee as to the extent and causes of these evils. Loud complaints had reached this House from the States of Kentucky, Tennessee, and Ohio—complaints sustained by ample testimony as to their real existence; but he had sought in vain for the evidence of well-founded complaint from Louisiana, Mississippi, Missouri, Illinois, Indiana, and Alabama. If there be evidence of such complaints, it had not reached him; and he knew of no source to which he could look for such complaints, or the evidence of their existence, although he had applied to the honorable Chairman of the Committee to ascertain the existence of such complaints, and the evidences upon which they rested. If there have been murmurs of complaint from these six States, they have not been sufficiently loud to excite attention. The administration of justice, under the existing arrangement of the courts in these States, appears to have hitherto flowed in a tranquil current, and to have answered all the essential ends of justice. If there be evidences of the oppressive delay, or the denial of justice, I ask that they may be produced, so far as these six States are concerned. These evidences have not yet been furnished to the committee, if they really exist. Has the State of Louisiana, described by the gentleman from Pennsylvania as most especially requiring the provisions of this bill, presented herself before this House, complaining of the evils, delays, and injustice, of the existing system? If such be the fact, I am ignorant of it. Has a case ever occurred in which complaints have been made from Louisiana that injustice has been done to her citizens, because the civil law prevails there, and because, from the ignorance of the Judges of the Supreme Court of the principles of that code of laws, they have not administered the law rightfully and understandingly? If such case has occurred, this committee are ignorant of the fact.

In Kentucky, Ohio, and Tennessee, I have already conceded, and I now reiterate the concession, that oppressive evils, resulting from the delay in the administration of justice, exist—delays of justice equivalent, at present, almost to a denial of justice. In the removal of these causes of delay, I have already said, and I now repeat, I am ready to go with the Judiciary Committee and the House, in any measure commensurate to the object. It is remarkable that the evils complained of belong, if not exclusively, certainly to the greatest extent, to a district of country now possessing, and which has possessed, from the year 1807, all the facilities and advantages of the Circuit Court system, under the immediate eye and superintendence of a Judge of the Supreme Court. Is it not most striking, most extraordinary, that the evils and delays of justice, we are now called upon to redress, grew up, and now exist, under the very system which the present bill seeks to extend to the adjacent States, hitherto living, without this system, in tranquillity and content?

The States of Kentucky, Tennessee, and Ohio, complain the loudest, and with the most cause, of the delays of justice. They now enjoy the Circuit Court system, and have enjoyed it since the year 1807. Ever since that period, they have had the benefit of this panacea, which is to remove all evils. Their neighbors are tranquil and content without the system: still, it is insisted, it must be extended to them also. At what period did the delays of justice, in the seventh circuit, and the train of evils complained of, originate? Have they not gradually increased since the establishment of that circuit, up to the present time? If such be the fact—and it is conceded on all hands—ought it not to be a conclusive argument against the extension of that system? If the participation, given by the act of 1807, instead of extending a train of benefits, has had the opposite effect; and if this effect could be accounted for in no other way; would it not be conclusive against an extension of the system, lest we should thereby introduce into States, now in tranquillity and harmony, the same extent of evils which have grown up under the system in Tennessee, Ohio, and Kentucky? I admit that the system is not entirely chargeable with producing or augmenting the delays of justice; they are attributable, in part, to various other combined causes: 1st, The infirmity of the Judges—a cause of delay inci-

dent to the very nature of the system. 2d, The extent of the country and population. 3d, The multiplicity of business growing out of land controversies. And 4thly, and mainly, to the delays incident to the organization of the State courts, and the character of the legislation of the State of Kentucky. He would ask gentlemen from Kentucky, if their courts had been so organized as to administer justice promptly—if their acts of legislation had been calculated to expedite justice, and not to retard it—would not suitors have prosecuted their rights in the State tribunals rather than in the Federal courts? In Virginia, he had been taught, by experience and observation, that suitors preferred the State to the Federal Courts, where both had jurisdiction. In the courts of that State, the administration of justice is speedy and certain. There is now, although the remark would not have been formerly correct, no legislative interference to retard. The preference is to be accounted for, upon various considerations: the Profession, which, in such matters, always exercises an influence over public opinion, prefer State courts for their own convenience, and from a conviction that, in doing so, they facilitate the interests of their clients. The preference is also attributable to motives of economy in the prosecution of suits, in which the plaintiff was interested as well as the defendant. Extra fees are higher in the Federal Courts than in the State tribunals. There is also greater expedition in the recovery of judgments in the State Courts than in the Federal courts, because of the greater extent of territory over which the Federal Courts have jurisdiction, and the consequent difficulty and uncertainty in getting parties before the Court. The attendance of witnesses is also more difficult and precarious. But it was unnecessary for him to dwell further on the subject, as applicable to Virginia. He appealed to gentlemen from other States whether the remarks did not equally apply to their sections of country. He would even appeal to the gentleman from Massachusetts to sustain him in this position. He stated that he believed he had assigned the main cause why the Kentucky docket was crowded. The delay with which justice is administered in the State Courts of Kentucky—a delay perhaps attributable to the course of legislation of the State—has driven suitors into the Federal Courts. But although this is the case, he sincerely hoped it would be only temporary in its duration; and that, by a speedy return of society to a healthful state, it would be quickly and effectually removed. He hoped and believed the tempest, which had shaken that State to its foundation, would anortly subside, and that the clouds would disperse, and be followed by uninterrupted serenity. But, notwithstanding these convictions, he was disposed to extend to the States of Kentucky, Ohio, and Tennessee, an immediate remedy, adequate to the evils with which they are affected. If the circuit was too large, he would divide it. He was willing to give them an additional Judge, or even two, if required by the ill health of Judge Todd. He would clothe such Judge with all necessary jurisdiction. He would give him the salary of a Supreme Judge, or consent to any other measure necessary to dispense justice. But he protested against increasing the number of Judges on the bench of the Supreme Court.

The gentleman from Pennsylvania has asked, with peculiar emphasis, what is the present state of things in Kentucky? He has drawn, with a masterly hand, a picture of the evils by which that State is afflicted, and insists upon the remedy, as provided by this bill, as the proper remedy. But all these evils have originated since the year 1807: they have arisen under the very system which it is now sought to extend.

We are asked, by the same gentleman, if we would require Judges to perform Herculean tasks, beyond human powers? and he informs us that Judge Todd has sunk under the weight of official duty imposed upon him. For one, he would reply no; he felt no such disposition, and he deeply lamented the effect of the system upon the enlightened Judge alluded to. He would go heart and hand in preventing such results, and in affording the most complete and effectual remedy. But, in doing so, he would use his feeble efforts to save the country from the consequences of a further increase of the number of Judges on the Supreme Court Bench: but especially he would resist the principle of extension, which, if now sanctioned as contended for, will be carried to an extent beyond what any of our imaginations can conjecture. The country West and Northwest of Missouri will, at some future day, be cut up into States. When the Union is thus extended, and our population proportionably increased, what number of Judges will then suffice? When these circumstances occur, instead of ten Judges, following up the principle and policy of the present measure, it would not be extravagant to say, that there will be perhaps thirty Judges on the bench of the Supreme Court. The Chairman of the Judiciary Committee had indeed anticipated this objection, and had said, that, when necessary, the system might be abandoned, and some other substituted. If that gentleman should live to see that day, and should be in the councils of the nation, he would place all confidence in his efforts. But, whenever the time shall arrive, the question will be, Shall the system be extended to meet the exigencies of the country? and will be controlled by the same considerations. If the gentleman from Massachusetts, with all his powers of reasoning, should then present himself in opposition to the measure, he would be met by the same popular argument which is now insisted upon, and be told, "Would you deny to us, who constitute a portion of the Union, standing in the same relation to the Government as every other part, a participation in the Judicial System, long established upon principles hallowed by time?" He would find it impossible to resist the current; it would have gained strength with time and circumstances. Even now, although the gentleman from Massachusetts has expressed his repugnance to an increase of Judges beyond the proposed number, other honorable gentlemen openly advocate the principle, *ad libitum*, as the true one on which the Judicial System should be, not only now, but hereafter, extended.

But to return to the course of remarks he had proposed to himself. The gentleman from Pennsylvania (Mr. BUCHANAN) says, the enactment of this bill is especially necessary in relation to Louisiana. Why is it so? The reply is, because the civil and not the common law is the *lex loci* of that State, and therefore is it necessary that a Circuit Judge should travel thither to return to the discharge of his appellate duties on the Supreme Bench, loaded with the principles of Justinian. Is it necessary to travel into Louisiana, and hold Circuit Courts there, to attain a knowledge of the civil law? The adoption of this conclusion presupposes that the Judges of the Court are not civil lawyers—not versed in the most important elements of the profession. He held, that a Judge of the Supreme Court, to be qualified for his high station, ought to be as familiar with the civil as with the common law. He had been taught to believe, that the common law was not perfectly and scientifically attainable, without a knowledge of the civil law. They are frequently so interwoven that it is necessary to trace principles of common law to the civil, for their thorough elucidation. We certainly have the authority of a Mansfield for the truth of this position. Another answer to the gentleman from Pennsylvania, he suggested. A learned member of the Bar, who represents, with so much talent, a portion of Louisiana on the floor of this House, has employed his great mind, and experience as a jurist, in forming a Code of Law for that State. When this Code shall be perfected, and belong to the Law Library, where will be the

necessity of sending a Judge to Louisiana to become acquainted with the code thus digested and reduced to system? But again, although the civil law is the *lex loci* of the State, we hear no complaint that injustice has been done in the appellate decisions of the Supreme bench, because the Judges are ignorant of civil law. As far as his information extended, he believed that the Judge in Louisiana had gone on harmoniously and satisfactorily, in the fulfilment of his official duties.

Mr. P. said he had thus taken a hasty view of the evils said to exist in the nine Western States. He had professed, and he still professed, his willingness to extend, on any rational plan, as efficient a remedy for the exigencies as could be provided. His objection to the bill grew out of his unqualified hostility to an increase of the number of Judges upon the Supreme Court bench, and especially to the idea of continuing to extend the Circuit Court system, as occasion might require, as a settled policy. If, however, it could be shewn to his satisfaction, that no efficient remedy could be successfully applied, without such increase, he would yield his objections and abandon his opposition to the measure. He would consent to divide the seventh circuit, and appoint as many Judges as necessary; he would command the best talents of the West, and entice the most eminent men upon the bench, by the most ample salaries. In this way the first talents and the highest integrity might be secured. In Tennessee, Kentucky, Ohio, and all the other States, may be found men who would adorn the station—would readily assume the responsibility, and administer the duties of the office. He would appeal to the Judiciary Committee, to know, if the creation of the three new Judges proposed, is essential to the administration of justice in the Supreme Court? Will it be more speedily and effectually administered when the three Judges are attached to the Court, than it is at this time? He would ask that committee whether, if it were not considered necessary to make some provision for the Western States, three additional Judges of the Supreme Court would have been recommended? He presumed not. The unavoidable conclusions, therefore, from the premises, are, 1st, that, for the purposes of the Supreme appellate court, it is not necessary to add a single Judge to the bench of the Supreme Court: 2dly, that the proposed addition is to be made entirely and exclusively to meet the views and wishes of the States West of the Allegheny. These propositions being conceded, and it being evident that, for all the purposes of substantial justice; for the due and faithful administration of law; the additional number of Judges proposed, ought not necessarily to be additional members of the Supreme Court bench—he considered himself warranted in the conclusion, that there really existed no necessity, evident or even persuasive, for the increase of the number of Judges on the bench of the Supreme Court; and that the bill, in its present shape, ought not to pass, providing for such an event. He had no objections to as many Judges as may be needful to satisfy the just and reasonable wants of the West; but let us not touch the organization of the Supreme Court, in any respect, as it now exists. His favorite rule, in all matters of this sort, was, to let good-enough alone. Let us bear in mind a most interesting fact, to which all would yield assent—that, for our national character abroad, as well as at home, we are at least as much indebted to the Supreme Court, as to any other department of the Government. Notwithstanding occasional murmurs have been heard, some of them occasionally from his native State, against its decisions, it has satisfied the People, and justly attracted and commanded the admiration of foreign nations. Its decisions will challenge a comparison with any court in the civilized world. Judges have adorned its bench who will not suffer in reputation when placed by the side of a Mansfield or a Kenyon. Let us not touch this important and valuable branch of the Government, unless we are called on by considerations imperiously demanded by the happiness and security of the country, which cannot be conscientiously resisted. He demanded of the friends of this bill, if such an occasion existed, to shew it by argument.

Mr. P. said, before he proceeded to consider the second question presented by the bill, he felt bound to advert to several incidental questions, not involved necessarily in the discussion. His first reference should be to what honorable gentlemen had called the political character of the Court, as connected with its organization. He regretted that such an appellation should have been applied to the Supreme Court, or any other judicial tribunal of this country. The presiding Genius of Justice is represented blind. Judges should have no political opinions or sectional feelings. Like the emblem they represent, they ought to be blind to the party or sectional policy or views of the Government under which they administer the laws. They should not only be free from political character, but also free from the influence of neighborhood associations on their feelings. It is a common law and a civil law principle also, that Judges and Governors ought not to be appointed to administer laws, or to preside over the administration of the law, in the place of their nativity. This truth is impressed upon the recollection of the profession by the horn-book of the science. It would be to every genuine lover of his country, a startling reflection, that the Courts of our country were to be influenced by political or sectional feelings. A greater curse could not be inflicted upon our country by a benign Providence.

It has been said that the organization of the Supreme Court ought be regulated with reference to their power to settle constitutional questions. It may be, said Mr. P., that I do not correctly comprehend the argument. Can this Court settle constitutional questions in the abstract? Can it settle questions of this description, so as to bind us in our Legislative character? He denied the position. Can they settle such questions so as to bind the Executive branch of the Government? For one, he was ready to say that he yielded his conscience to no earthly tribunal. However much he respected the Supreme Court, and the wisdom of its adjudications on constitutional questions, still, if he differed with them, he should follow the dictates of his conscience. As to the Executive Department of the Government, we have had practical testimony that the Executive does not consider itself bound by its decisions. The various adjudications on questions involving the contitutionality of the Bank of the United States, had been made by the Supreme Court: it was considered by many that the question was at rest; but it was afterwards ascertained that the then President did not hold himself bound by such decisions.

One other remark: Is not the present time unpropitious for the extension of the present system, upon the avowed policy? Ought it to be resorted to if it is possible to avoid it; especially as the principle of extension is avowed to be the policy of a permanent system as to the whole Union. Strong jealousies already exist in relation to the powers of the Federal Government: and although he explicitly disclaimed belonging to that class of politicians entertaining these jealousies—believing as he did that, while the General Government moved on as it now did, there could be no danger—yet, he could discern the point which marked the limit, and beyond which all is fearful. The Supreme Court, augmented and extended upon the avowed principle of permanent policy, would be an overshadowing tribunal. It would fling into the shade the State Courts. Its numerous Judges, mingling with the People of the various sections of the Union, and exercising the influence of power and official station, might, and would excite unfortunate jealousies. The fear then, is, lest it should become, under such circumstances, a political court, whose feelings would belong to the Government. Say what we may

upon the subject of judicial integrity, such is human nature—such is the inevitable tendency of our dispositions—we will have predilections for that power from which we derive office and authority.

It was said by the gentleman from Pennsylvania, (Mr. BUCHANAN) that this is only an extension of the original policy of the Judicial system of the United States. On that point, the gentleman and myself are at issue. He said it was never contemplated by the framers of the Constitution, that the Judges of the Supreme Court should be employed upon circuit duties. This was demonstrable from the provisions of the Constitution itself. It would be an evident infringement of the Constitution, to require the Supreme Judges to perform circuit duties. They are thus employed by their own consent. They are not bound to exercise any jurisdiction beyond the jurisdiction specially and distinctly assigned them, and which is required of them by the Constitution. This position is demonstrable from the provisions in the instrument—connecting the 1st and 2d sections of the third article, and giving a fair and candid exposition to the powers granted, and the restrictions imposed upon the grant. By assuming the exercise of these circuit duties, they exercise a jurisdiction which was not contemplated by the framers of the Constitution, as properly and necessarily assignable to them. It is not my purpose to investigate the constitutionality of the law imposing those duties upon them. They have voluntarily assumed and exercised them. It is sufficient for my purpose to shew that this was not the constitutional policy in regard to the Supreme Court. He traced the history of the legislation of the Government upon this subject—the original law organizing the Federal courts. There is no evidence to be derived from that source, shewing that the union of circuit and appellate duties in the Supreme Court, was contemplated as the permanent policy of the country; the very reverse is inferrible from the law itself. The framers of that law did not extend the system to all parts of the Union at that day. They created two District Courts—one in Kentucky, the other in Maine; not extending to them the benefits of the circuit system—thus distinctly intimating that the circuit system was not the fixed policy equally due to all the sections of the Union. At the original organization of the judicial system by Congress, they had many difficulties to encounter. Promptitude in the administration of justice, and economy in the manner, were matters of equal moment. The Treasury was comparatively empty—national character depended greatly upon the judicial character of the Government. The attention of the statesmen and patriots of that day was directed to the attainment of both objects—the efficient administration of justice, and the economy of the means to be employed to effect the object. Looking to the face and extent of territory and population, the probable quantity of business for the Courts, and the state of the Treasury, they fixed, in reference to these objects, upon the Circuit Court system, as best. To come down to a later period, the act of 1801 passed, introducing a new policy. This act, as far as he had been able to derive information from the history of the day, was not resisted in its progress on the principle that it was a departure from the fixed policy of the country. He would say that, if such an argument was advanced by any Member of Congress at that day, he had not been able to discern the fact. It was resisted, manfully resisted, upon other grounds, and every inch of ground was fought. This law was repealed in 1802—he believed rightfully repealed, because the law of 1801 was unnecessary for the exigencies of the country. Certainly the passage of the law of 1801 affords no aid to the argument, that the extension of the circuit system was considered a fixed policy of the country. In reference to the law of 1802, repealing that of 1801, he would ask if that repeal was the result of an anxious desire to reinstate the policy? There are gentlemen on this floor who could assign the true reason of the passage of the law of 1802. History furnishes the reasons of the repeal of the law of 1801. He would not trespass on the committee in detailing historical facts with which they are as familiar as himself. All he would now say upon the subject was, that, had he been a member of Congress at the time, viewing the subject as he now did, and differing as he did with his friend from Virginia, upon this particular branch of the subject—and he would say, differing with him in doubt of the correctness of his own opinion—he would not have supported the law of 1801 at that particular time. He found nothing in his review of that period that sustained the gentleman from Pennsylvania, and to justify the opinion he had advanced that the union of appellate and circuit duties in the Judges of the Supreme Court was considered a part of the fixed policy of the country. When we are referred to the law of 1807, he would ask whether it was a fair inference from the passage of that law, that this policy was to be entailed upon the country to all time? The extension of the system to the seventh circuit was clearly regarded only in the light of an experiment of the system. It was then, he considered, a hasty experiment, that had resulted in disappointment, and ought to operate as a caution in making such experiments. He was old fashioned in his notions in politics. He was in favor of no new principles, especially as it regarded the Judiciary, or the extension of old principles, unless imperiously demanded by the exigencies of the times. He was so anxious that the Western States should be fully satisfied upon this subject, that he would go thus far—he would appoint the three additional Judges, called Judges of the Supreme Court, but providing that the supreme appellate court should never consist of more than seven members—to consist now of the seven oldest Judges, and as they were removed by death or resignation, their places to be supplied by the three junior Judges in rotation. Thus far he would go, and no farther, unless it was demonstrated to him, that, without the adoption of the bill under consideration, in the form now before the committee, a large portion of the population of the United States would be excluded from the pale of justice. It had been urged that there ought to be uniformity in the Judicial system; and to preserve this uniformity, this bill ought to be passed. Uniformity in the system—*Cui bono?* He confessed himself at a loss to understand the talismanic influence and importance of this idea of uniformity. If the laws and justice be effectually and speedily administered, are not all the necessary ends answered?

Has there ever, since the establishment of this Government, been a uniformity in the organization of the Courts of the United States? Certainly not. Still we have done well, and there is a most efficient administration of law. England, whose judicial system has been the admiration of the world, so far as substantial justice between man and man is concerned, sustains no inconvenience from a want of this uniformity of judicial organization. The diversity in the judicial system of that country is remarkable, if we include the Courts of Wales, Scotland, and Ireland. Cannot justice be effectually and speedily administered if we leave the system upon its present basis, providing adequate courts for the West, with a final resort to the Supreme Court? I think it can. Will gentlemen shew to me why it cannot? Uniformity may be matter of pride, of feeling; but it can have no concern with the substantial interest and happiness of the country. It is true, the honorable Chairman of the Committee has not advanced or intimated an opinion furnishing ground to conclude that the idea of judicial representation furnished a motive to the scheme of the bill they have reported. But other honorable gentlemen, in support of it, have distinctly advanced the proposition, that it is a valuable and desirable feature in it. He confessed, the idea of judicial representation was not only new to him, but was beyond the reach of his humble comprehension. He could not comprehend how a court

could be a representative body. The Constitution has fixed no standard for this representation: his mind could conceive no rightful rule. He would simply ask, upon the ordinary principles of representation, would New York be content to be represented on the Supreme Court bench by one Judge; and would the advocates of this representative system give to Delaware and Rhode Island an equal privilege? This cannot be the principle of judicial representation referred to by its advocates. The principle he presumed to be, to bring to the Supreme bench, through the medium of a Circuit Judge, a knowledge of the *lex loci* of all the respective States to whom they respectively administered justice. To perfect this plan, it would be necessary to have one Judge from each of the twenty-four States. Is this the plan contended for by the advocates of this bill? If it is, will the Judiciary Committee go with them? I must have an imperfect idea of the views of that committee if they are prepared for such a scheme.

He contended that the Judges of the Supreme Court have it in their power to acquire a knowledge of the law, and the end and policy of the law, of the several States, without the Circuit Court intercourse, as effectually as with it. They already possess this knowledge. If, indeed, there were any unwritten law of the States, which could not be acquired without personal observation, there would be some reason for the adoption of this principle. But Judges, and Lawyers, and Jurists, obtain elementary knowledge in the closet. They can, in truth, acquire it no where else. It is true, they can become most speedily and effectually acquainted with all the information, in relation to State Courts and State Laws, which may enable them to exercise the appellate power beneficially and ably. The duty, imposed on the Judges of the Supreme Court, of travelling from court to court, is calculated to do injury, as it interrupts and destroys this closet application. He would detain the committee by a single illustration. Has not the gentleman from Massachusetts been employed to argue a cause before the Supreme Court, depending upon a statutory law of some remote quarter of the Union? Did he find those insuperable difficulties, which have been alluded to, in understanding the law which it was his duty to expound to the Court? I presume not. The gentleman from Pennsylvania has not succeeded in eluding the force of the argument of the gentleman from Virginia, as to the inefficiency of numerous appellate courts, by his reference to the New York Senate and the House of Lords, as appellate tribunals.

From his knowledge of history, he understood that, in its judicial capacity, the House of Lords was considered a blemish on British jurisprudence. Its judicial character belonged to the structure of the Government, and could not be separated from it. It was the Baronial judicial power, by regular succession, that had descended upon the House of Lords, by the force of circumstances. In our courts, the opinions of a Mansfield and a Kenyon would have more weight than the opinion of Lords and Commons, upon a question of law. As to the adjudications of the Senate of New York, sitting as a Court of Errors, he could affirm that, in all the courts with which he was acquainted, the single opinion of Chancellor Kent would be received as better authority. Again, he was opposed to increasing the number of the Supreme Judges, because of its tendency to lessen judicial responsibility. The gentleman from Pennsylvania had laid down, as to this matter, a sound principle, when he asserted that the individual members should be held responsible for the opinion of the court. If you have ten Judges, or a greater number, you may never expect to have their opinions seriatim on any subject. Even in the present organization of the Supreme Court, he understood it to be the practice to portion off the business, giving this cause to a certain number of Judges, and that cause to another number. Thus, the principle, is weakened even now, and if you increase the number, you only extend the evil.

Another objection, in his mind, arose out of the effect of this increase of Judges in lessening the motive, in the appointing power, in selecting the very best men for such high and responsible offices. It was reasonable to expect that the appointing power would be more careful and select, if the Court consisted of five Judges, than if it consisted of ten. Knowing that there now are so many members on the bench, of great learning and experience, his anxiety and solicitude as to the competency of the new Judges would not be so great as though the number was less, and each Judge held responsible for his opinion.

Mr. P. said, he had only, in conclusion, to state, that he had thrown out these remarks, in the hope that some gentleman of more competency and experience, would, at a proper time, move to recommit the bill, in order that it might be so modified, that the end proposed might be attained without the connection of the appellate Court system being disturbed in its present situation. He professed his obligations to the Committee, for the very great patience with which they had heard his remarks, and begged to conclude with a declaration that, what he had urged on the subject proceeded from the honest convictions of his own mind, guided by the best lights which he could obtain.

Mr. CLARKE said, he would ask the attention of the Committee to a few remarks in reply to some of the arguments which had been adduced by the opponents of the bill, and would endeavor briefly to present the reasons which would induce him to vote in its support. He hoped to be able, in the few words with which he might trouble the Committee, to avoid that angry and vindictive manner which had distinguished the speeches of some of the opponents of the bill. For himself, he had no personal feelings to gratify; he was far from participating in the angry controversy which had been represented by some gentlemen as existing between Kentucky and some other portions of the Union. Could he even participate in those feelings, and so far forget the respect due to a body occupied in the solemn duty of legislating for the interests of the Union, as to indulge them on the present occasion, he was conscious that such indulgence would be very unbecoming, because a subject of such controversy, if any did exist, was not now before the committee.

The gentlemen who had spoken in opposition to the bill, had rested their arguments chiefly on two points: in the first place, they deny the existence of any present necessity for the re-organization of the Supreme Court; and, in the second place, they contend that if any such necessity does exist, the system proposed by the Judiciary Committee in the present bill is not the proper system. He would endeavor to pursue this general order of debate in what he might now say in reply.

In the first place, then, the gentlemen would have us to believe that there does not exist any such necessity as is alleged, for extending the benefits of the present judiciary system to the States West and Southwest of the mountains, because the amount of Federal Court business in those States is not such as to warrant any new arrangement. The gentleman from Virginia who last addressed the Committee, and who has just taken his seat, denies that any complaints exist as to the delays of justice in the United States' courts in any of the Western States, save in Kentucky, in Tennessee, and, perhaps, some in Ohio. Let us examine this statement for a moment; let us see if such be indeed the state of the case: for, Mr. Chairman, I feel persuaded that if the true state of facts in relation to this matter can once be fairly set before this committee, and satisfactorily established, nothing more will be required to secure its ready support of the bill. For, sir, I am yet to learn (the arguments of the two gentlemen from Virginia, notwithstanding,) that the Congress of the United States is prepared to say, we will give one system of judicial administration to one portion of the Union, but another system to another portion. That which we have long en-

joyed ourselves, and which we believe from experience to be the best and the perfect system, we will not extend to the States that ask it. I am yet to learn, that, to hold such language, would be consistent with either the dignity or the justice of this body. I shall, therefore, take it for granted, that the great point will be gained in relation to this measure, when its advocates shall have convinced this Committee that it is necessary and indispensable to an equal administration of justice to the People of this Union.

The gentlemen have come forward, and, as I think, gratuitously assigned the causes which have produced the alleged increase of business in the Federal Courts of the West. They have told us of causes which I aver to be utterly unfounded, and which have at least the appearance of being conjured up entirely by the hostility with which the gentlemen regard the measure contemplated by this bill. I was going to say, that their disinclination to give to the Western States a few judicial appointments, had conjured up the picture which they have held up to this Committee. The gentleman from Virginia, who first addressed the Committee, has informed us that the crowd of causes on the docket in Kentucky arises from the disordered State of her own judicial tribunals, and what he was pleased to denominate "the relief system." But what, sir, is the fact? We were told by the honorable Chairman of the Judiciary Committee (and when that gentleman had concluded his clear, able, and luminous argument, it appeared to me that it was impossible but that he must have carried conviction to the mind of every candid inquirer after truth, that there are now two thousand causes on the docket of that Court. Look round, and tell me where else such a docket exists. Where, sir, in what direction, is any thing to equal or to compare with it to be found? Shall I look to Virginia, sir, with all the wisdom of her laws, and all the purity which the gentleman told us, with an air of so much triumph, marks their administration, (insomuch as, when compared to it, all other States are nothing but rottenness and corruption?) Those gentlemen told us that their Judges are quite able to despatch the causes on their docket at each term; and seem to exult in the contrast afforded by our state of things. We are told they need no change; they are quite satisfied. No doubt, sir; but why? They have two Judges of the Supreme Court resident in their own State, and continually performing circuit duties in that and the adjacent States. Those Judges are intimately acquainted with the local laws of Virginia, and they administer justice to her citizens according to the laws under which the rights in controversy accrued. It was not needful, then, for the gentleman to tell us how many causes are tried in Virginia. But one of the gentlemen told the Committee that these two thousand causes had accumulated in Kentucky in consequence of a desire in the citizens of that State to have their causes tried in the Federal Courts; and he informs us further, that it is a practice in Kentucky to transfer their causes to strangers, with the express purpose of bringing them within the jurisdiction of these courts. Sir, I do not pretend to know the sources from which that gentleman has derived his information; certain it is, that I never till this moment heard of the existence of any such practice. I therefore repeat, that this statement was wholly gratuitous on the part of that gentleman; and, as it is not pretended to be derived from his own personal knowledge, I do not think it entitled to any great consideration. He says, that a desire to avoid the relief laws in Kentucky has operated in a considerable degree to throw this mass of causes into the United States' Courts. Sir, I will only ask, from the very nature and construction of our judicial system, how can this be possible? The two systems of State and Federal Courts are as well defined, and as entirely distinct in Kentucky, as the Legislative and Executive Departments in the General Government; so that, if even the desire did exist, its gratification could not be realised.

In relation to the State of Kentucky, (I speak first of it, because I am best acquainted with that State, and because the gentlemen from Virginia seem to have directed their peculiar displeasure against Kentucky,) I heard with much pain and regret, an allusion made to a difference which once existed between the States of Virginia and Kentucky, and which was decided by the Supreme Court of the United States against Kentucky and in favor of Virginia. I thought this matter had been decided and was now at rest. Yet it seems the gentleman from Virginia, who first addressed us, has conjured up a thousand horrors before his imagination, and apprehends, if the present extension shall be given to the U. S. Court, his own State will be overwhelmed in inevitable ruin. The gentleman alludes to the occupying claimant law; but, sir, there is a tale connected with that law, which I feel assured the gentleman has no wish should be brought before the notice of the Committee, and the Committee, I have no doubt, are equally indisposed to listen to a detail of quarrels which have heretofore existed between Kentucky and Virginia; and which we did once hope would have been settled in an amicable manner.

Mr. C. said it would have been so settled, but for Virginia; she declined carrying into execution an arrangement entered into by her Commissioner for the adjustment of the difference between the States. By the compact of separation between these States, it was agreed, if any complaint or dispute should thereafter arise between the States, concerning the meaning or execution of the compact of separation, the same should be determined by six Commissioners, of whom two were to be chosen by each of the parties, and the remainder by the Commissioner so first appointed. Virginia sent her agent to Kentucky, who proposed submitting the matters in difference between these States to a neutral tribunal, to be mutually chosen. The proposition was acceded to by Kentucky, and Commissioners on her part were chosen; the place of meeting was this District. The validity of the occupant laws, and the legality of a claim set up by Virginia, for some two or three millions of acres of land in Kentucky, were the subjects to be settled. Confident that Virginia would, without hesitation, carry into execution what her authorized agent had agreed to, the Commissioner chosen by Kentucky attended at this place, ready to proceed in the business. But Virginia, her Legislature being then in session, changed her determination, and rejected the commission. She preferred having the validity of the occupant laws to be settled by an adjudication of the Supreme Court; that Court, at a previous term, having intimated an opinion hostile to the constitutionality of those laws. With this intimation, and two of the Judges from the State of Virginia, she might with safety wait with folded arms the result of the trial. It eventuated, as had been expected, unfavorably to the occupant, and there it should have rested, so far as relates to the merits of this bill. If Kentucky, then, has been clamorous, as the last gentleman from Virginia, (Mr. POWELL) has said, for more judges on the bench, and that clamor has arisen from interested motives, he would be glad to know if the opposition manifested by that gentleman and his colleague to such increase, was entirely disinterested. Another subject of dispute existed between these States. Virginia set up a claim for about three millions of acres of land in Kentucky; but he could assure the gentlemen from that State, that the advocates from the West for this bill, were uninfluenced by any considerations connected with that subject. They could not be, because this claim excited no other sensation in the minds of persons acquainted with its merits, than that of derision.

The gentleman from Virginia, who had last addressed himself to the Committee, had made a remark, and, he hoped, that the expression he had made use of, had been used in the ardor of debate, without his having weighed

fully the import and meaning of his words. He had demanded of some member from Kentucky, to state if this statement was not correct. The gentleman asked if the State Courts of Kentucky were organized so as to command that respect which the other State Courts commanded; whether that would not annihilate, in a great measure, the business which exists in the Federal Court of that State.

[Mr. POWELL rose to explain. If the gentleman from Kentucky supposed he meant to cast any imputation on the character of the Judges of that Court, or on their particular organization, he had misconceived him; he only alluded to the delay of justice which was experienced—it was impossible he could intend any thing disrespectful towards them, for he did not know one of them.]

Mr. CLARKE resumed. He was pleased that the gentleman had thought proper to make this explanation, because it was with pain he had observed the tone of feeling towards the Western States, which had been brought forward in this discussion. He had but one more remark to make in answer to the gentleman who had put the question, without noticing the terms in which it was couched. The organization of the courts to which he alluded, is precisely similar to that of the Courts of the State of Virginia. Then as the gentleman expresses his ignorance of the ability of their Judges to transact the business which comes into their Courts, and as those Courts were organized in a similar manner to those of Virginia, he hoped the gentleman would be satisfied that this increase of business in the Federal Court did not originate from the peculiar organization of their State Courts; and, he understood the gentleman did not mean to assert that it arose from corruption in them.

Mr. C. said, on the subject of the quantity of business to be done in these Courts, he had one remark to offer. Since this discussion had come before the Committee, he had received a letter in answer to one he had written to the Judge of the Federal Court of Kentucky, requesting him to forward a certified statement of the number of appearances to each term, the quantity of business transacted, and the number of causes on the docket. By the number of appearances, Mr. C. said, he meant the number of suits brought to each term of that Court. The Judge had received his letter at some distance from the place where the Court was held, and had it not in his power to procure a certified statement, to be forwarded in sufficient time to be used during the present discussion; but, as the quantity of business had not, for the last four years, diminished on the docket, and as, within the last three years, they had tried and decided more than two thousand causes, he inferred, without stating it as a positive fact, that the regular number of suits brought, was between six and seven hundred annually. He would ask, if the same amount of business was to be found in the courts of any three States East of the Allegheny Mountains? Indeed, he very much doubted if that number of suits was annually brought into the Circuit Courts of all the States East of the Mountains.

And who, Mr. C. asked, were to dispose of these causes? The Circuit Judge is required to hold two Circuit Courts annually in the State of Tennessee, two in Kentucky, and two in Ohio, and besides that, to attend as a member of the Supreme Court in this city, one in every year.

Gentlemen had expressed themselves as not being satisfied that the business of these States required an increased number of Judges. How were they to be satisfied? Had it come to this, that an honorable Representative from a State was not to be believed, when he stated in debate, facts which came within his own knowledge? He had supposed that nothing more would have been required so satisfy this committee of the present, and probable future state of the dockets in the Courts of the West and Southwestern States, than the statement of the Representatives of these States. If gentlemen will not give credit to what has been said upon this subject by the Representatives of the State of Tennessee, nor yield belief to the memorial of the bar of that State; if the opinion of the Senators is to have no influence, he could not tell how gentlemen were to be satisfied.

In West Tennessee, the number of causes, Mr. C. said, amounted to one hundred and sixty. The Chairman of the Judiciary Committee had supposed, in his remarks upon this bill, that, in East Tennessee, the number was full as great; and, if correct in this supposition, the number would be three hundred and twenty now on the docket. He had been assured, by the Representative from Illinois, (who, it seemed, "was from the North of Tweed," whose well known character for integrity and truth, placed any statement, coming from him, above suspicion, that from forty to fifty causes were annually brought in the Federal Court of that State. He had been informed, by a Representative from the State of Ohio, that there were from two hundred and fifty to three hundred causes now pending on the Federal docket of that State. Mr. C. said, he had also been informed, by the honorable member from Missouri, that there were causes depending in the Federal Court of that State, but, as it was a subject that did not attract his attetion particularly, before he left home, he could not distinctly state the number. We are also informed, there are many causes pending in the State of Indiana. Was not this sufficient to satisfy a mind uninfluenced by prejudice, and anxious in the pursuit of truth, that there ought to be an increased number of Judges, to meet the increased business of these States?

There were, then, Mr. C. said, two thousand causes in Kentucky; three hundred and twenty in Tennessee; three hundred in Ohio; from forty to fifty in Illinois; many in Indiana, Missouri, Alabama, Mississippi, and Louisiana; and yet, gentlemen assert, that, for a fair and impartial trial of these causes, an extension of the judicial system of the United States was not needful.

He said, it might seem strange, to persons unacquainted with the peculiar nature of the land titles in those States, how it could possibly be, that so much litigation could exist in their courts: he admitted that, upon the first impression, it did appear somewhat extraordinary; yet a moment's reflection on the character of the land titles in those States, would remove all doubt and difficulty from the minds of gentlemen who think it impossible that business can exist to an extent sufficient to employ additional Federal tribunals.

Mr. C. said, gentlemen were mistaken, when they supposed that the land titles of the new States were altogether founded on the laws of Congress. They ought to recollect, that a time existed, when a portion of the Territory now composing these States, was not under the control of Congress. Gentlemen will at once perceive, by a reference to the history of those States, that much of the valuable lands in the States of Indiana and Illinois, are claimed, and occupied in virtue of French and English grants; commissioners, deriving their powers under Congressional legislation, at a subsequent period, pernicious appropriations of parts of their lands to other persons, who were, perhaps, ignorant of the former grants. Whether our Government had the right to make these appropriations, interfering with antecedent claims, is a question which has not undergone judicial scrutiny, and must be settled hereafter, by the Federal Courts.

The character of the land claims in Missouri, Mr. C. presumed, was well known to the committee: the citizens of that State had their Spanish and French grants; and among other claims, derived from the laws of Congress, there were grants of a particular description, growing out of a law, passed some eight or ten years since, which might be denominated the earthquake law, under which large portions of that State had been appropriated, and which would be a fruitful source of litigation.

There are, also, large Spanish grants, which have not yet been recognized as valid, and can be settled only by the Judiciary. As to the subjects which might, and in all probability would, require Federal adjudications in the Southwestern States, he was not sufficiently informed, and referred the committee to the gentlemen representing those States.

Mr. C. hoped he had shewn, in a satisfactory manner, to the committee, that there was business in the West and Southwestern States, to justify an extension of the present judicial system, so as to give to these States the same measure of justice which had been meted to the other portions of the Union. But, before he proceeded to the other division of the subject, he would remind gentlemen of a remark which had fell from the honorable chairman of the Judiciary Committee. That, of the seven circuits now existing, six of them were East of the Alleghany mountain. This fact needed no comment; it ought to satisfy every candid mind of the inequality of the present organization of the judicial system, and especially so, when it is remembered, that six of the States are entirely deprived of a Circuit Court: indeed, it seemed to Mr. C. it was only to be informed of these facts, to put opposition to shame. Can it be, asked Mr. C. that a body as enlightened as the Congress of the United States, divested of all sectional views and interests, uninfluenced by any motive save that of public good, and legislating for the whole, could so far forget what was due to themselves and to the nation, as to draw invidious and disparaging distinctions between the States in the judicial administration of the Federal Government? He was certain no gentleman would be found willing to avow a determination to administer one measure of justice in one State, and a different measure in another State. No one will consent to deprive a citizen of the United States of the right of trial, or say to him, "as you are from beyond the 'frontier of the State of Virginia,' your right shall be settled by an inferior tribunal, when the rights of your fellow citizens in the Atlantic States shall be tried in the superior tribunals!" Although no one will avow these sentiments, and he trusted no one felt them; yet, if this bill is rejected, looking to the effect, is not the injury the same to the citizen, whatever may be the motive for its rejection?

Mr. C. said, as it was apparent that something was to be done to render the administration of justice equal in all the States, the question presented itself, how is this to be effected? And upon this branch of the argument, but little was left for him to say, after the able view with which the committee had been favored by the gentlemen from Massachusetts, from Tennessee, South Carolina, Pennsylvania, Maryland, and from North Carolina, who addressed the committee but the evening before.

The gentlemen from Virginia have suggested the propriety of giving to the West and Southwestern States, Circuit Courts, with Judges a little inferior in grade to what they have themselves, and their benevolence inclines them to the opinion, that these States ought to be satisfied. Why satisfied? asked Mr. C. Is it because they will be thereby placed upon an equal footing with the Atlantic States? or do they suppose these States will so far acknowledge their inferiority, as to be satisfied with a judicial system so palpably inferior, in every point of view, to that which prevails in the other States? If, sir, the system is to be altered at all, make it equal: let it be so arranged that the new Judges shall compose a part of the Supreme Court, and thereby bring upon the bench something like an accurate knowledge of the legal code of the State, by which the rights of the parties are to be decided.

The honorable gentleman from Virginia, who moved the proposition to strike out the first section of the bill, seemed struck with horror at the idea, that three new Judges were to come from the West and Southwest; and having passed a high compliment on the wisdom and judicial purity of the present Judges of the Supreme Court, emphatically asked, "if the committee would be willing to taint the purity of the bench, by the introduction of three new Judges from the West?"

Mr. C. said, he scarcely knew in what language to answer the question: he would, however, say, that, in his humble opinion, the sum of wisdom and virtue, in the States referred to, was at least equal to *that* in the quarter from which this *liberal* sentiment proceeded.

Mr. C. expressed his fears that he was fatiguing the committee, as he was sensible he was discussing the question in a very desultory manner. He wished, however, to repel a charge which had been made, as well against the Judiciary Committee, as against the friends of this bill. It had been repeatedly stated in debate, by the opponents of the bill, that the principal object for its introduction was to give to the West and Southwestern States, a representation on the bench of the Supreme Court; and they have connected with the term representation, the idea, that the friends of the bill wish to elevate to the bench, men, whose feelings and whose interests are at war with the great Constitutional rights of the People of this country.

This assertion is entirely gratuitous; it has its origin only in the distempered imagination of gentlemen: they have originated the suggestion, and taken great pains in shewing its absurdity. Has any friend to this bill made an allusion as to a representation on the bench of the Supreme Court? None, sir.

Mr. C. said, that, notwithstanding the odium which gentlemen were disposed to attach to the term representation, he desired a representation, in one sense of the word; not, however, as had been supposed, of the low and vulgar feelings of our nature, but a representation of the wisdom, virtue, and talent, of the country, and an accurate knowledge of the Federal and State institutions: in this sense of the term, and in no other, did he desire representation on the bench.

Mr. C. said, the gentlemen from Virginia, and North Carolina (Mr. MANGUM) had discussed the question as if this bill had proposed a radical alteration in the judicial system of the United States. He did not so consider it. It was only an extension of the present system, so as to adapt it to the present wants of the country: he was opposed to any radical change of the Court; and, whatever gentlemen may think of the political appearances of some politicians from the West, he was not one who, for slight causes, would run a *tilt* against the Supreme bench: nor had he any disposition to commence an unholy crusade against Federal or State Judges. He did not, however, deem it necessary to be burning incense continually under the nose of any Judge; it was sufficient that he would support them when right, and condemn when, in his opinion, condemnation was deserved.

The bill, as reported, extends the circuit system to every State in the Union, and will, as was properly remarked by the Chairman of the Judiciary Committee, answer all the purposes of the Government for thirty years to come. Indeed, he thought the honorable Chairman was short of the length of the time: for, as new States are admitted into the Union, it will only be necessary to attach them to some of the existing circuits. Gentlemen have said, if something is to be done, nothing more is needed than to relieve the Judges of the Supreme from Circuit Court duties; that is, they ought to have appellate jurisdiction only.

Mr. C. without pretending that his opinion upon that subject was entitled to much, if any, weight, as he had but little experience, thought, from the best consideration he had been able to give the question, the present system the best. He thought the Committee should hesitate long, and that nothing but the most weighty considerations

should induce it to adopt a change so radical in our Judiciary, as to relieve the Judges from Circuit Court duties. The system, as it now stands, has stood the test of near twenty five years of experience; during which time little or no complaint has been heard against its organization: occasionally, to be sure, murmurs have been heard from some of the Judges, that too much labor was required of them. The present system was, in his opinion, better calculated than any other, to bring on the bench of the Supreme Court accurate and intimate knowledge of the local codes and customs of the several States by which the rights of suitors were to be determined. It was more eminently calculated to inspire confidence in the purity and wisdom of the decisions of the Court, than any system which had yet been devised. We should, said Mr. C. furthermore reflect, that the Supreme Court is the peaceful tribunal that settles, in the last resort, the great Constitutional questions of the Federal and State Governments. The deliberate enactments of this body may be held at naught by the dictum of that Court. It is of the first importance, that the People should have confidence as well in the wisdom as the purity of a tribunal upon which devolves such important duties; the Court then ought to be strengthened from the wisdom and intelligence of all parts of the Union; this will be more effectually accomplished by requiring the Judges to do Circuit Court duties, than by releasing them from the discharge of those duties. In settling the great and vital principles of the Federal and State Constitutions, in which every individual of this nation is interested, the Court ought to be sustained by numbers, and selected from different parts of the Union. He believed, if the Court was permitted to remain as at present organized, and it continued to manifest the same disregard which it had heretofore done to the State authorities, this Union would be shaken to its centre, and he feared that day was not very distant.

The gentlemen prefer diminishing the numbers to increasing them, and think the number five about right, and would require that number to do appellate duties only. He asked if the committee was prepared to confide the constitutional rights and the happiness of the People of this country to the *fiat* of five Judges resident about the City of Washington, perhaps superannuated, and obedient to the will and pleasure of some future ambitious President, or the dominant party in Congress? He, for one, would not consent to such a proposition; and, without being prophetically gifted, he would say, whenever this nation shall so far forget what is due to its security, as to commit such important responsibilities to the hands of five men, resident about this District, the momentous crisis of separation will not be distant. He was astonished to hear the proposition for reducing the number of the Judges upon the Supreme bench, come from Virginia: for, it would be recollected that that State was, on one occasion, so convulsed by the decision of a cause in the Supreme Court, that her Court of Appeals not only refused to carry into effect the mandate of the Supreme Court, but, he believed, refused to let it be entered of record.

Yes, sir, said Mr. C. the highest judicial tribunal in the State of Virginia presents the novel spectacle of refusing to obey the mandate of a constitutional supervising court, and of publishing to the world an elaborate argument, justifying itself in its disobedience. The case to which he alluded, he believed, was the case of Hunter and Fairfax. This, to be sure, may not excite any astonishment in the minds of the gentlemen from Virginia, although they may loathe and sicken at a little disorder in the State of Kentucky. Mark the difference! Virginia defies the power of the Supreme Court of the United States, because it is displeased with its decision: Kentucky permits hundreds of its citizens to be driven from their ancient possessions, and from fields which had been rendered dear to them, without being compensated one cent for the money and labor they had employed in its amelioration. He hoped that the gentlemen from Virginia would draw no more disparaging comparisons between the two States.

Mr. C. said, he was sensible he had discussed the question before the committee in a crude and imperfect manner, and would trouble them no further.

On motion of Mr. COOK, the committee then rose, and having obtained leave to sit again,

The House adjourned to Monday.

MONDAY, JANUARY 16, 1826.

The House resumed the unfinished business of Friday; and, on motion of Mr. WEBSTER, went into Committee of the Whole, Mr. TOMLINSON in the Chair, on the bill "further to amend the Judiciary System of the United States."

Mr. COOK said, when the Committee rose on his motion, he felt much more disposed to address it than now—his state of health being much better than at present. He should make no apology, however, on that score, nor any other for addressing the Committee, except that which grew out of the fact of his representing a portion of the Union to which the provisions of the present Judicial System of the United States did not extend. And this circumstance, he hoped, would not be considered less satisfactory in pleading his apology for troubling the Committee, than he considered it imperative, in requiring him to support the passage of the bill.

The motion, said Mr. C. now pending is, to strike out the first section of the bill, which, in its nature, as well as from the remarks which have been made in support of it, involve the principles on which the Judicial System of the country should be established. Before he proceeded, however, to examine those principles, and particularly as that point had been questioned, he would undertake to show, by additional reasons to those that had already been advanced, the propriety, and even necessity, of doing something on the subject.

The interior situation of the West, and its dependence in all matters of commerce, on persons engaged in that business in other States, and particularly for articles of foreign production, so long as credit shall enter into commercial transactions, would render the collection of debts, by distant creditors, a constant and increasing source of Federal jurisdiction. The Western States have no ports of entry—no importing merchants—and he knew of nothing that could be done, either by the General Government or the States, that could change their situation. Some years ago, a skilful calculation had been made of the amount then due by the People of the West, to non-resident creditors, principally growing out of its commercial relations with other portions of the Union; and, if he were not mistaken, the estimated amount was between six and seven millions of dollars. This, he said, had given rise to much of the litigation that had, for some time past, and which even yet continued to harass the People of the West; and, from the very nature of things, as the West should increase in population and wealth, the source of litigation must increase also.

But, in relation to the sources of litigation, in regard to real property, there was a peculiarity in the situation of seven of the Western States, which distinguished them from all the other States of the Union. In these seven States, there was not a foot of land, the original *foundation* of the title to which, when drawn in question, would not constitute a proper subject for Federal jurisdiction.

The original title to all those lands, was derived, either from the foreign Governments which had once exercised sovereignty over the country—from the United States, or some one of the individual States, other than those in which the lands lie; and, where the foundations of title

have emanated from any of these sources, or shall hereafter emanate from the United States, every such title, when drawn in question, will be entitled to be decided by the Federal Judiciary.

In addition to these general causes, which would enlarge the field of Federal jurisdiction, in both real and personal actions, there was a particular source that would, in all probability, be very prolific, lying within Illinois and Missouri; and, he might say, would, eventually, be felt in Arkansas It was known to gentlemen, that some six or seven millions of acres of land had been granted to the soldiers of the late war within those States and territory, as military bounties. It was also known that the grants were so made, that the soldiers were not at liberty to sell or convey the land, until after the issuing of the patents therefor; and yet, he said, it was a fact well known, that many conveyances had been made before that time, and that many frauds had been practised upon this ignorant class of the community, and principally by non-residents. It was also a matter of general notoriety, that, in many cases, the soldiers who had not parted with their lands, as well as those who had purchased from them, had been delinquent in paying the taxes due thereon, to the State or Territory, within which they were situated, and that, in order to raise the necessary revenue for carrying on the local Governments, those Governments had been obliged to sell those lands. And, Mr. C. said, almost every dispute growing out of any of the proceedings he had mentioned, would present a subject for Federal adjudication. And, if the experience of other States might be taken as safe data, from which to reason, he did not see but what this was likely to afford a most distressing source of litigation to all those sections of the Union.

These reasons, in addition to those that had been forcibly presented by other gentlemen, he thought would have great weight in proving the propriety of adopting some measure with reference to the subject now under consideration. What that measure should be, seemed, indeed, to be the only difficult question to settle. Even the opponents of the bill seemed willing that something should be done. Having arrived, then, at that point, when it is proper for us to act, it was natural, that, before we make any movement on so important a subject, there should be much and serious deliberation. Such was the magnitude of the subject, that, in the discussion of the bill before the Committee, unlimited range had been taken, and the comparative propriety and fitness of three plans had been urged, viz:

1st. A Supreme Court with appellate jurisdiction only, except so far as the Constitution had conferred original jurisdiction upon it, and the establishment of Circuit Courts in the several States, in lieu of those now held by the Judges of the Supreme Court.

2dly. The creation of Circuit Courts, to meet the present exigencies of the West, the Judges thereof not to be members of the Supreme Court, and to leave the Supreme Court, in all respects, with its present organization.

3dly. The system proposed by the bill under consideration.

The objections to the system first stated, Mr. C. said, had been so fully, and, he thought, so successfully urged by other gentlemen who had preceded him, that nothing remained for him to say. With reference to the second plan, he thought there were many strong objections. He who is capable of appreciating the feelings of freemen, entitled to enjoy equal advantages with others of the same community, cannot but admit that such a system, if forced upon them against their will, and even against their deliberate protestations, drawing, as at least it will appear to do, an invidious distinction between them and others of the same community, will, instead of being received with satisfaction, give rise to jealousy, discontent, and, in all probability, even to deep-rooted animosity. The People of these States have been taught by the Constitution under which we live, that, as States, they are entitled to an equal participation in the benefits, as well as to share equally in the burthens of the Government; and that pride of feeling, that spirit of independence, which ought, and does, characterize every American citizen, cannot but be wounded by the adoption of such a discrimination; and the more so, if it shall be made in despite of their active and openly proclaimed opposition.

But, said Mr. C. the practical objections to this system need not be enumerated. If he should succeed in shewing that the provisions of the bill on the table were such as were best adapted to the condition and wants of the country, it would follow that neither of the other plans ought to be adopted.

In support of this system, we have, in addition to all theoretical reasoning on the subject, the benefit of long and satisfactory experience. It was adopted cotemporaneously with the first organization of the Government. It endured undisturbed for ten years. A change was then made (he meant the change of 1801, which established the system he had first mentioned,) but that change it would be remembered, continued in force for but one year. The experience of ten years shewed that the first system was a good one, and, by the will of the People, it was re-established. In 1807, the system was again brought under review, and extended to the three Western States that now enjoy its advantages. The experience of the operation of this system, for sixteen years, had then been so satisfactory, that there was no halting or misgiving as to the propriety of extending it.

We have now arrived at a new era in the growth and wants of our country; and, in deciding on what is proper for us to do, we now have the benefit of thirty-five years' experience under this system, with the exception of the single year of 1801. And he would here take leave to say, that if this debate were productive of no other good, the opportunity it had afforded gentlemen from every quarter of the Union to bear their official testimony to the salutary and satisfactory operation of the system, was, of itself, of essential importance, and could not fail to be productive of good. It would have a happy effect in reconciling the People at large to the judicial administration of the country, and would shew to the nations of the world the firmness of the foundation on which our institutions rest.

But, said Mr. C. with all this experience before us, approved, too, as it has been, by gentlemen on both sides, new and untried theories are urged upon us, and objections to this system for future purposes are made, designed to prove, that, in its extension, we shall plant the seeds of its own destruction, and even the destruction of the peace and harmony of the country. It has been objected, first, that the number of Judges of which the Supreme Court will consist, under the provisions of this bill, will be so great, that it must necessarily tend to engender faction amongst its members, and lead to corruption on the bench, and finally make it a political court. In support of this objection to its numbers, the gentleman from Virginia, (Mr. MERCER) had urged with great zeal, the want of any example of any court consisting of such a number. Mr. C. said, he would not travel to other countries to seek for such examples, but would content himself by referring the gentleman and the Committee to one in our own country, which comes within one, at least, of the objectionable number. He referred to that, for the organization of which provision would be found in the Articles of Confederation. All cases of controversy between States, involving their territorial boundaries, and all cases of controversy between individuals, claiming lands under grants from different States, and which, therefore, incidentally involved the question of State boundary and State interest, it would be found, were to be submitted to a court, to be

organized in the manner there prescribed, to consist of not less than *seven*, nor more than *nine* Judges. He was not aware that any inconvenience had grown out of this system, nor indeed was he aware that many cases had arisen during its existence, requiring the action of this tribunal; and he only cited it to shew, that, in the wisdom of our ancestors, no objection was found to a court, organized for these high and important purposes, consisting of such a number.

The supposed absence of any example of a Court of such a number as this bill proposes, said Mr. C. is not the only reason, however, urged against its passage. The same gentleman ojects to the number, on the *principle* that it is calculated to lead to faction amongst its members, and eventually to make it a political Court.

The objection thus urged, naturally leads to an examination of the *nature* of a judicial tribunal. England, from whom we derived so many of our views in relation to our judicial system, from the commencement of the Christian era, down to the year 1761, may be considered, in reference to this matter, as having been in a state of experiment. The Judges in that country, until the reign of William III. held their offices entirely at the pleasure of the Crown. By a statute passed during that reign, they afterwards held their appointments during good behavior, and for the life of the King; but at the expiration of six months after the demise of the King, their commissions expired. This continued to be the law until the accession of George III. When that Prince came to the throne, he himself brought the subject before Parliament, and recommended that the Judges, in order to secure the more independent exercise of their functions, should hold their offices during good behavior, and not be affected by the demise of the King. The recommendation was received with acclamation, as well by the People of the kingdom as the Parliament to which it was made. The measure was promptly adopted, and that has been the tenure of judicial appointments in that kingdom from that time to the present. This striking feature in the Judiciary system of Great Britain, was adopted during the reign of that same King against whom our ancestors successfully revolted. And yet, when they succeeded in their Revolutionary effort, and shook off his regal authority, cherishing nothing, at the same time, but feelings of resentment and animosity against the mother country, they did not refuse to profit by its wisdom, but, in this, as in many other cases, they profited by its dear-bought experience, and incorporated into our frame of government the same important principle in relation to our judicial department. The experience of thirty-five years, under our own system, as well as still greater experience in Great Britain, shows that it has not fallen short of the expectations of those who suggested and adopted it. Thirty-five years it has been in force in this country, during which time many great and interesting principles have been settled, and yet this tribunal, amidst all the storms of party, has pursued the even tenor of its course, having, at one time, five, another at six, and then seven Judges; and, at last, surrounded itself by the confidence, and even admiration of almost all portions of this extensive Republic.

With this experience and these results to the contrary, before us, he said, the question might be fairly asked, Is there, in the nature of the judicial function, any inherent principle, which leads to the engenderment of faction amongst its members? He thought there was not. The Judges are appointed during good behaviour. Their salaries are secured to them, and cannot be diminished during their continuance in office. They are vested with no power to decide on questions of expediency—questions which are always the prolific sources of contention and political excitement, and must always continue to be so in a Government like ours, where such diversified interests exist. They have no legislative power to say what the law ought to be. They have no political patronage, by the exercise of which to array against them disappointed expectants, or to draw around them a body of favored friends. They simply have the power of saying what the law *is*. And whilst the Judges are protected against any undue influence, either from the temporary excitement of any portion of the People, or a corrupt administration, that might aim to seduce them from a just and *independent* discharge of their duties, the Constitution has also guarded the People against a *corrupt* exercise of their powers. It has provided that this House, coming as its members do, directly from the People, and who, the theory of that instrument supposes, will always be ready to snuff the first taint of corruption in the passing breeze, shall have the power of impeaching; and the other branch, though supposed to be more calm, yet not less devoted to the public interests, shall have the power, not only of removing from office, but of passing sentence of eternal disqualification to hold any office whatsoever, gainst them. Standing in this relation to the country, he saw nothing in the nature of the judicial function which *necessarily* should lead to the creation of faction amongst its members: on the contrary, he thought he saw the existence of every inducement which could be presented to honorable minds, to act with calmness, and to strive, by a faithful discharge of duty, to acquire that fame and consideration in society, which virtue and talents never fail to secure. Should the number, therefore, be increased, even beyond ten, standing in the midst of these strong incentives, to discharge their duties with fidelity—in the midst of these terrors, to warn them against corruption—he could not see that the evil so much deprecated, was likely ever to exist, or to affect any considerable portion of the Bench. The theory, therefore, as well as our experience, of the nature of the judicial function under the Government of the Union, he thought refuted the idea that it is prone *per se* to run into faction, and that the purity and freedom of the Bench, from such a condition, did not depend on its numbers, but on the nature of the trust.

In further illustration of this idea, he begged leave to refer gentlemen to their own experience in another quarter. Since the organization of the Government down to the period of the commencement of the present administration, it might be stated as a fact, that the Executive Cabinet, consisting of but five members, except, perhaps, during the administration of Mr. Jefferson, had been more or less visited by discord and contention. On what principle is it that this has happened? The number is less than that of which the Supreme Court has consisted for twenty-five years, and which has never been betrayed into any such excesses. It is, sir, said he, owing to the nature of its functions. It is because these officers are connected particularly with the politics of the country: because they are not limited in their official trusts to the mere saying of what the law *is*: but often have to recommend, and express opinions, as to what the law *should be*. In other words, their duties lead them into the wide field of expediency, and expose them to many of the conflicts of opinion, which agitate not only this House, but the country. They, moreover, occasionally have views to still greater political preferment, and their success may frequently depend, not less on their opinions of measures merely of expediency, than on their views of the constitutional powers of the Government. It is from causes like these that we so often see that little spot of earth surrounding the Presidential mansion inhabited by strife and discord.

A judicial tribunal, as a court of *final* resort, is armed with despotic dpower. It is in its very nature despotic. It is so considered by all writers on the subject. It is so considered by the Constitution, as well of the United States, as of the several States. It is a power, however, that must of necessity reside somewhere, under every

form of Government. There must of necessity be—for without it, no Government could exist—some tribunal finally to settle all contests. This power, in Great Britain, resides in the House of Lords. In this country, it resides, in relation to all matters of Federal cognizance, in the Supreme Court. And in all the States, in relation to cases subject to State authority, (except New York, where it resides in the Senate) it resides in the highest courts of the State. That it must reside somewhere, is a principle pervading every organized Government; and the great difficulty has been, to guard against the abuse of it: and hence the diversified modes of appointing the depositories of this power. In some of the States, the Judges are appointed for limited periods. In others, during good behaviour. Such is also the case under this Government. In some of the States, the Judges are declared ineligible to serve, after passing a specified age. In some, the Executive has the power of dismissing them from office, on the address of two-thirds of the members of the Legislature; and in some, of three-fourths. And in all, the power of impeachment is preserved. The power of impeachment is the only power retained by Congress over the United States' Judges; and however adequate this power might appear to be, (and experience, he would say, had so far proved it to be adequate,) to prevent corruption from entering into that tribunal, yet he would submit to gentlemen, whether this high, and as he had called it, despotic power, might not even be *safer* in the hands of ten, than in either five or seven Judges? In his opinion, he was free to declare, it would be safer.

It had been said, without a sufficient explanation of what was meant, by some of the friends of this bill, that this was, in part, a *political* Court. The remark had been seized upon by its opponents, and had been interpreted to mean a *partizan* Court. A Court to be arrayed on the one side or the other of the future political parties of the country. This interpretation is gratuitous and unfounded. It is a Court, said he, in the final resort, to settle all questions arising between the Federal and the State Governments, involving the Constitutional power of either—questions that must always be delicate and interesting in their nature. It is a Court to expound treaties between this Government and foreign nations; and, in doing which, even causes of war may spring up. It is a Court which, in the exercise of its admirality jurisdiction, will frequently have to expound and decide on the laws of nations, and from which also, causes of war may spring up. It is, therefore, so far as the exercise of these powers may be coupled with the administration, of public affairs, a *political Court*. And it is so far, and no farther, that the friends of this bill consider it so. And it is because of the magnitude of this power, so intimately connected with the political power of the country, that the friends of this bill consider ten Judges as being none too many; and as being more safe than a smaller number. The decisions of such a tribunal, on such questions, composed as it ought always to be, of both great and good men, are more likely to command the support and confidence of the People, than one of a smaller number.

But, it is also contended, that this bill is to make the Supreme Court a representative Court. To its being a representative Court, using the term in that sense in which it has been employed by the opponents of the bill, its friends as much object as its enemies. What is that sense? Why the opponents of the bill say, it means a representation of the particular notions, feelings, and principles, of the People of the circuit in which the Judge presides. No such idea has been suggested by any supporter of this measure. On the contrary, it has been disclaimed by all who have spoken. What, then, it may be asked, do they mean? Mr. C. said, to a certain extent, their meaning had been happily explained by the honorable gentleman from Kentucky, (Mr. CLARKE.) They meant a representation of knowledge—a knowledge of the local laws of the several States, on the bench of the Supreme Court. That this was desirable and useful, could not be doubted. The theory of the present judicial system of the country, was partly based on that idea, and the experience of thirty-five years, which had tended so fully to establish the importance and value of its organization, was alone sufficient to prove it. But the friends of this bill think that advantages equally as important as those suggested, will result to the People of the States, by having sent to them, through the respective Judges of the Supreme Court, a knowledge of the principles settled, and views taken, by that Court, on intricate and interesting questions of law. Enlightened as each Judge must be, by associating with such a body, his decisions on the Circuit would generally be correct and satisfactory; and under these impressions, suitors would seldom, except where some new questions might arise, think of incurring the labor and expense of prosecuting writs of error, or appeals, to the Supreme Court. The tendency of the system, therefore, would be, eventually, to lessen the expense of litigation, to expedite the administration of justice, and at the same time, to give greater satisfaction to the People. And, said Mr. C., no matter what system may be adopted, unless it combine these recommendations, it can neither endure long, nor be valuable. Delay in the administration of justice, and unreasonable expense in obtaining it, will eventually destroy any judicial system that can be established.

But, said Mr. C., it has been again objected to this bill that it falls short of that uniformity in its provisions, for which its friends themselves contend. It is said, that, even if it be adopted, there will be one district in Virginia, one in Pennsylvania, and one in New York, that will not enjoy its advantages. This objection, sir, is destitute of the advantage even of plausibility. The friends of this bill support it because they deem it essential to the safe, cheap, and satisfactory administration of justice, that there should be carried into the Supreme Court a knowledge of the local laws and the Constitutions of the States. They support it, because it is believed equally important to the attainment of the same end, that a Judge of that Court should preside in each of the States. The advantages to be derived from this source, he had before stated. Now, said Mr. C. have not each of these States these advantages? It is admitted that they have.

In each of these States, it is admitted, there is a district into which the Supreme Judge does not go. But, in New York and Pennsylvania, they have the benefit of a decision of the Circuit Court in each case, within the State, before the parties are required to travel to this city to prosecute their rights. Writs of error, in both of those States, lie from the District Court to the Circuit Court held within them. It is not so in Virginia. Writs of error, from the District Court of the district into which the Supreme Judge does not go, lie directly to the Supreme Court. But, in each of these States, these separate districts have been recently established—one in 1814, one in 1818, and one in 1819. They were established to meet the wishes of the People, and at their request. But it will be seen by the dates referred to, that their establishment has been since most of the questions that could grow out of their land titles, or their local constitutions, had been settled and understood. The local situation of Virginia rendered it almost as convenient to bring up their cases from that district to the Supreme Court, as to the Circuit Court within that State. But how, said Mr. C. are we situated in the West? The six States not embraced in the system now in operation are new. They may, as Governments, yet be considered as in a state of development. The great land-marks which are to guide them, in their legislative and judicial administrations, are, in a measure, yet to be set up. And if the present sys-

tem has been so valuable to other States, heretofore, in this point of view, it cannot be less so in future, to the new States of the West. If it has had the effect to allay State jealousies, and popular excitements, and to attach the People of those States to the terms of our Union, why not extend it, and secure to the new States this same salutary, mediatorial agency, in the event of their being similarly disturbed?

But it is objected, that, if we extend the system now, we shall have again to do so at some future period; and that the evils with which this bill is fraught, will be extended still further.

To those who think the present bill adapted to the present condition of the country, let it suffice to say, that "sufficient for the day is the evil thereof." If, in the progress of time, it shall be found necessary to increase the judicial branch, let posterity, when the time arrives, provide for itself. It will be able to act, as we are now acting, with the aid of experience.

Wisdom, it is to be hoped, is not to die with us. The march of mind has kept pace with the progress of ages; and there is no reason to suppose that the lights of science and experience will shine less brilliantly on those who may come after us, than they now do upon us. It is true wisdom, in relation to measures of expediency, to adapt them to existing exigencies. In framing constitutions, or in establishing fundamental principles, a different rule may apply. The peace, prosperity, and permanent power of a Government, naturally leads us to look into futurity, and requires us to examine into the effect likely to be produced by the causes we are creating. But this has been done in relation to our judicial department. The *fundamental* principles on which its administration is to rest, are already laid in the Constitution; and we are now merely discussing the question as to the *mode* of carrying those principles into operation, which is a question of expediency; and that question should be settled, at least in some degree, with reference to the present and near approaching state of things. For, whatever we may do will be subject to future alteration, and when experience shall develop the necessity of change, change will be made.

Mr. C. regretted that, in the discussion of such a subject as this, it had been thought necessary to refer to the political condition of a single State—he meant the State of Kentucky. Frequent allusion had been made to the unhappy and disturbed condition of that State. He hoped, however, that, instead of prejudicing this bill, the reference would tend to strengthen the argument in its favor. The power of this Court had, when it could be fairly applied, calmed as great agitatations in other States—it might do so in Kentucky. But was it wonderful that there should be some feeling, some anxiety in Kentucky? Was it wonderful that those men who had, in a state of supposed security in their titles, mowed the forests and tapped the virgin earth, even with arms by their sides; who had reared their families at homes made by themselves, and around which were entombed their fathers, their mothers, their wives, and their children, should, when about to be driven from their possessions, and turned naked upon the world, be excited and stimulated at least to a rigid examination of the principles on which all this is to be done? Was it wonderful that inquiry should be sharpened and invigorated, and defence be made resolute? He thought not. As a son of Kentucky, proud of his native land, he extended, and thought the sympathies of our nature would lead others to extend, to that State, all the apologetic feelings which magnanimity and liberality inspire.

But, suppose Kentucky to be in error—suppose she is infected with the most poisonous "taint"— has she given tone to the feelings of the other States in the West? Has she so far overshadowed them as to despoil them of their purity? There is no fact to sustain any such opinion. The other States stand firm in the pure principles of the Constitution; and even Kentucky, if she now be in error, he had no doubt, in due season, would return to the fold with her other sisters.

Another objection, as invidious as it was unfounded, had been made by the gentleman from North Carolina (Mr. MANGUM) to the passage of this bill. He is opposed to extending this system to the new States, because they have been dandled in the lap of the Federal Government until, like the adder warmed into existence, they are now seeking, by an unjust influence, to destroy the hand that protected them. Who, said Mr. C., inhabit these new States? They are your fathers, your brothers, your friends, and your relatives. Born and brought up in the elder States of the Union, they have been taught to know their rights and duly to appreciate their privileges. When called on to defend their country, they rallied around its standard, and spilt their blood as freely in its cause as any other portion of the American People. They have gone to your own unpeopled territory, to increase your strength and the wealth of your country. They have carried with them respect for your laws, veneration for your character, and affection for your persons. They have, by the charter of our common liberties, and the compact for our common safety, been admitted to rise, from a state of colonial dependency, to the full fruition of independence and sovereignty as States of this Union. And what does the Constitution teach them? It teaches them that, when thus situated, they are to stand on an equal footing in the enjoyment of rights, with the oldest and the proudest State of this Union; and when stimulated by the tuition of the Constitution, to ask an equal participation in your most important institution—manifesting that legitimate pride which sovereignty ought to inspire, and which their elder sisters ought be proud to see arising amongst them—when they do this, they are gibed as spoiled children; are *reproached*, as the adder, warmed into life and animation, aiming to destroy its protector. Sir, the West, the new States, have done nothing to deserve the severe reproach. It is true, that, in this case, they do not come as supplicants. Standing on the proud eminence of free and sovereign States, entitled to be placed on "an equal footing with the original States," they *demand*, as they have a right to demand, at your hands, the adoption of this measure, or some other, that should treat them as equals. And so long as I shall be the organ of the State which I now represent, when a case like this shall present itself, *I will demand*, but with all proper respect, that the claim set up shall be accorded.

But the gentleman from North Carolina complains, at least by inference, of the share of power now held by the West, and particularly in reference to an event to which he alluded—I mean, said Mr. C., the Presidential election. Sir, the West, in that case, exerted no more than its constitutional power, and that was exerted in good faith to what it believed to be the best interests of the country; and for differing with others on that occasion, there ought not to arise, and it does not expect that any unjust reluctance will arise, to accord to it its just and constitutional rights. But the gentleman ought to remember, that the day is approaching when the tables may be turned—when power may take up its abode in the West; and with a view to this contingency, what does sound policy dictate to those now holding it? "Be just, at least, to those now in your power, so that you may hereafter receive justice from them." But he trusted the magnanimity of the West would never allow it to consent even to *retaliate* injustice. Sir said Mr. C. the course pursued by that State in the West, which, since 1802, has grown from a population of about 56,000 to be the fourth State in this confederated Republic, ought to inspire confidence in the liberality, the justice, and magnanimity of the West. Ohio, in the hour of danger, was found at her post; and, on this floor, she is now, and at all times

found fighting side by side with the most patriotic States in the Union, in supporting all measures designed to sustain the honor and advance the happiness and prosperity of the country.

The West has done nothing, therefore, to merit the severe reproach cast upon it by the gentleman from North Carolina.

But the gentleman from North Carolina, not contenting himself with this heavy charge against the West, had made one of equal severity against all of the advocates of this bill, and which he (Mr. C.) thought deserved especial notice. The gentleman has charged, in substance, the advocates of this bill with conduct, not only improper and unjustifiable, but grossly corrupt. They are accused of base subserviency, in advocating its passage, to the Executive, in order to retain him on his seat. This general and sweeping accusation could not be misunderstood. When motives so unworthy were attributed to members of this House, the charge of their existence ought to be sustained by some fact, by some proof. If the gentleman had any, Mr. C. invited him to disclose it—to be explicit.

A sudden increase of friends to the bill had also been charged, and ascribed to an unholy combination between the friends of the administration elsewhere, and the members of the West. By what inquistorial system of operation that gentleman has acquired his information of this combination, I do not know; by what means he has ascertained that the Western members have consented to barter away their honor and independence, remains for the gentleman to disclose. But, if it be so, if the Representatives of the West have consented to be drawn into such a vortex of Executive corruption, the gentleman is invited to come out and state who these unprincipled panders of power are. So far as related to himself, he begged leave to inform the gentleman and the Committee that his support of this bill now was neither sudden, or new. Sir, if the Journal of this House shall be examined, it will be found that on my motion, as far back as the year 1821, this subject was referred to the Judiciary Committee; and, as the humble organ of the State he represented, he thought he then had expressed the wishes of his constituents on the subject, and he had no reason now to think otherwise.

The gentleman had discovered, too, "that the Administration and its friends were crowding in masses to the support of this bill," and that its object was to seat more firmly a tottering prince on his throne.

If the Message of the President had been relied on to show the wishes of the Administration in relation to *this* bill, he must inform the gentleman that it furnished no such proof. The President, in speaking of the growth and expansion of the population of the country, had recommended in *general* terms, such change in the Judicial Department of the Government, as should adapt it to the wants and necessities of the country. But he recommended no *particular* modification of it. The message, therefore, did not furnish any evidence that the Administration was crowding around this *bill*.

How the gentleman then has acquired his information, and particularly that the Administration is supporting this bill, and that, too, merely to quiet the West, and "to sprinkle the delicious manna of Executive patronage" in that quarter, he has not deigned to tell us. By what operation or process he has done so, he keeps to himself. Such charges, however, when made on this floor, should be sustained by something more than naked assertion. The public will expect it, and this House ought to expect it.

The particular notice which the gentleman had bestowed on himself, which went to impeach his motives in supporting the bill, he had shown, was utterly without foundation: for he had shown, that, even five years ago, he had his attention directed to the subject, with a view to the adoption of some such system.

[Mr. MANGUM inquired in what part of his remarks the gentleman found any such personal allusion to himself.]

Mr. COOK replied, that he found it in the remark, which represented the State that he represented, as being in "harmony with the powers that be," and as having more than an ordinary interest in the existing order of things, coupled with the general charge of corruption against the advocates of this bill, both from the West and elsewhere—a charge that had been made against others, without offering any fact to sustain it, and which, as it related to himself, he had shown, by the facts he had referred to, to be wholly without foundation.

Mr. C. said, the desultory and ill digested remarks he had made to the committee, were prompted by a thorough conviction of the propriety of adopting some system which should meet the existing wants of the country, and from a no less entire conviction that the bill proposed was better adapted to answer them any other that has been suggested. Mr. C. returned his sincere thanks to the committee for the patient attention given to him, and concluded by expressing his earnest desire that the motion of the gentleman from Virginia might not prevail.

The Committee, on the motion of Mr. BARBOUR, of Virginia, then rose, and obtained leave to sit again.

And the House adjourned.

TUESDAY, JANUARY 17, 1826.

FLORIDA WRECKING LAW.

Mr. WEBSTER, from the Judiciary Committee, reported, without amendment, a bill from the Senate, "to annul an act concerning wreckers and wrecked property," passed by the Governor and Legislative Council of the Territory of Florida.

Mr. WEBSTER, in reporting the bill without amendment, explained briefly the facts which had given occasion to it. It appeared that, in consequence of a state of things which existed on the coast of Florida, and its vicinity, in relation to wrecked property, the Governor and Legislative Council of that Territory had passed an act, which was found in practice to be productive of some pretty strange effects—and which had led to evils so great as to attract the attention of Congress. The whole subject, he said, is of a character which requires Legislative provision—and there being no court of admiralty near the scene of these wrecks, the Legislative Council of Florida had interfered; but, in doing so, had exhibited a course of pretty wild steering—and, in a word, had exercised their power in a manner not calculated to produce any good effects to the sufferers. The *whole* subject was before the Committee on the Judiciary, who had it in contemplation to report a bill concerning it: but they were of opinion that, meanwhile, no time should be lost in annulling the act of the Legislative Council of Florida; and they, therefore, reported the present bill from the Senate without amendment.

Mr. WHITE, the Delegate from Florida, said he had no objection that the bill should pass to a third reading. He wished, however, to state, that he was convinced the Legislative Council of Florida, in passing the act now to be annulled, had been animated by good intentions only. The losses which were occurring on the reef were of such a character as needed some Legislative interference. The Courts, to which the property lost was to be carried for adjudication, were remote—and they thought that the act they passed for the relief of the injured parties would receive the sanction of Congress. It had, unfortunately, happened that great abuses had grown out of the act. These would, of course, be corrected by Congress, and he presumed some special law would be passed on the subject. He had only risen, at this time, for the purpose of vindicating the Council from any intention to transcend

the powers entrusted to them, or to do injustice to the persons whose interests might be brought into question under their act.

The bill was ordered to a third reading to-morrow.

BALANCES DUE FROM LAND OFFICERS.

A resolution, offered yesterday by Mr. SCOTT, calling on the Secretary of the Treasury for a list of balances due by Receivers of Public Moneys, for the sale of Public Lands, to the 1st January, 1826, was taken up.

The resolution gave occasion to some conversation, between the mover and Mr. SLOANE; the latter asking for an explanation, whether the resolution was aimed at Receivers now in office, or those who had gone out of office. These officers are appointed for four years, and cannot, at the end of that time, be re-appointed unless all arrears are paid up. This, Mr. S. conceived a sufficient guarantee for the honest discharge of their duty. Their deposites might have been made by those now in office, on the first of January; but according to the terms of the resolution, these deposites would not appear to their credit; and so an imputation might be cast upon honest men, who did not deserve it. He moved to amend the resolution, by adding the words, "not now in office."

Mr. SCOTT replied. By the existing law, he said, balances which have remained due more than three years, are required to be reported to this House. A list has, accordingly, been returned from the Treasury, but it includes only balances due for three years, on 30th September, 1825. Any balances which may have become due within that period, are not included. Mr. S. said, he had heard that one Receiver, who had been out of office for four years, had run off with $68,000 of the public money: and that another, who had been out of office one year, had gone off with $25,000. His object was to inquire into these facts. He thought the House had a right to know them. From the returns required by law, this information could not be obtained; it must, therefore, be demanded by a special order of the House. He saw no reason why those in office should not as well be included, as those who had gone out of office. The object was to get at the amount of moneys received; of moneys receivable, and of moneys embezzled. He thought the public eye should be drawn to these facts. If corrupt men were in office, they ought as much to be exposed, as corrupt men who were out of office.

After some farther observations, Mr. SCOTT consented to modify his resolution, by substituting 30th *September*, 1825, for 1st *January*, 1826. Upon which,

Mr. SLOANE withdrew his motion for amendment, and the resolution, thus modified, was adopted.

JUDICIARY SYSTEM.

On motion of Mr. WEBSTER, the House then again went into Committee of the Whole, Mr. TOMLINSON in the chair, on the bill "further to amend the Judiciary System of the United States."

Mr. WEBSTER, on making this motion, observed, that, as the subject had now occupied the attention of the committee for more than a fortnight, and other matters of great importance were pressing on the consideration of the House, and as it was desirable to hear every gentleman who wished to speak upon it, more especially those who were opposed to the bill, he hoped that it would not be esteemed a want of courtesy, if a motion for the committee's rising should be opposed until they had, at least, reached the hour fixed by the usage of the House for adjournment.

Mr. BARBOUR, of Va. who, having last evening moved that the committee rise, was entitled, by the custom of the House, to the floor to-day, declined occupying the time of the committee, by presenting the remarks he had intended, with a view to hasten a decision on the bill.

Mr. BUCKNER said, that, in rising to address the committee, at this late period of the discussion, when even eloquence would be divested of its wonted charms, he was satisfied that he needed some apology to offer for the intrusion. He hoped, however, that a satisfactory one would be found in his conviction that a more important matter would not occupy their attention during the present session, and in the very deep interest which the People of the West felt in the fate of this bill. He confessed, however, that he was almost deterred from entering upon the investigation of its principles, when he recollected that the gentleman from Virginia (Mr. MERCER) had told us, that the learned Chairman of the Committee who reported this bill (Mr. WEBSTER) had himself shown its utter inaptitude to answer the avowed objects of its friends; and that the able argument of the gentleman from South Carolina (Mr. DRAYTON) had but served to strengthen his resolution to oppose it. A task which they had failed to accomplish would certainly be far beyond his reach. Under a hope, however, that the committee might take a very different view of it, Mr. B. said, he should proceed concisely to submit the remarks which he designed to offer.

If, said he, I could be satisfied, with the gentleman from Virginia, (Mr. MERCER) that this bill is calculated to destroy the very vital principles of the Judiciary system, I hope I need not declare that not a member on this floor would oppose it more zealously than myself. But he could see no ground on which to found such an apprehension.

In speaking of the grievances complained of, respecting the inequality of the operation of that system, in the different parts of the United States, and the inability of the Circuit Judge, who presided in the Western circuit, to dispose, in any short time, of the great and increasing number of suits in the courts of that circuit, and the fitness of this bill as a remedy, Mr. B. said, it was necessary to turn our attention to its legislative history, and to its present arrangement. We should also inquire whether it had secured the prompt and satisfactory administration of justice in the States to which it had been extended, where circuit court duties were required to be performed by a Judge of the Supreme Court of the United States. The Government is divided into three distinct departments—the Legislative, the Executive, and the Judicial. It was certainly highly desirable that the principles which support those main pillars of the Government should be as stable and permanent as possible: and no doubt can reasonably be entertained that the very able men who framed our Constitution endeavored, as far as they could, to effectuate that important object. They declared that the judicial power of the United States should be vested in one Supreme Court, and such inferior courts as Congress might, from time to time, ordain and establish.

The permanency of the Supreme Court was scarcely more to be desired than that of the inferior tribunals. But it was not within the ken of human foresight to decide either the particular number of those inferior tribunals which the exigencies of a rapidly increasing nation might require, or the precise principles on which they should be organized. Those matters were of necessity subjected to the wisdom and future experience of Congress. But if stability was important, when that feature of the present bill, which requires the performance of circuit court duties by the Judges of the Supreme Court, had received the approbation of the American People for many years; when the utility and wisdom of such a provision had been tested by the experience of upwards of thirty-five years; ought we not to regard it almost in the light of a constitutional provision? Were a proposition made to change the Constitution itself, I would not approach it with more caution. In 1789, we are informed that the first statute was enacted in relation to the judicial power of the United States. In that law you find the same

feature which the present bill presents. That statute remained unaltered until 1793, when the subject was again presented to the consideration of Congress. The time was too short to give to it the character of a fixed policy at that period. But let us pursue its course farther. The system was continued without any change, in the principle alluded to, until 1801, when the acts of '89 and '93 were repealed, the Judges of the Supreme Court were separated from the circuits, and Circuit Judges were appointed. In 1802, the act of 1801 was repealed; and thus well nigh did the same year witness the birth and the death of this system of 1801. The act of 1802 brought us back to the principle of the law of 1789 and 1793, so far as they required the Supreme Judges to attend at the circuits; and thus was furnished strong and persuasive evidence of a most decided preference by Congress for that course. I shall not stop here, (said Mr. B.) to inquire into the considerations which conducted to the repeal of this law of 1801, from any other source than that which the statute itself furnishes. To attribute its repeal to any other cause than a conviction on the part of those who voted for it, that the plan of 1802 was superior to that of 1801, would be an uncharitable imputation of corrupt motives to the majority of Congress, which ought not to be indulged. Thus stood the law until 1807, when the matter was again brought before Congress. It began now truly to be entitled to the appellation of a fixed policy. But could any doubt be reasonably entertained on the subject, was it not entirely dissipated, when, in that year, the wisdom of the measure having been fully and completely tested, Congress not only continued, but extended the system? They did in principle then what the advocates of this bill insist ought now to be done. Yet the gentleman from Virginia (Mr. POWELL) considers this as no indication of an intention to engraft on the system this principle as a matter of permanent policy. He tells us that it was merely an experiment, and one which ought cautiously to be indulged in; and as an evidence that they did not contemplate uniformity; he reminds us that, in Kentucky and Maine, district courts only were established. But did the gentleman recollect that Maine was at that time a part of Massachusetts, and Kentucky a part of Virginia? Every State in the Union had its circuit court, by the provisions of the act of 1802; nor is there the least ground upon which to conclude, from the establishment of district courts in Kentucky and Maine, that uniformity was not within the contemplation of Congress, to be carried into effect on some convenient occasion. Such a conclusion is altogether inadmissible, because the present circuit system has since been extended to them. At this very time, eighteen States out of the twenty four are enjoying its benefits, not one of them willing to be deprived of it; and yet we hesitate to place the remaining six States upon the same ground that the eighteen States occupy. But, Mr. Chairman, (continued Mr. B.) are we not bound to believe, that, according to this plan, justice in the inferior courts, if not more promptly, is at least more ably and satisfactorily dispensed? I shall not insist that the ability of a judge is always in an exact ratio to the salary which he receives; but talents, like commodities carried to market, have their price; and it is in vain that we may expect to secure an equal degree of legal acquirements and strength of intellect, for the sum of fifteen hundred or a thousand dollars, which is the salary of some of the inferior judges, as we can for four thousand five hundred dollars—the salary of a Supreme Judge. That the Judges of the Supreme Court, by performing circuit duties, obtain a more accurate and thorough knowledge of the municipal laws of each State, than they would otherwise do, is an argument entitled to very considerable weight; but it has been so fully urged by gentlemen who have preceded me, that I shall not dwell upon it. But, Sir, if the six States alluded to had no other or stronger ground on which to urge their claims to an equal participation in the benefits of this system than that the other States enjoy its benefits, I should consider the reason as altogether resistless. I know it may be replied to this, that justice is as promptly, and in some cases, perhaps, as correctly administered by a District Court, with Circuit Court powers, as in a Circuit Court. We might, in like manner, tell those States, that they may send delegates to Congress who may present their petitions and explain their grievances, but that they shall be entitled to no vote in this House; that Congress is too large and unwieldy a body; and that, to permit their Representatives to appear on this floor with all the rights and privileges of a Representative from one of the older States, would be likely to create faction. We know that this cannot constitutionally be done; but who is there, in the least acquainted with the feelings and character of the American People, who does not also know, that, if the Constitution even permitted such a course, and it were attempted, nothing short of the power of Heaven could preserve this Union for the space of one year! Such a doctrine is repugnant to the genius of our Constitution, and destructive of the best established principles of our liberty. We have, indeed, been told by the gentleman from Virginia (Mr. POWELL) that the People of the West will receive no practical benefits from this measure; that it may be a matter of feeling and of pride, but nothing more. Yes, sir; and permit me to inform that gentleman, that it is an high minded, honorable pride. It is that kind of pride which swells with patriotic emotions the breast of an American, in whatever clime he may be, when he exclaims that he is an American citizen. They are feelings which ought not, *cannot*, be disregarded with safety.

It is the conviction only which each State of the Union feels, that it is, alike with every other, the object of the paternal regard and protection of this Government, that can give strength and durability to the ligaments which bind us together; that can preserve unimpaired that Union, which, I hope and trust in God, will effect for us in a political, what faith does in a religious point of view—everlasting salvation.

But, Mr. Chairman, let us consider their claims still farther. Do not these six States contribute their due proportion to meet the expenditures of the Government? and have not they, and all the Western States, most valiantly and magnanimously defended the rights of our common country? Behold North Carolina, with business not more than sufficient to detain the Circuit Judge, according to the acknowledgments of the gentleman from that State, (Mr. MANGUM) two or three days at a term, receiving the aid of the learning and talents of Chief Justice Marshall, while, in some of the States, a District Court Judge presides with the paltry salary of a thousand or twelve hundred dollars. Is this just—is it fair? Do gentlemen believe that large and respectable portions of the United States intend to submit to this state of things, and to have the system, in its present circumscribed condition, fastened upon them as a course of settled policy? If so, they labor under erroneous impressions; and the sooner they are undeceived, the better.

But, Mr. Chairman, said Mr. B. the provisions of this bill are not exclusively for the benefit of the People of those States who are the most anxious for its success. The rights of the citizens of every State in the Union are affected by them. Why has jurisdiction been conferred on the Federal Courts, in legal controversies between citizens of different States? Because the wise men who formed our Constitution, well versed in the volume of human nature, anticipated, and thus intended to guard against, that partiality and State feeling, with which a Judge of a State court might sometimes take his seat on the bench. I submit it, therefore, to the gentlemen who are pleased to speak of this as a Western bill, to determine, whether plaintiff or defendant is most likely to be injured by an

injudicious organization of the inferior tribunals of the United States.

But, Mr. Chairman, we are told, that no complaints have been heard from any other parts of the United States, except from Ohio, Kentucky and Tennessee. I have myself heard the opinion of some of the gentlemen from other Western States, in favor of this bill; and I have no doubt that they will, unanimously, join those three States in demanding, as a matter of *right*, that their States, respectively, shall be embraced within the arrangement of the Circuit Court system: a demand, not made in a supercilious and arrogant spirit, but with an unhesitating confidence in the intelligence and sense of justice of this honorable committee.

I come now, sir, to speak a few words of the claims of Tennessee, Ohio and Kentucky; but, more particularly, of the latter. We find on the docket of the Federal Court in Kentucky, nine hundred and fifty suits, many of them of the most complicated character, requiring attention and patient investigation. Those acquainted with the nature of litigation in that court, are aware that there is no reasonable hope of any considerable diminution of it for many years. On this point, the remark of the gentleman from Illinois, (Mr. COOK) as to the Northwestern States, were alike applicable to Kentucky. The titles to real estate, through the largest and most fertile part of the State, indeed in all that part of it subjected to location under Treasury warrant claims, issued by the State of Virginia, were derived from that State; and, of course, in every controversy respecting those titles, when coming in conflict with a title derived from the State of Kentucky, the jurisdiction of the Federal Court attaches. The titles to real estate in Ohio and Tennessee, constituted a source of litigation but little, if at all, inferior to those of Kentucky. He would not detain the Committee by speaking either of the Occupying Claimant Laws of Kentucky, or the apprehension which Virginia appeared to feel, that this bill was designed by Kentucky, as a prelude to a reversal of the decision of the Supreme Court in the case of Green and Biddle, upon the constitutionality of these laws. The gentlemen from that State need not fear any such result. The validity of those laws had, to be sure, been tested in the crucible of judicial investigation, in both the inferior and superior courts of that State, and had been uniformly supported, both by the Judges of that State, and by a very large majority of its ablest lawyers; and, when decided upon in the Supreme Court of the United States, of the four Judges on the bench, one was in favor of them. But the opinion of the three determined the principle, and Kentucky was thus bound to abandon a policy which she regarded as essential to the improvement of the State, and the security and repose of her citizens. Judge Marshall, as we were informed by the gentleman from Virginia, through motives of delicacy, omitted to take his seat on the bench, when that case was decided; but yet, the same gentleman tells us, that his opinion coincided with a majority of the Court. The whole difficulty in relation to that subject, had, to be sure, originated in the Legislature of Virginia. That State, through her Legislature, had issued warrants for the location of at least three times the number of acres which were contained in the territorial limits of Kentucky; and had made it necessary, by the law on that subject, to make the entry so special, that subsequent locators might be enabled to locate with certainty the adjacent residuum; a degree of precision, which, in many cases, was absolutely impracticable. But this was irrelevant in the discussion of the principles of the present bill. It is sufficient for my purpose to shew, that, such is the number of suits, however they may have originated, now pending in the Federal Court of Kentucky, and such the difficulty of their determination, that there exists an absolute necessity of some redress. It had, indeed, been admitted, that the situation of business in the Federal Court of that State, imperiously demanded legislative interference. But a remedy had been proposed by the gentleman who made the acknowledgment (Mr. POWELL.) He was willing that a Judge should be appointed, with a competent salary, equal even to that of a Judge of the Supreme Court, but that he should not be allowed to take a seat on the bench of the Supreme Court. I cannot believe that there was an intention to cast any reflection upon the West, because the gentleman remarked, that he had no doubt, men of great talents, and every way adequate to the discharge of so important and arduous a duty, might be found in the States of Ohio, Kentucky and Tennessee. But, sir, a moment's reflection ought to be sufficient to satisfy the Committee, that a proposition to send us a mere land commissioner, would be rejected unhesitatingly and indignantly. The People of the West will not rest satisfied with one single mark of respect less than that which is bestowed on any other portion of the United States.

But, Mr. Chairman, it has been objected, said Mr. B. that, should the bill pass, the number of the Judges, for the discharge of ordinary business, would be inconveniently large. Such, if I recollect aright, was the opinion advanced by the gentleman from Massachusetts, in whose judgment, and particularly, in any matter relating to the Judiciary, I have very great confidence indeed—but, on this point, I must beg leave to differ from him. I regret that he did not assign the reasons on which he founded that opinion. No complaint has been made, that the present number of Judges is inconveniently large. If ten would be too many, on what point shall we determine to settle, as the precise maximum? The proposed increase may not, indeed it is very certain that it will not, be calculated to expedite the determination of business in the Supreme Court—but expedition is at best a matter of secondary consequence—correctness is always of primary importance. The supposition, that, by the introduction of three additional Judges, a faction may be created on the bench, is utterly visionary—it is any thing short of ridiculous. The history of the world presents no example of such a result. If, indeed, they were an assembly of legislators, chosen for short periods, and of a number as great as that of which Congress is composed, anxiously anticipating the result of an approaching election, willing to flatter popular prejudices to procure a short-lived popularity, faction might rear its head among them: but a Judge, who receives a salary of four thousand five hundred dollars per annum—not more secure in the tenure of his office, which he is to hold during good behavior, than in the amount of his salary, cannot be suspected of a disposition to faction: he is above the atmosphere of popular prejudice, or popular excitement:—*Vox Populi vox Dei* is not the motto of his creed—he is satisfied with the existing state of things: for he could scarcely calculate on a change which would better his condition.

But, Mr. Chairman, comparisons have been insisted between our Judiciary system and that of England: and it was insisted that a smaller number of Judges had there been found sufficient to determine all the legal controversies of that unequalled People. Mr. B. said he was willing to leave gentlemen to enjoy their opinions, and to pronounce their eulogiums upon the Judiciary, and if they please, the Government, of England: for his part, he considered neither the one nor the other as presenting fit models for the United States. Yet even there, on appeal, in the last resort, (although he wished to be understood as protesting against the comparison) causes are decided by the House of Lords, aided by their twelve Judges. We have also been told, that in all England, there is but one Lord High Chancellor. But if the gentleman will turn his attention to the Judicial history of England, he will find that such have been the vexatious delays in Chancery under the English system, that they have amounted to a denial of justice. It has very often happened that one

generation witnesses the commencement of a cause, and another, its end. But, sir, it appears that we are not only to regard the English judiciary system as worthy of imitation, but that we are also to admire even its anomalies. Our attention has been called to Wales, by the gentleman from Virginia, (Mr. POWELL) who informs us that the courts in Wales are as distinct from those of England, as from the courts of the United States. This is, I believe, an error. An appeal lies to the courts of England. But a slight attention to the history of that country will shew us, that this anomaly as to the courts of Wales, was not the result of the choice of the English Parliament, but rather of necessity. Wales remained, for several centuries after the Saxon invasion, unconquered, and independent of England. The son of Edward the First, became the first titular Prince of Wales. A statute in the reign of Henry the Eighth, placed them on the footing of English subjects, in most respects, except that they were permitted, as a matter of *favor*, as we are told by the English writers, to retain their courts independent of process from Westminster Hall. And six States of the Union are now to be permitted, I suppose, as a matter of sheer *favor*, to retain District Courts with Circuit Court powers, in which a Judge, with a salary of $800 or $1000, presides, while the remaining States are to have Circuit Courts with a Judge of the Supreme Court.

It has also been urged, that an increase of the number of the Judges would be calculated to weaken the responsibility of each, and render the Executive careless in his selection of them. The argument is utterly untenable. Will not the Judges be compelled to give their opinions in writing as at present, subject to the inspection of the world: and can it be supposed that a Judge, occupying so exalted and conspicuous a station, will be willing to hazard his reputation for legal learning, under the hope that his brother Judges will share with him the disgrace? As little is it to be expected, that the Executive will select carelessly, or if even he did, that the Senate would confirm the nomination, because there would be ten instead of seven Judges.

But, Mr. Chairman, continued Mr. B. it is principally with an eye to decisions on Constitutional questions, that I believe an increase in the number of the Judges is most to be desired; and in this point of view, there is not the slightest analogy between our Government and that of England, or any of which I have any knowledge. The English Government is composed of two branches only—the Legislative, composed of the King, the Lords and Commons; and the Executive, of the King only, who, through his Judges, administers justice, and by the proper officers, executes their judgments. The Parliament is, of course, supreme. The English courts have no great constitutional questions to settle; no power of the Government to extend by construction; no will of sovereign States to control. They have nothing to do but to administer justice according to the principles of meum et tuum. But, Mr Chairman, we have, in my opinion, arrived at a point, at which we are bound either to extend the present system, or to adopt the plan of 1801. Shall we hesitate which to do; when not only reason, but experience, the safest of all guides, points out the path so plainly? Are there not alarming evils to be apprehended by confining the Judges to the bench of the Supreme Court only? Let it not be forgotten, that there is an extent of jurisdiction confided to them, unequalled by that of any other court in the world. From the nature of our Government, it is necessary that it should be so. There must be some tribunal, upon whose decisions those matters must depend, and there can be none more safely relied on than the Supreme Court, as it is at present constituted, composed of venerable and learned men, selected from the whole nation for their talents and integrity. I feel no alarm at the encroachments of the Federal Government, yet it is proper and safe to guard against them as cautiously as possible. A blind confidence is unwise. The gentleman from Virginia (Mr. POWELL) told us that he thought he could see the point beyond which all was danger. I too, believe, Mr. Chairman, that I can see that point; but in a very different direction from that alluded to by that gentleman. I fear no evil from the Judges mixing with the People. I fear much more from confining them to the performance of duties within the District of Columbia. If the system of 1801 be adopted, and persevered in for half a century, the principles of this Government, at the end of that time, will, in my opinion, be very little more like that which prevailed in 1798, than the present Government of England is like that which existed in the reign of William the Conqueror. In the decision of all constitutional questions, I wish to see at least ten Judges on the bench of the Supreme Court, and the concurrence of seven required to declare a State law invalid, or to determine upon the implied powers of this Government.

Whoever has noticed the decisions of the Supreme Court, even under the present arrangement of compelling the Judges of that Court to perform Circuit Court duties, cannot have failed to observe that, in the most important cases, involving the powers of the General Government, depending on doubtful construction, and its restrictive power over the States, they have set with a strong and bold current, like the Gulph stream, sweeping every obstacle before them, in an undeviating course, to the Federal Ocean. We have already had an exposition of the powers of Congress, under the last clause of section 8th, and 1st article. In time to come, we might be favored with that of the 1st clause of the same article; and might we not, to a certain extent, have looked for such a state of things? Can we not trace it to the frailties of human nature; to an universal predilection for the source from which we derive our authority? The Sun-flower does not more certainly and naturally turn her face to the genial and vivifying rays of that luminary, in whose presence she delights to bow, as if in homage, than does a Judge to the fountain from which he derives all his consequence and authority. The greatest security against such a tendency, is to extend the present system, and to require the concurrence mentioned in the cases alluded to, so that a small number may never decide in cases of such momentous import. Mr. B. said, he was disposed to repose as much confidence as any gentleman on the floor of this House, in the learning and integrity of the Judges of the Supreme Court: but he would not render to them a blind and idolatrous adulation, like those, in ancient days, who approached the Oracles which they deemed infallible. He regarded Judges merely as men, and was disposed to guard against any improper tendency in their course. He was sorry, with these views, to hear, from some of the advocates of the bill, that, when this particular proposition to require the concurrence in opinion of a certain number of Judges, to decide on Constitutional questions, should be brought forward, they would not sustain it. He trusted that gentlemen would not prejudge the proposition. It should be laid before the House in due time, and its final decision would be urged. The principles of the proposition would be discussed, and it would be then time enough to decide upon it. Kentucky is not the only State in this Union which has cause to be dissatisfied with some of the decisions of that Court. None, he would admit, had greater cause to be dissatisfied than Kentucky. But he would submit it to Virginia herself, if she had not even cause of alarm, at a decision of the Supreme Court, that, under a rule entered up by the Court itself, property, not subject to execution by any law of Congress, might be sold in satisfaction of a judgment of the Federal Court. The whole policy of Virginia, respecting her titles to real estate, may, under that decision, be made to undergo a radical change. There might be some whose confidence

in the decisions of that Court was such, that they might be inclined to smile at the manner in which he spoke of its decisions; but, in doing it, he only exercised a right which belonged to him in common with every citizen of the Union, and, on this particular occasion, he spoke with, he hoped, the honest confidence of a Representative of a certain portion of the People of the United States.

Mr. Chairman, said Mr. B. it is asked whether the plan can be made to suit future exigencies, and whether, when the present Territories shall become States, and new Territories shall be added, we are prepared to see twenty Judges on the Supreme bench; and whether we wish to have a limb of the law in every section? I answer, that I believe the plan can be made to suit all future exigencies, and that there will never be such an increase in the number of the States, as to render necessary that increase in the number of the Judges which some gentlemen appear to apprehend. We have been told by the gentleman from North Carolina, that, in his State, the Supreme Judge is not required, by the business, to remain above two or three days at a term. In Kentucky, when the present mass of business shall be expunged from the docket, she may not require the attendance of a Supreme Judge for half the time which she now does. Such may be the case with the other new States, and the circuits may be increased by taking into them the new States which may be admitted into the Union. I do not wish to see a limb of the law in every section, but a Circuit Court in every State in which a Judge of the Supreme Court shall preside. As much, however, as he admired the present system, he would willingly abandon it, rather than, by a continuance of it in its present circumscribed, and too narrow limits, the People of any of the States should be made to cherish feelings of jealousy and bitterness against those of other States.

Mr LIVINGSTON said, he did not know that he should have troubled the committee with any remarks on a subject already so well discussed, if frequent allusion had not, in the course of debate, have been made to the State he represented, and if his support of the bill were not founded on somewhat different reasons from any he had heard expressed. I do not, said Mr. L. conceive myself bound by Congressional usage—I do not say Parliamentary (for of that I know very little)—to advocate this measure because I had the honor to be a member of the committee which reported it. I am not the counsel for the bill, but one of the judges who are to determine on its merits or faults—on the advantages or evils attending its adoption. In order to perform the task with propriety, we must inquire—

First. What are the evils of the present state of things which it is intended to remove?

Secondly. Does this bill apply a complete remedy to the evil, or, if not complete, is it the best that circumstances permit us to apply?

To determine what are the defects in the present state of the judiciary system, it will be necessary to inquire whether, in every part of the Union, the objects for which it was instituted are carried into effect. These objects were:

1. To secure the execution of the laws and treaties of the United States. The Convention wisely thought that, if the tribunals of the different States were alone relied on for this end, not only would the provisions of these laws and treaties, under various pretences, be evaded, and remain unexecuted, in many instances, but that, when effect was given to them, there would be as many different constructions as there were States in the Union; the law would remain a dead letter, and the country be involved in disputes with foreign nations, for misconstruction or the non-execution of treaties.

2. To give to Ambassadors and others foreign Ministers that prompt relief, for any infraction of their privileges, which is required to secure the free intercourse between nations.

3. To give uniformity to the decision of all questions of international law, and to punish offences against it.

4. To provide a proper tribunal for the decision of all questions arising under the admiralty jurisdiction.

5. To guard the rights of the United States against State prejudices, in the decision of cases in which those rights come in conflict with the interests of a State, or of its citizens.

6. To secure aliens, and citizens of other States, against the operation of unjust laws, or illegal constructions of them. This important object must have been impressed on the minds of the Convention, by the just complaints of Great Britain, for injustice to her subjects, by confiscation and tender laws, and other impediments to the execution of the treaty of peace, as well as by the operation of some of those laws on the citizens of other States.

7. The remaining objects to be effected by the establishment of a Federal Judiciary, which occur to me, were the punishment of all offences against the laws of the U. States, and the collection of its revenue.

This enumeration may appear inapplicable to the subject, or useless, to those who must have a perfect recollection of the objects for which the Federal Judiciary was estabtablished, and the reasons on which it was founded: but it was necessary to detail to the committee all these objects; to desire the members to supply, by their more perfect knowledge of the subject, any omission I may have made; and then to ask them, whether, of all these functions of the Federal Judiciary, there is one that has for its object any advantage to the State in which it is to be exercised? Whether, on the contrary, they are not all either of a general nature, for the benefit of the Union collectively, or restrictions of State rights, and intended to protect the General Government against State encroachments; to give execution to its laws and treaties; to force the State and its citizens to do justice to the alien and the inhabitant of other States; and to make the local laws bend to the dictates of justice, whenever they contravened the rights of such parties? Should this be the result of the investigation—should it be found that all the advantages proposed by this branch of our Government, and consequently all those to be expected from its extension, are on the side of the States collectively and their citizens; that no one exclusive benefit is to be derived to the State within which it is established—what must be the conclusion? That the States who ask for the extension of the system can have no improper or selfish views in making the demand; that, if any other be imputed to them, or charged as resulting from the measure they advocate, it should be clerly proved. In order to carry these great objects of the Federal Judiciary into effect, the First Congress, in which were many of the framers of the Constitution, passed the act of 1789, by which the Circuit System was adopted nearly in the form in which it now exists, but on the principle of complete extension to every State in the Union. Maine and Kentucky have been mentioned as exceptions, but they form none. They were then, respectively, portions of Massachusetts and of Virginia, desirous of being considered separate Governments, but not acknowledged as such by the States of which they originally formed parts. Hence, Circuit Courts could not be established in them without, in some sort, acknowledging them to be States, which would have injured the interests and pride, perhaps the rights, of Virginia and Massachusetts. Nor could they be subjected to the jurisdiction of the circuits in those States, without deciding the questions pending between them and their parent States. A middle course was pursued. They were erected into separate districts, and District Courts, with circuit powers, were given them. The same course was pursued with respect to the Territories; and when, in process of time, they came to be

States, the system was not changed with respect to any of them, except Tennessee, Kentucky and Ohio, for whom a new circuit was made, and an additional Judge of the Supreme Court appointed. The other six Western States, as they successively assumed their places in the Union, did not, in the infancy of their political existence, press to be placed on a footing, in this respect, with the other States. The first moments of a State are generally devoted to the interesting task of internal organization. The energies and talents of the new State are directed to matters of immediate interest, and it is, therefore, not astonishing that this anomaly should not earlier have attracted attention. Nor can the neglect be considered as a reproach, far less urged as an abandonment of the right. The time, however, has at length arrived, when the six States, in which District Courts only are now established, demand that they should be placed on an equality with the other members of the Union, and the three other Western States desire such a modification of the system as will enable the Judges of the Circuit Court to despatch the accumulation of business which obstructs the administration of justice. Why do the six new States require this? In the answer to this question will be found the statement of the first point of our inquiry—the evils to be remedied by this bill. Why do we desire to be placed on a footing with the other States? We desire it, sir, because we are States! entitled to equality! the most perfect equality with the oldest, the most populous, the most influential, the best represented State among the first thirteen of the Union! Rights, privileges, honors, burthens, duties, every thing, by the structure of our Government, must be participated by every member of it, on the broadest principle of equality. I would not, coming as I do from one of the smallest States, in point of population—I could not, without betraying its honor and dignity—receive, in its behalf, even an exemption from any duty, however burthensome, if borne by the other States, if it were conceded as a badge of inferiority; I should be disavowed by those who sent me, and justly disavowed. They ask no exemptions; but they demand! yes, sir, that is the word—they demand an equality of rights. Inattentive to this right when it was not disputed, they are feelingly alive to it when their claim is contested; and, in their behalf, I say with Hotspur, for a disputed right, "*I will (do ye mark me) cavil on the ninth part of a hair.*"

But, again, why do we desire the establishment of a Circuit, instead of a District Court? What advantage is to be derived from it? I answer, the first effect will be uniformity. But what are the advantages, says the gentleman from Virginia, (Mr. POWELL) of uniformity? We desire it, simply because it is uniformity. If the circuit system be an advantage to the States in which it is established, it ought to be extended to us: for we are entitled to every political advantage resulting from the Union which they enjoy. If it be, on the contrary, a burthen, it is one of which we ought to support our share. If the system be good, extend it; if it be bad, abolish it; and give us one that shall be equal in its operation. We cannot extricate ourselves from this dilemma, while we acknowledge what nobody has yet ventured to deny, in words—the perfect equality of political rights, in the several States. Uniformity, says the same honorable member, can only, on this subject, be desired as a matter of State pride and State feeling. Yes, sir, it is a question of pride and feeling—of honest pride, and dignified feeling—a pride that ennobles; a feeling that will not permit us to suffer wrong; and which, when we disregard, we lose the best characteristics of freemen. If this bill had no one object of profit, convenience, or utility, in the ordinary acceptation of those terms—if its only end were to place us on an equality with the other States, in a circumstance the most insignificant; if the right to it were denied, I should contend for that right with the same pertinacity. Sir, the privilege of being covered during the debates of this House, is one which, of all others, I hold to be the most worthless: it is one of which I do not frequently avail myself, and which, if it were not sanctioned by such high authority, I should think somewhat indecorous; yet, sir, make a discrimination in this paltry privilege—declare that none but the Representatives from the Atlantic States shall be covered; but that those from beyond the mountains shall enter bareheaded—do this, I will not ask how long we shall stay here—how many hats will be seen in this hall—but how many heads will be found to wear them? No, sir; pride, founded on a sense of dignity; feeling, originating in a sense of wrong, ought to be cherished in Governments, as in individuals: lose them, and patriotism is at an end, and the motive to glorious actions is destroyed: for the pure virtue that does not need their aid, has either never appeared upon earth, or is lost in the degeneracy of modern times. Direct them to proper objects, but do not reduce or endeavor to annihilate them. But is this a matter of mere pride? Important as its gratification is, when properly directed—is that the object? There are real disadvantages attending the present state of things, independent of the injury to pride of opinion, or to wounded feelings of dignity. There is risque of fortune, of life, of reputation, to the inhabitants of six of the Western States, which is not incurred by those of the others. We have seen to what objects the powers of the Federal Judiciary extend; that all suits in which an alien or a citizen of other States is plaintiff, comes within its scope, and that accusations for crimes against the United States, are to be decided there. Under these two heads, every judicial question that can affect property, life, liberty, or reputation, may be comprehended.

Now, I ask gentlemen, said Mr. L. who oppose this bill, to give a deliberate answer. If they deign to give any, I am sure it will be a candid one, to this question: whether a defendant, who has these all important concerns depending on the decision of a single District Judge—not always a man of high legal talents, (for your paltry salaries will not command them) without the fear of any revision of his sentence, and remote from any superintending control—whether a defendant so circumstanced, can be said to enjoy equal rights with him who cannot suffer either punishment or loss of property, unless the decision of his District Judge is concurred in by a man, selected from among the highest talents, and distinguished for his integrity and learning, and who, in every case of a doubtful nature, even when they concur, may, by a pro forma dissent, have the benefit of a recurrence to the assembled wisdom and justice of the Supreme Court? Are these two parties on the same footing? Can it be said, with the semblance of reason, that they enjoy the same rights? And can it be said, that a State, all of whose citizens are subjected to these disadvantages, is placed on an equal footing with other States, whose inhabitants enjoy the privileges I have enumerated? If it cannot, the question is at an end: for the terms of our admission are express. Each of the new States is declared "to be one of the United States, and admitted into the Union on an *equal footing* with the original States, in all *respects whatever.*" Now, sir, how is this stipulation fulfilled, if the property, lives, and liberty of *our* citizens, are subject to the will of a single man, while yours can suffer in neither, without the revision of a wise and enlightened tribunal? But we have an appeal from the decision of the District Judge, therefore, we have no right to complain! Error, sir! palpable error in fact, as well as fallacy in argument! This right of appeal is limited in cases of property, to those above two thousand dollars in value. But in many instances, the whole fortune of an individual does not exceed that sum. In criminal cases, there is no appeal. It is not only property that is concerned, but liberty and life. Both may depend on the construction of law. No innocence can

protect a man from accusation. All are liable to be dragged before a Court. My life may depend on a correct or false interpretation of a statute of the United States. It is submitted to a District Judge. He decides incorrectly against me, and my life is lost. There is no appeal from his decision, although he may be the man the least qualified, in the district, to pronounce. What would happen if the case were tried in a Circuit, not in a District Court? First: the concurrence of a Judge of the Supreme Court, in the opinion of the District Judge, would be necessary. Secondly: if they did concur, if the case were one of first impression, a pro forma dissent would be entered, and final judgment could not be passed, until the question had been solemnly debated, and the sentence had received the sanction of the Supreme Court. Now, I again ask gentlemen to say, whether this is no disadvantage? Let them meet this question fairly, and either give a satisfactory answer, or agree to remove the evil by according to us a uniform administration of justice.

A third disadvantage of the want of this extension, is that arising from the knowledge of our laws being less accurate, on the bench of the Supreme Court, than it would be, did one of the Judges hold a circuit in the State. I do not enlarge on this head: it has been sufficiently enforced by gentlemen who have preceded me. But I am bound in candor to allow, that if the Judicial system was now to be first established, I do not think this advantage would induce me to prefer the circuit system to that of a stationary appellate court. But it is unnecessary now to balance the advantages of the two systems, because the present courts cannot be abolished without counteracting public opinion; because no such proposition is before the House; and because, however favorably I may think of the system, I am bound to yield to the decided opinion that now exists against it. The sole question now is, Shall we extend the circuit system unto the States that are deprived of it? And on this question there can be no doubt that the measure would bring to the bench of the Supreme Court, a more perfect knowledge of the laws necessary for the decision of questions, in the State I represent, than the Judges can now possibly possess. It has been governed successively by the French and Spanish law, and although it has now a written civil code, and one that in time may be extended to commercial and penal cases, yet cases arising before the adoption of those codes, must be decided by the prior laws, and the knowledge of them would undoubtedly be facilitated by the appointment of a person versed in them, to the Supreme Court bench.

The weight of public opinion against the restriction imposed on the Western States, is also a disadvantage attending the present system, which it is desirable to remove. It is powerful, and wherever not unreasonable, must have its effect. Originating in well-founded complaints of the system, it attaches itself at last to the Court; its decisions become suspected of partiality; political views are imputed to it; and the most unfounded suspicions are fostered and propagated by the ignorant or designing. Public opinion must, therefore, be consulted. Not, I pray to be understood, in the decision of causes, but in the constitution of courts; and, in proportion as this is consulted, in the formation of any system, will be its efficacy in the administration of justice, and the preservation of union and peace.

Another evil is peculiar to the States of Kentucky, Ohio, and Tennessee—the only three States to which the system has been extended. The press of business, it appears, is so great in those districts, that one Circuit Judge cannot get through it. This is not denied; but the remedy offered by the opposers of the bill, is a Circuit Judge, having no seat on the bench of the Supreme Court. To the other six States they offer nothing; or, if nothing else will satisfy, we shall have a commissioner too: for, call him what you will, he is nothing else. The advocates for the bill ask, whether this is wise legislation? whether it is just? whether it is uniform? and gives equal rights to all the States?

This offer supposes some change necessary; it acknowledges the existence of an evil: others have been shewn to exist in all the new States. The next question is, does the present bill apply a remedy to those which have been enumerated? In my opinion it offers a complete one to all. It gives uniformity; heals the wounds that have been offered to the rights, to the honest pride and feelings of our sister States; it satisfies public opinion, destroys prejudices, and removes the obstructions to the administration of justice. Is it the best remedy? The best, in my opinion, that can now be applied. I have already hinted my preference for another system; if this were not now established, or could not, with convenience, admit of extension, it may hereafter be necessary to recur to it, but now I do not think it is. The objections that have been urged against it, come next to be considered. I shall do this very briefly, for they have more than once been already brought under the consideration of the committee.

The most prominent is, that a court consisting of ten Judges will be too numerous. This has always been urged, as if the mere statement of the fact were sufficient to enforce the objection; but it would have been more convincing, if some reasons had been stated to shew why a bench thus composed would be less competent to the administration of justice than one consisting of half the number. The final decision of a cause on an appeal, is made on a cool consideration of the facts contained in the record, and the law applicable to them. Whether the Judges be many or few, the arguments at the Bar are the same; each of the ten Justices hears and considers them at the same time; and each forms his own opinion of the fact and the law; which is corrected or confirmed by a free communication with his brethren, when they meet. This is done in private; there are no long speeches—no warm debate—no pride of opinion to be supported in the presence of a numerous audience. The publicity is as it ought to be in the result. The operation by which it has been produced, is carried on in the calm retirement of the cabinet; and so far from considering the number as an evil, I regard it as one of the best features of the bill. If all the tribunals, whose decisions are to be revised, were governed by the same laws, a less numerous court of appeals might answer the purpose: but when we consider the questions arising on the civil law, and the local laws of France and Spain, in the five States, and the two Territories, that were once wholly or in part governed by those codes; when we consider the vast variety of modifications which have been made by the statutes of the other States, whose jurisprudence is based on that of England; we can scarcely fail to arrive at the conclusion, that such a knowledge of this heterogeneous mass as will be necessary to correct the fallacies of ingenious counsel in expounding it, will be much more probably found divided among ten men of learning and experience, taken, as for this purpose they undoubtedly will be, from different parts of the Union, than united in five men of the same description. The instances which have been cited of small judiciary bodies in England, and in the different States, afford no applicable examples; because the law is the same throughout each State, and reasons of economy may have, in many instances, operated to reduce the number; but that practice is not uniform, and I need not repeat the exceptions, which have been shewn in the debate. There is, however, a striking one, which has not been adverted to; and yet it comes under our daily observation; an instance in which questions of fact, intricate points of law, combined in every mode that can make them difficult of solution, land titles, contracts, descents, founded on law, on equity, on usage, are heard and decided by more than two hundred Judges: aye, sir, and decided in our opinion so wisely, that we will never permit

them to be sent to the tribunal of seven. To all those who have constantly refused this reference, even in the most difficult cases; who have clung to the right of deciding on the justice of private claims in this House; to all such, the proposed augmentation of the Supreme Court can form no objection to the bill. If we believe ten are too numerous to give just decisions, how can we reconcile it to ourselves to sit as Judges in a court of two hundred?

Again, we are told, that the new Judges will, probably, be selected from the new States; that they will bring with them their State prejudices and feelings—always meaning unjust prejudices—improper feelings: for, if they were not such, they would form no objection. That these bad feelings would not only influence the new Judges, but would be communicated to others; that this leaven will corrupt the whole mass; that all the injustice, prejudice, and party feeling, which, it is taken for granted each of the three will bring with him, is to be eagerly imbibed by the rest of the bench; and that, if the original stock is not sufficient, they are to employ themselves on their circuits in the task of collecting political contagion, with which they are to come back and innoculate their brethren on the bench. Sir, the operation would be vain! Those respectable men have been vaccinated by honor, integrity, and truth; they need not fear the infection—even if it corrupt others, they are safe. And, agreeing perfectly with the gentleman from Virginia, in his deserved eulogium of those respected magistrates, I cannot reconcile to it the fear, that, under any circumstances, they can become converts to the heresies, in law and morals, which are apprehended. The effect, sir, must be the reverse: if any political partizan should be selected to fill that high station, he will, himself, be converted to the truth by the reason, firmness, and learning, of his associates. The air of that tribunal is too pure for any reptile who might creep to the seat in order to poison it with his venom. And if there be any man in this assembly—I will not do it the injustice to believe there is one—who supports this bill under a belief that it is to be made the vehicle for carrying political opinions to the bench, that man grossly deceives himself. There is talent enough in the several States interested, connected with integrity, and divested of party feeling, from which the President might make his selection; and, should he unfortunately be deceived in his choice, the object of it will either lose his prejudices by a communication with his brethren, or, if he retains them, they will influence none but himself.

I pass over the objection that this measure *tends* to promote Executive patronage: for I never understood either of the gentlemen to say, that such was the object of its supporters. I will pass that objection with two remarks. One, that, circumstanced as I am, I cannot be supposed to be the advocate of any measure that would have that effect in an improper degree. Another, that the measure proposed as a substitute, would give that patronage to much greater extent. This proposes the appointment of three Judges; the substitute would require ten; or, in time, fifteen new appointments of Judges for the circuit.

[Here Mr. MANGUM and Mr. MERCER disavowed the expression of such opinions.]

Mr. L. proceeded. I find I have been in an error, in imputing to one gentleman observations which were made by another. The gentleman from North Carolina alluded to the patronage as an objection, and not the gentleman from Virginia, to whom, and not to the gentleman from North Carolina, I ought to have given the credit of the proposed appointment of circuit Judges. I hope they will both pardon the involuntary inaccuracy of the statement.

One other characteristic is affixed, I suppose, by way of objection to the bill: it is called a *Western measure*. This is properly applied, if it means nothing more than to designate that the States, for whose benefit it is intended, are situated, in general, in that direction from the Capitol. But, if it is used to imply, that there is any interest to be derived from it, resulting from the geographical position of those States—any joint political object to be attained by it—it is a mischievous error. There is nothing joint in the complaint. It is, to be sure, made at the same time, and for the same wrong—but a wrong operating separately on each of the complaining States; and it may be redressed or continued with respect to one, without affecting the others. If, sir, it were a question of joint wrong to what are called the Western States, although that which I represent were not interested in it, I should belie my own feelings, and misrepresent those of my constituents, if I failed to use my feeble powers to procure them redress. We remember, and we cannot without ingratitude forget, that they stood by us in those trying times when we jointly and successfully contended against fearful odds; and I should be disavowed by my constituents, if I lost any occasion to shew, that we remembered their voluntary and efficient aid. Of the Representatives of one of those States, I am forced particularly to speak. That State has frequently been alluded to in the course of this debate. It has been hinted, if not directly charged, that, to its unconstitutional laws, and incorrect decisions under them, all the clamors, as they have been called, for this bill, have originated. Those laws, it is said, deprive the citizens of other States, particularly those of Virginia, of their property, and impede the collection of their just debts. Yet, sir, the Representatives from that State are the first to press the enactment of a law that is to give effect to the laws of the Union—to give operation to the jurisdiction of the Federal Court, in which the constitutionality of these State laws can be questioned, and to control the injurious operation of the State Judiciary. This honorable, manly, and disinterested conduct, ought to have disarmed the opposition that has been shewn to them, and particularly, on the part of Virginia: for the benefit of whose citizens, having claims in Kentucky, this measure is particularly calculated.

I have now done, sir. I support the bill, because it in a great degree applies a remedy to all the existing evils; and because the objections to it cannot be compared to those of suffering those evils to exist.

Mr. INGERSOLL observed, that, when the debate on this subject opened, it was not his intention to obtrude himself on the indulgence of the committee. Indeed, after the enlightened and expanded views presented to us by the different members of the Judiciary Committee, who reported this bill, he felt as if its friends might fold their arms in security, and wait patiently for the question. The whole ground appeared to be minutely explored, and every avenue guarded by anticipation against attack. But, as we approach the question, the indications around us show, that the passage of the bill will be disputed, inch by inch. New obstacles are thrown across our path: new points are presented; objections of every variety that ingenuity can invent, or eloquence urge, thicken around us. It was with a humble hope that he might be able to answer some of these new objections—which could not have been anticipated by the Judiciary Committee—that he had ventured to rise on the present occasion. If, therefore, his remarks should be principally confined, as they certainly would be, to the dull routine of answering objections that had been urged by others, he hoped an apology would be found in the fact, that the leading topics connected with this subject, had been scrutinized, sifted, and disposed of, by abler hands than his.

The gentleman from Virginia, (Mr. POWELL,) who last addressed us in opposition to the bill, had struck out a new path: not only different, but essentially different, from the course of either of his friends who preceded him. And although, (said Mr. I.) I saw him advance his positions with a delicacy and a talented ingenuity that commanded my admiration, yet I must confess, in the cooler moments of reflection, I found my judgment un-

convinced, if not undisturbed. He tells us, in the onset, that but three of the nine States which are intended to be reached by the provisions of this bill, have called upon us in a voice loud enough to demand the interference of Congress; that these three States are Kentucky, Ohio, and Tennessee; while the remaining six have only made known their wants in distant and indistinct "murmurs." And hence an argument is derived, that, if we interfere at all, our aid should be extended to the three States which have thundered their grievances in our ears, whilst the modest murmurs of the remaining six should, for the present, pass us as the idle wind. Sir, if the complaints of the six States alluded to have not been as loud as those of the three States which he designated, they have certainly not been less constant. No, Sir, these murmurs are blended in every breeze from the West. And I hope, (said Mr. I.) that the honorable gentleman from Virginia will excuse me for reminding him, that a skilful pilot will often perceive, in the muttering of a distant cloud, the approaching thunder of a tempest.

The bill before us, (said Mr. I.) may be regarded, not only as intrinsically important, on account of the conveniences which it will afford the citizens of the new States, in the judicial determination of their rights, but it is doubly important when considered as fixing the policy which is to govern the Old Thirteen States in regard to the new members of this Union at the West and South. For, disguise this question as you may, it is, after all, nothing more or less than an appeal to the Old States from the New States, which have come into the Union since the adoption of the Constitution, to participate freely and unshackled in the benefits derived from the judicial branch of the common Government. Gentlemen seem to argue this question as if the extension of the Judiciary System to the new States ought to depend upon the number of cases that were docketed for decision in the District Courts of those States. But, in the view which I take of this question, it is immaterial whether those States have few or many cases in the Federal Courts. If they have any cases contemplated by the Constitution, as proper to be adjudicated by the Federal Courts, they had a right to have the benefits of the system extended to them. As was well observed by the learned jurist from Louisiana, (Mr. LIVINGSTON,) who had just addressed us, there is a pride and a feeling on this subject, applicable to States as well as individuals, which, when based on proper principles, a wise legislator will never lightly regard. If, when the citizens of the West approach the Old Thirteen, the parent States, and ask—I will not say for favors, but for rights, guarantied to them by the Constitution—you extend to them a grudging hand, you may alienate their attachments to this Union, and lay the foundations for those sectional jealousies, which the Father of his Country warned you to avoid. Sir, it has been said that some of the new States are the children of the General Government, and that they have been so long dandled on the parent knee, that they presume to demand the extension of the Judicial System to them, not as a favor, but as a right. Those States are, indeed the children, not of this or any other administration, but the children of the original States which formed this Union. But, sir, instead of being favored and caressed by an over-weening care, you have given them for their toys the rifle and the bayonet; and the history of the last war tells you, that they learned to use them with effect, and to bring them from the contest with untarnished lustre. These children of the Old States have never forgotten the parent stock. When the commercial rights of the United States were invaded—rights, the invasion of which more particularly affected the Atlantic States than those beyond the mountains—the statesmen of the West were among the first to raise their voices in Congress in vindication of the injured honor of the common country; and in a war waged for "free trade and sailors' rights," these children of the West were the first to meet the enemy on the frontiers, and, as we have been eloquently reminded by the honorable gentleman from Louisiana, they were the last to sustain your eagles at New Orleans.

If, however, Mr. Chairman, an extension of the Judiciary System is to depend upon the number of cases that have arisen, or that will arise in the new States, where, it may be asked, will you find so wide a field for judicial labor, as in those States? Kentucky, we are told, has six hundred cases annually commenced in the Federal Courts; Ohio has four hundred; Tennessee has now three hundred and twenty suits undecided; and the dockets of the Federal Courts in Indiana, Illinois, and Missouri, are so lumbered up as to call loudly for relief. Does any thing like this mass of business exist in the Atlantic States, where the Judicial system acts freely and unembarrassed? What, then, is our condition? We have, in the Old States, an old and a tried system of administering justice, which has called forth the eulogies of both the friends and the foes of the present bill; and, when we are asked to extend it to the wants of the West, gentlemen pause as if we were legislating for colonies, and not for States equal in sovereignty and equal in rights to the States to which we belong. The honorable gentleman from Virginia, to whom I first alluded, tells us, that he would not extend the Judicial system any farther than it now reaches; because, he says, the evils which now press so heavily on the Seventh Circuit, are the effects of the existing system; and he warns us not to entail these evils on other portions of the Western country. Sir, the embarrassments in the Seventh Circuit are not the consequences of the Judiciary system considered as an entire system, but are attributable to other causes. Would you condemn the system, which, in six out of seven of the circuits, gives, as is admitted on all hands, the most perfect satisfaction, because you find there are evils in a single unwieldy circuit West of the mountains?

Is it correct, is it logical, thus to argue against an entire system, because you can find a single spot that is embarrassed by an accumulation of business? The embarrassments are attributable to the formation of the Western circuit. You have there the three States of Kentucky, Ohio, and Tennessee, thrown into a circuit, when either one of those States produces more causes than an entire circuit on the Atlantic border. It is to remedy this very difficulty that the present bill is, in part, intended. The honorable gentleman says, that he would appoint an additional Circuit Judge for the new States, but not permit him to take a seat on the bench of the Supreme Court, at Washington; and yet, in the same breath, he informs us that he is, in principle, opposed to a circuit system, as connected with Supreme duties. He would raise a rampart around the present Judicial system of the Old Thirteen States; he would vote down the system of 1801, if it now existed; and he would have done the same had he been a member of the Congress of 1802. Where, then, does his reasoning bring us? I ask him, in candor, to say, he would have us hold on to the present system in the Atlantic States, as the best that can be devised, and, at the same time, offer to the States which have recently come into the Union, a circuit system, which we have once discarded as unfit for ourselves?

Another plan proposed, in opposition to the present bill, is, that three Judges, with the same salaries as Supreme Court Judges, should be appointed for the circuit business of the new States, but that they should not be advanced to the bench of the Supreme Court, except as vacancies may arise among the Supreme Court Judges. This, sir, would be imposing the greatest labor, Circuit and Supreme Court duties, upon the oldest men—upon men who have grown grey in the service, and become, perhaps, worn down by care, while those in the prime

ife, with all their mental faculties vigorous and firm, would be drawing the same pay, but performing but half he service. Aside from this objection, such a plan would be apt to breed jealousies and distrust among the People o whom you offered it.

The peculiar condition of the Kentucky Courts has been very adroitly brought to bear upon the present question. An attempt is made to account for the increase of business n the Federal Courts, from the fact, that the courts of hat Commonwealth have been in a deranged state for a ear or two past. But, sir, does the unstable condition of the Kentucky Courts, account for the heavy dockets in Ohio and Tennessee, and the other Western States? That many causes are thrown into the Federal Court, in the district of Kentucky, in consequence of difficulties in their State tribunals, I can readily believe. But does this afford an argument against our extending Judicial facilities o that State? Most of the causes pending in the Federal Court in Kentucky, it should be remembered, are in favor of the citizens of other States. Nineteen out of twenty are brought against citizens of Kentucky, who are interested in having their trials delayed, and in favor of he citizens of distant States, who seek, in vain, term after term, to have their rights decided. Indeed, sir, these facts seem to have been so forcibly felt by an honorable gentleman from Virginia, (Mr. MERCER) who so ably led he way in opposition to the present bill, that he is anxious to revive the old Judiciary act of 1801, though decidedly opposed to an extension of the present system. His fears are principally for the Supreme Court. He and his ingenious colleague are both alarmed lest an increase of Judges on the bench of the Supreme Court would so far diminish their responsibility and their labors, that some of the ten Judges would dwindle into nominal members of the Court.

It is one of the most valuable features of the present bill, that none but men of talents, and talents of the first order, too, would be capable of performing the duties required of them. There is no danger of seeing inferior men elevated to the bench of the Supreme Court, so long as every member of that tribunal is compelled to perform circuit duties. The ablest jurists which Great Britain ever produced, were never exempt, so long as they were on the bench, from the performance of Nisi Prius labors. And, in our own country, I need but mention the names of Parsons, Kent, and Spencer, to shew that talents and learning are not exclusively confined to Judges who are exempt from circuit duties. Yes, sir, it is the performance of circuit duties, where prompt decisions are required, that qualifies the Judge for the more grave labors of a Supreme Court. His faculties grow brighter the more they are rubbed. There is also much force in the idea that a Judge should carry out to the People in his circuit, and put in practice himself, the opinions which he promulgates when he is here, wrapped in his official robes.

I would also ask the honorable gentleman, who urges upon us the system of 1801, in lieu of the present bill, whether there would not be danger of increasing the jealousy already existing, in regard to the powers of the General Government, by establishing a permanent court in this City, for the decision of the interesting questions which are daily arising under the Constitution? Would the distinguished State which that gentleman in part represents—would Virginia, with her honest anxiety to curb the constructive powers claimed by the General Government—be willing that the Judges, who are finally to decide these momentous questions, should be always snuffing the atmosphere of Washington, and living, as it were, under the eaves of the Palace?

We are, however, reminded, that a majority of twenty-six thousand freemen have recently decided, in the State of New York, in favor of relieving the Judges of the Supreme Court of that State from presiding at Circuits. Is the gentleman aware, that this experiment has been the source of unceasing trouble to that State ever since it was resorted to? Such, sir, is the fact. Meetings have been held, by the members of the Profession and others, to devise some plan to obviate the evils under which they suffer. And all admit, as their published addresses will shew, that the difficulty arises from the system, and not from the Judges, who are all able and upright jurists.

Thus, Mr. Chairman, I have rapidly touched upon the few topics that I had prescribed for myself. I will not, at this late hour, detain you longer; and will only express, in conclusion, my unfeigned acknowledgments for the patient and kind attention with which the committee have been pleased to favor me.

Mr. PEARCE now moved that the committee rise; but the motion was negatived.

Mr. PEARCE then was proceeding to address the committee; but, expressing a sense of disadvantage, owing to the lateness of the hour, and the exhausted attention of the committee, Mr. WRIGHT renewed the motion that the committee should rise. The motion prevailed, 95 to 45: when the committee rose,

And the House adjourned.

WEDNESDAY, JANUARY 18, 1826.

ATTORNEYS OF THE UNITED STATES.

Mr. INGHAM offered the following resolution:

Resolved, That the Committee on the Judiciary be instructed to inquire whether any, and, if any, what, provision by law is necessary to prevent Attorneys of the United States from rendering services to defendants or their representatives, in suits brought by such Attorneys, in behalf of the United States; and also from receiving compensation therefor.

In submitting this resolution—

Mr. INGHAM said, it might, perhaps, be proper for him to make some explanation of the object of the resolution, and the motive for submitting it to the consideration of the House. Not being a professional man, it could not be presumed that he should be so well acquainted as he otherwise might be, with the rules which govern professional gentlemen, in receiving compensation for their services. If, therefore, he had been laboring under an error in the opinion heretofore formed on such subject, or if his present difficulties were groundless, he might claim some apology, for the reason mentioned. I had firmly believed, said Mr. I. that, for an Attorney to touch the money of an opposite party in a suit, was an act of the foulest corruption, and such, he had always understood to be the sentiment of every honorable man belonging to the profession. It would seem, too, that the plainest rules of propriety, and the security of suitors in courts of justice, would render the remotest deviation from this principle, most dangerous in its consequences, as well as subversive of those high and sacred obligations of faithfulness, which an Attorney owes to his client; but he had been compelled to doubt whether he had not been in error in these opinions, and he should almost as soon have doubted the existence of truth itself.

A case had been brought to his notice, Mr. I. said, in which, if he was not greatly deceived, an Attorney of the United States had brought suit against a public debtor, and afterwards received a fee of two hundred and fifty dollars for services rendered to him in that character; and when the act was brought to the attention of the Attorney, he admitted the fact, and justified himself on the ground that the fee was not received from the debtor, but from his assignees, who were not original partners to the suit upon the record. Not being able to perceive, Mr. I. said, the difference, in principle, between receiving the fee from the debtor or his assignees, and being induced, by some very peculiar circumstances in the case, to doubt

what might be the rule of law in such a case, he had considered it his duty to bring the subject before the House, and ask its reference to the Committee on the Judiciary, who were very competent to say what the law was, and what it ought to be.

Mr. WEBSTER, the Chairman of the Judiciary Committee, said, if such a state of things should ever exist in this country, that there should be required a plain and explicit statute to declare that a gentleman of the legal profession, retained on the part of the United States, in any cause, should not be at liberty, in the same cause, to take a fee from the adversary party, he prayed God that it might never be his lot to draw up the form of a statute which would cast so gross a reflection on the profession to which he belonged. How it could ever enter into any man's head that such a contract, as had been spoken of, should not be a gross professional and official misdemeanor, Mr. W. said, he could not conceive. What, sir, said he, make a grave inquiry into the propriety of passing a law to prevent our agent, in any cause, from receiving a *douceur* from an adversary in that cause? Heaven spare the Judicial Committee from ever being obliged to settle that question in morals, or from making inquiry into the legality of such an act! If any such act has been committed, it requires to be investigated and punished. There is law enough, and there will be found a disposition in the members of this House, to pursue and punish such an offender. If there be such a case, Mr. W. said, he wished the attention of the committee to be directed to the fact: it was a case for punishment, not for legislation. He suggested, therefore, a modification of the resolution, so as to require an examination into the fact. If the fact was ascertained to be as suggested, the law of morality, the law of common sense, would guide the House to the proper course in relation to the matter.

Mr. INGHAM observed, that the views suggested by the gentleman from Massachusetts, entirely corresponded with those he had always entertained, and that he should not now have doubted their correctness for a moment, but for some very peculiar and imposing circumstances not necessary at present to explain. These were sufficient, however, in his judgment, to justify the course he had taken. He did not intend to assume the attitude of a public accuser. He had brought the subject before the House, according to his convictions of duty, where he should leave it for whatever disposition the House might think proper to give it. He should make no objection to the course suggested by the gentleman from Massachusetts, and would freely put any committee, that might be raised on the subject, in possession of all the information he had, and he was not aware that any obligation of duty required him to do more.

Mr. BARTLETT expressed his hope that, instead of laying the resolution on the table, (for he was unwilling it should come even there) that the gentleman from Pennsylvania would furnish the House with the name of the individual referred to, that the Judiciary Committee might be directed to make the proper inquiry into this affair. It was certainly due to the members of the profession, who were employed in the service of the United States, that an aspersion so foul should not be permitted to attach to them in a body—but that the individual who had incurred it should be known, and the service of the Government be purged from such corruption.

Mr. WEBSTER then offered the following amendment to the resolution, to come in after the word "any," and strike out the residue:

"Cases have occurred, in which Attorneys of the United States have received compensation from defendants, in causes under their care, in which the United States are plaintiffs, for services rendered in such causes for defendants."

The amendment was unanimously agreed to.

Mr. COCKE then moved further to amend the resolution, by adding "and that the Committee have power to send for persons and papers."

The SPEAKER suggested that it might probably be better to wait, and if such powers should be needed in the course of the investigation, they could at any time be given, at the request of the Committee.

Mr. COCKE objected to this course, and preferred clothing the Committee with this power at once—as, unless possessed of it, they could not so well determine how far they might want to employ it.

The amendment was agreed to, and the resolution, as amended, was adopted, with few dissenting voices.

JUDICIARY BILL.

On motion of Mr. WEBSTER, the House then went into Committee of the Whole, on the bill "further to amend the Judicial System of the United States"—Mr. TOMLINSON in the Chair.

Mr. PEARCE rose, and returned his thanks to the committee for the courtesy which had induced it to accede finally to his motion of yesterday, to rise, in order to afford him an opportunity of making some observations on the important question now before them. The favor which had been extended to him was unexpected, and he did not know but it was an unusual one; at any rate, he felt very grateful for it, and felt himself under peculiar obligations to his honorable friend from Ohio, on whose motion the committee rose. He had been for some days anxious to address the committee on the question now before them, but he had always entertained the hope that he should be able to speak under circumstances not altogether unfavorable. The question which was now pending was not one of any ordinary character. It was one of those subjects which involved considerations of the highest character. It was not a subject of special legislation, to extend to a humble petitioner compensation for a horse, valued at forty pounds, killed or lost in the service of the country during the war of the Revolution; or to extend to a widowed mother a pension for a short period, to sustain the fleeting years of her existence. No, sir, said he, the subject now under discussion is pregnant with interests to every individual in this nation, and involves considerations and results in which not a *few*, but the whole People of the United States have a deep interest. What, sir, can be more important to us, as a free People, than the establishment of our judicial system on the basis of equality and impartiality? If our judicial system be of the highest importance, it is consequently necessary that the present question should pass through the strictest investigation—that we should pause at every step, deliberate at every point, and weigh every decision, lest we finally enact a law, or pass a bill which may be injurious in its consequences to the People at large. Although, therefore, he had the misfortune to differ from every one who had reported this bill, all of whom, with the exception of a single member, had been heard on this occasion—and he was now charged, as he had learnt, and ready to fire: and who knows, Mr. Chairman, but he who now addresses you, may be the poor ill-fated wight who shall be first to receive and feel the effects of his volley?—he did not conceive that he should have fulfilled his duty, had he acquiesced in the suggestion that had been thrown out, with a view, as he conceived, to circumscribe the debate. He thought every member should have the privilege of being heard on a question of such vast importance. Sir, if we consume the whole session on this question, and do nothing else, we should still do much better than if we were to pass an improper act. Many questions have been presented to us in the discussion of this subject; and the present bill is presented as one of that cast and character which is best calculated to remedy the defects which now exist; and the remarks of those in favor

the bill, have been based on the ground that these defects exist in the Western States, and in those alone. He denied, however, that the defects were confined to the West; there are other sections of the country which are not satisfied with our judicial system. We should so alter it, as not to give occasion to frequent alterations, or make them necessary. It would be better not to touch the system, than so to alter it as hereafter to render other laws necessary in order to regulate it. He was willing to go hand in hand with the People of the West, as far as regards an investigation, and as far as was necessary to remedy the grievances under which they labor, and to extend to them a remedy or relief, which is justly their due. He wished to extend to them a full and equal participation of the rights and blessings which other sections of the Union enjoy, and which ought to be extended to them; but he was unwilling to take the mere list of cases as the ground on which he would form his opinions of their wants. He considered it sufficient that they are members of the same Union, to entitle them to all those rights to which the citizens of any State are entitled. If one State had fifty, two hundred, three hundred, or nine hundred cases on the docket of the Federal Court, it did not lessen or increase its rights to those benefits that ought to be common to all the States. As to the numerical list of cases, he was not to be carried away by any considerations of that kind. It is easy to see how cases sometimes get into Courts, and the causes of their continuance there. The decision of one or two cases would sometimes settle the fate of as many hundred; and he strongly suspected that this formidable list upon the Western dockets, might be disposed of by a few, a very *few*, trials. It is probable they all might be disposed of in less than one week. He would not make the question of equal rights, of equal blessings, and of equal privileges, or the question whether our judicial system should be extended, depend upon the number of cases now on our Western dockets. He was not of opinion that the rights of Government ought to be circumscribed—he would extend them alike to all, from the shores of the Atlantic to the borders of the Ohio, Mississippi, and Missouri.

He would take another view of the subject. Is not the Western section respectable for its talents, and have not the People of the West some claims on the other sections of the Union for their patriotic exertions? Have they at any time been found wanting when their services were required? In lavishing praises on the citizens of the West for their bravery, their gallantry, and fidelity, in the day of danger, and in the hour of our country's calamity, he would go, in extenso, with the gentleman from Connecticut, (Mr. INGERSOLL.) They flocked to their country's standard, when dangers threatened; they have ever been ready to stand forward to resist encroachments and to repel invasions. The voice of the great orator of the West has been raised in this Hall in defence of "free trade and sailors' rights;" and at a time, too, when those who *were as much* interested in the vindication of our rights, were dumb on the subject of our country's wrongs. Where would we find a People whose conduct has so nobly sustained their professions as the People of the West? Who evinced a greater readiness to go forth to battle at the call of our common country, than they who have come to claim an equal participation in common rights? Sir, they did not march to the field of battle, nor did they "go in pairs, or on horseback;" they went as the winds *come*, when forests are rended; they went as the waves *come*, when navies are stranded.

In another view, as to the important offices to be created by this bill. In making his selection of the new Judges, the Executive will necessarily be confined in his views to the West. For the purposes of his argument, he wished this to be conceded; and, whether conceded or not, he had no doubt this would be the case. If he acted otherwise, he would neglect the claims of the West. And, sir, is there any paucity of talents in that quarter? Look at the important offices which your Western citizens have filled and do fill. A gentleman from the West once filled the first law office in the Government; a gentleman from the West was once the Secretary of the Treasury, and Minister to Petersburgh; a gentleman from the West was your pacificator, and is now your Prime Minister; a gentleman from the West is now your Minister in one of the sister Republics; a gentleman from the West is now at the head of your Post Office Department—and who ever discharged the duties of that office half so well? The West has supplied you with Judges for this District, and with officers of your Treasury. If, then, sir, whenever requisitions have been made on the West for talents, those requisitions have been readily met and promptly complied with, will the Executive turn his eye to any other quarter? No Executive would do so; no Executive would take upon himself the responsibility of treating the West with such neglect. Whenever these appointments have been made, they have been made from the section where the circuits were created. He believed there was but a single exception to this statement; and, without calling names, the Chairman would readily recognize the case he referred to. After the office of Judge of the Supreme Court for the Northern Circuit had been tendered to the present Executive of this nation, by Mr. Madison, after it had been tendered to a late Lieutenant Governor of Massachusetts, it was tendered to a gentleman living out of the circuit, and the nomination was nonconcurred in by the Senate; and Mr. Madison was thus enabled to make a good retreat and a more judicious selection. Judging from the fact that there is no want of talent in the Western States, the selection can be made from the West, and will and ought to be so made. If the selections are to be made from those sections of the country, will any gentleman, who properly considers the subject for a moment, believe that they will not carry with them to the Supreme Court local views and feelings, which may have a tendency to distract the Court, and upset many decisions which have been made there? We have thus some reason to fear that those evils will arise which the gentleman from Virginia had contemplated. It would not do to tell him that Judges have not their local feelings. They are but men, and such feelings are common to all men. If, then, local feelings and prejudices may be called into operation on the bench of the Supreme Court, and thus lead to a train of injurious consequences, we are called upon to pause before we pass this bill: for we have a right to fear lest it open the door to such evils.

Mr. P. said, he did not intend to cast any reflections upon the West: for, if he had not already done justice to them, he had more encomiums in store for them. No man more highly respects their patriotism and chivalrous acts; but, if we admit them to the Supreme bench, they will go there as men, and not as angels—bringing their local feelings and prejudices with them, which men from those sections of the country must be expected to bring. All the consequences which have been predicted, may, in that case, arise; and we have been told by the last Western gentleman that has addressed the Committee, that he intends to follow up the passage of this bill with a resolution that no decision of the Supreme Court shall be binding, that is not made by a majority of the whole Court. Is not this, sir, a sectional measure? Already we see the gathering of the storm, and the clouds thickening which are to burst upon our devoted heads! Is it not important that the decisions of our Supreme Court should be uniform? for to them we look for the law of the land. What would be the situation of our country, if one construction of law is to prevail to-day, and a different one to-morrow? If we are now to have ten Judges, and hereafter some five or ten more, how long will the decisions of

our court, which have been made, remain the law of the land? No one would believe that many of their decisions would not be speedily reversed. Sir, there are many cases settled by that court, which have been settled by a bare majority, and there are many questions which have been settled, which, if they would come again, neat and clean, before that Court, would be readily reversed. Take the question as to the conclusiveness of a foreign admiralty decree, which was settled one way by the Supreme Court of the State of New York, and another by the Supreme Court of Errors. This question was settled in the Supreme Court of the United States, by a majority of one vote, and when the late Judge Cushing was rather the worse for wear. Take the question as to the right of a plaintiff living in one State, to sue a corporation in another State, when any one member of that corporation lives in the State where the plaintiff resides. Many of the Court are dissatisfied with the decision of this question. Hereafter, the mooted point, as to the common law jurisdiction of the Supreme Court, may be called up. Notwithstanding the decision in the case of the United States versus Hudson & Goodwin, the admirable, the learned, the elaborate argument of his Honor Judge Story, in the case of the United States versus Coolidge, has never been fairly met or answered. Perhaps, sir, at the time they were made, it would have been as well if many of the decisions of our Supreme Court had been different; but what the law is, is not so important to us as its certainty, fixed and settled character. Many of the decisions of our Supreme Court may not be so fixed but that they may be upset by two or three Judges, and, in that case, what security have we, that what now is law, will long continue to be law? In this view of the subject, he coincided with the gentleman from Virginia, that there would be no permanency in law, and we should have abundant evidence of its *glorious uncertainty*.

In the arrangement of Judges according to the provisions of this bill, we are now to take in all the Western States. But, when the Territories shall become States, and when new Territories shall come in; when our Western population shall have an additional increase; when our States shall extend to the barren heaths, even beyond the Rocky Mountains—will the arrangements of this bill be sufficient for the increased wants of the Union? The citizens from those distant regions will then come on this floor and tell us, we have cut down the forests—we have cultivated the wilderness—we are members of the same family—we are your fathers, your sons, and your brothers; and are *we* not to have an equal participation in the advantages of the American Union? When they shall thus come to us, we shall find it as difficult to resist their prayers, as we do now the calls and the petitions of the West. Then, sir, this bill is predicated upon an increase of the number of Judges, as the exigencies of the country shall require it to be made. And there is not one of the Judiciary Committee but acknowledges the defects of the bill, in consequence of this contemplated increase, and that the measure proposed to be adopted, is not, and cannot be, a permanent one. Why, then, this special legislation—this useless legislation? Are not the People as well prepared now as they ever will be, for a more perfect system? Where is the evidence to the contrary?

Again: If there be a deficiency in the system under its present organization, let us bear it in mind: for such is the fact, that the evil is not felt in the West alone, but in every part of the country. Will it be said there are no defects which apply to other sections of the country? The best system is that which brings justice to every man's door at the cheapest rate. Let us examine the condition of the individual whose suit is carried into the Supreme Court. He would state a fact which had come to his knowledge. Two days ago, a gentleman in this Hall, but not of this House, of the first respectability, had informed him that, in a case in which he was concerned or interested, an appeal was taken to the Supreme Court. He offered six thousand dollars, rather than to have it brought into that Court, and with an idea of purchasing what he deemed to be justice. The offer was not accepted, and the cause was carried there. Four times he travelled to Washington to attend to it. The fifth term of the Court he was not able to attend, but at that term it was tried, and his expenses were six thousand five hundred dollars; and to remunerate him for this expense, he recovered a bill of costs of one hundred and twenty dollars! Even at this moment, said Mr. P. two of my constituents have a case pending before the Supreme Court, which has been upon the docket four terms, involving about ten thousand dollars, and is now number sixty-five on that docket, and it is extremely doubtful whether it can be tried at the approaching term of the Court. Already the parties have expended a sum of money almost equal to the amount in controversy. If we are to touch the Judiciary system, it behooves us, if practicable, to make justice cheaper, better, and more speedy. The Judiciary Committee might discover a mode more suited to our wants and circumstances. He did not intend to cast any imputation upon the Supreme Court. They do all that can be reasonably required of them. They generally sit six weeks, sometimes longer—and it will not be expected that they should sit months; they cannot sit longer and attend to their duties upon their circuits. The defects of the Judiciary system reach every section of the Union, and affect every portion of our citizens. Let us not benefit the Western People only, but extend the blessings of a well regulated Judiciary to every part of our country. Is there not another evil, not contemplated by the Constitution, which has escaped the attention of our vigilant committee? The Constitution contemplates the erection and existence of two Courts, and guaranties to parties, under certain circumstances, two trials—before two different tribunals, separate, apart, and distinct. But what is the present situation of things? The Judge has decided your cause in the Court below, sits in judgment in the Court above, and there meets you on your appeal. It will be said that he does not give his voice in the decision; but it will not be denied that he brings on the bench his pride of opinion, his personal influence, and receives, and is entitled to receive, from all his associates, a respectful deference for his opinion: for, having tried the case once, he is presumed to know more in relation to its merits than those who have previously known nothing about it. They all meet for the correction of mutual errors—but their meeting tends to the confirmation of mutual opinions. The favor A asks of B, B asks of C; and thus this courtly courtesy which runs through the bench, may destroy the even current of justice, more especially when we increase the number of our Judges to ten, to twelve, to fifteen: for, as we increase the number, we increase the evil complained of. A gentleman already referred to, had, within a few days, told him that, in a particular case, in which he was deeply interested, he had rather have given a thousand pounds, than that the Judge who sat upon that case in the Court below, should have been one of the Court when his case was tried in the Court above—entertaining, at the same time, the highest opinion, as he said he did, of that Judge's integrity and impartiality.

We are called upon to reform our Judiciary system, and, at the same time, to leave untouched these glaring evils.

There was another view, and an important one, which suggested itself, and in this he had been in some degree anticipated by the gentleman from Virginia, (Mr. POWELL) and he hoped it would invite, if not provoke, a reply from the Southern Hector, or the Northern Ajax, of this debate. It was not one of a novel character. He would submit, whether, under the Constitution, a Judge of the Supreme

Court can sit in Circuit, and legally discharge the duties of a Judge of an Inferior Court? That he could not, he thought, was plain, from the Constitution itself; and he was fortified in this opinion, by what has been said upon this subject in the debates in the Virginia Convention, in the Massachusetts Convention, and from all that he could collect from the writers of the Federalist. But he would not stop here; he was the more confident, because he was sustained in his view by that great and illustrious Judge—among the great men of this country, the greatest of the great—Theophilus Parsons, *nomen et clarum venerabile gentibus*. While at the bar, and while on the bench, he had but one opinion on this subject, which he retained to the day of his death: he had no doubt of the unconstitutionality of this union of the two Courts, and the exercise of Circuit duties by the Judges of the Supreme Court. Before the late Judge Cushing, the late Chief Justice of Massachusetts, when at the bar, he once had an opportunity of testing his opinion on this highly interesting question. But Judge Cushing thought it was too late to hear an argument on the question raised, and was unwilling to hear discussed, or argued, a question which might be so settled as to render his acts extra-judicial, and thus that he had doomed men to the scaffold without right, and against law. And, Sir, whatever may be the present views of our Supreme Court on this subject, increase the number of that Court to ten, to twelve, to fifteen, hereafter, another Parsons may arise, and raise the question, which may be settled in a manner different, perhaps, from what many persons may expect, and in a way that may not, under the existing state of things, be salutary to the people of this country.

A few words, Mr. Chairman, on the language of the Constitution itself: "The Judicial power of the United States shall be vested in *one* Supreme Court, and in such *Inferior* Courts as Congress may, from time to time, ordain and establish." Here, Sir, are recognized two distinct Courts. "The *Judges*, both of the Supreme and Inferior Courts, shall hold their offices during good behaviour." Here is described two distinct sets of Judges. "In all cases affecting Ambassadors, other public Ministers, Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction." Here is set forth the jurisdiction which the Supreme Court, and that Court alone, must exercise: Sir, every line, every word in the Constitution, points to two distinct tribunals, separate and apart, from their very nature, and which ought never to be united, under any circumstances whatever. Sir, if I was disposed to avail myself of a legislative construction favorable to my position, I have one at hand. The Congress of 1802, in the repeal of the Judiciary act of 1801, went upon the ground that the two Courts contemplated by the Constitution, were separate and distinct in every sense; and, although they had no right to touch the Supreme Court, Inferior Courts they would alter *ad libitum*. If any argument could be urged in favor of the constitutionality of their proceedings, perhaps this could, with more success than any other. I say nothing of their absurdity, in imposing upon Supreme Judges Circuit Court duties. With this view taken, the passage of the present bill, and the increase of the number of Judges, assume a still more important character, and the question naturally arises, Is there no mode of applying relief to grievances complained of, except by adopting a course which may be itself unconstitutional?

There is a remedy; and he must ask the indulgence of the Committee for the time he should waste in calling their attention to it. Let the Supreme Court hereafter consist of five Judges, when it shall be reduced to that number by deaths or resignations—and not that he would revive the act of 1801—but let Inferior Courts be established for Circuit duties; and this, as he would by-and-by shew, could be done without any increase of expense: for, as his constituents were parsimonious, even as to the pay of their Judges, it was necessary for him to be so as to his views of the expenses of a Federal or National Judiciary. By this arrangement you give to the West a Court of Western Judges—men of their own materials, in whom they will have the fullest confidence; and if, at any time, that confidence should be shaken, you secure to them an appeal to a higher tribunal, above the reach of local feelings, or sectional jealousies. He would have three Circuit Judges for the New England States, New York, New Jersey, and, if deemed advisable, for one of the Districts in Pennsylvania; three for the other District in Pennsylvania, Delaware, Maryland, Virginia, and North Carolina; three for the other States South of North Carolina; and three for the Western section. One moment as to the comparative or relative expense of the two establishments. The best talents in the country for Circuit Court Judges, would be engaged for three thousand dollars for each Judge. The whole expense, then, would be thirty-six thousand dollars for salaries. Under the establishment proposed by the bill, and to make the Supreme Court consist of ten, instead of five, the salaries of five Judges would amount to twenty-two thousand five hundred dollars; and when this number is increased to twelve Judges, as it must soon be, the salaries of the seven Judges will amount to thirty-one thousand five hundred dollars—making a difference of only four thousand five hundred dollars in the salaries of the two establishments. But, when we come to dollars and cents, let us view the expense in every light, and in all its bearings: what would be the saving to the People, to suitors, if the Circuit system went into operation? Hereafter there would not be one appeal or one application for another hearing, where there are ten now; and the Supreme Court, relieved from their Circuit labors, would dispose in one sitting, or one year, of all the cases that came before them—what they are now hardly able to do in five years. And, Sir, for whom do we legislate? Whose grievances are we called upon to redress? The People's. Whose rights ought we to guard and protect? The People's. Who pay all the expenses of the Government? The People. Another question arises: Can these duties be performed by these Circuit Judges? There can be no doubt they can, and their travelling expenses would not be five hundred dollars each, and probably not more than half that sum. If any one should complain that these duties should be too arduous, he would ask what are they, compared with those performed by the Judges of the Supreme Court previous to 1801? Previous to that period, Judge Cushing went from the shores of Scituate to Savannah, and Judge Chase from Baltimore into all the Eastern States. The duties would not be half so arduous, nor the travelling expenses half so great, as they were then. The facilities of travelling are now greater, and the costs much less. You may now, in the Summer season, go from Boston to Detroit, and return, for a less sum than sixty dollars. You may come from Boston to this City for a less sum than twenty dollars, if you do not stop too long at the Mansion House in Philadelphia. There would be no obstacle, then, in point of expense incurred; nor would there be any in point of time employed. It is said the Supreme Court, in its appellate character, would be an insulated Court, cut off from its Circuit duties, under the influence, if not identified with, the Executive. He would never exercise his influence over the Judges; if he would do it, he never would be able to do it; they are not dependent upon him for any thing, and are completely independent of him. If there be any branch of the Government that would be safe from that influence, it is that of the Judiciary. If they stand in fear of any thing, it is this House: for the National Legislature alone can reach them: the watchful eye of the Legislature is always upon them.

But the gentlemen who have advocated the bill, have

gone upon the ground that the Supreme Court must, under all circumstances, and throughout all time, meet in this City. They ought to meet where the People will be the best accommodated. Why should our Judges, in the language of the gentleman from Pennsylvania, forever breathe the "tainted air of Washington?"—not tainted, he hoped, by Executive patronage. He repeated it, Where is the necessity of sitting here always? Are there so many cases here? It will not be pretended. No: hereafter let our Supreme Court hold one session in this City, for the accommodation of the South; one in New York, for the North; and one in Pittsburg, Louisville, Cincinnati, Frankfort, or Lexington, for the West. By this plan great sums would be saved to the country, in the reduction of the expense of going to those different places. And cannot such a plan be adopted? Are there any objections to it? If gentlemen are bent on equal justice, why not adopt it? But it is said by the gentleman from Massachusetts, that it is necessary for the Judges of the Supreme Court to exercise Circuit duties, in order that they may understand the feelings of the People. Is it necessary for a Judge to travel to acquire knowledge? If, when he presents himself for the bench, he is, like the Stoic's god, all *soul*, and no passion, let him retire to his closet, and, there, communing with his God, and abstracted from the world, let him be "a Judge, altogether a Judge, and nothing but a Judge." He would not let him mingle with the People for the sake of hunting for praise, and inviting local feelings and prejudices. He was always of opinion that a Judge must be great and useful by his books and his Judicial experience; and the more he is separated from the People, the better. At the commencement of the late war, our Courts found it necessary to acquire a knowledge of proceedings in prize causes; yet, to acquire a knowledge of the laws of war, and what appertained to belligerents, they were under no necessity of *travelling* into the enemy's country. Every thing, eventually, went on as formerly, although it is said, when the first prize arrived, there was not a lawyer in the country who could draw a libel in a prize case. Our privateers pursued their wonted courses, and the Judges of our Supreme Court found the decisions of Sir William Scott very accommodating, and to answer all their purposes. But again, if professional men find no difficulty in acquiring a knowledge of naval law, will not the exertions of our Judges be crowned with equal success? Call on the Chairman of your Judiciary Committee next month, whether the cause to be argued is from the East or West, from the North or South, he will be found *semper paratus*. One would suppose, from the remarks of the gentleman from Tennessee, that the causes there are of such a peculiar and complicated nature, that not even a 'Philadelphia Lawyer' would be able to understand or to manage them. Sir, is this so? I trow not—one or two decisions of our Supreme Court would set every thing right, and bring even the land laws of the West down to a level with the understanding of common men. And, after all, why is this great parade made about local law? What is the law of this country, and of the different States? It is the common law in main. We look into the English books for most of our knowledge; we read them for our law of evidence, for our definitions of crimes, with a very few exceptions: the English statute of distributions is almost our law of descents. We look into English books for our proceedings in Chancery, for our proceedings in Admiralty, both in the prize and *instance* side of the Court—for almost every thing we want to know to make us well understand the laws of our own country. Tell *me* not that the Judge of our Northern Circuit, (and I refer to him because I know no other member of the Supreme Court) must go to Kentucky or Tennessee, to gain a knowledge of the *land* law. Such, to be sure, is his thirst for knowledge, that, if necessary to increase it, I do not know but that he would embark in an expedition with John Cleves Symmes, and explore the bowels of the earth, or take an airy flight with Madam Johnson, and explore the regions of the Moon. The winds and the waves are put in requisition by him, and every Eastern gale wafts to him the lore of a foreign kingdom, and the profitable researches of, perhaps, the greatest lawyer living.

But the bill is to extend equal justice, and the gentleman from Louisiana had said, that, if we suffer a Judge to go into one State, we should give such a Judge to every State. He agreed with the honorable gentleman, if he goes into one he ought to go into every district. He understood that it was the object of the bill to extend that equal justice. But, have we not, in all our discussions and deliberations, overlooked a most important section of the Union, containing a million of people? He alluded to the Western part of the State of New York. Does the bill extend to the people of that section equal justice? Pass it in its present form, and you will soon hear a voice of complaint, that will reverberate along the shores of their canal, which will extend from the waters of Erie to where those waters were lately joined in holy wedlock with the waters of the Ocean. You will hear the *small* voice of twenty-three Representatives on this floor calling on you for equal justice. The People of that country will soon knock at your door, and you cannot but let them in, and heed their complaints. But he forbore: he would not encroach upon the prerogatives of others; comprising as that delegation does, a good share of the best talents of the House, he should not further attempt to represent their wants, when, as he had no manner of doubt, a faithful and more able representation, before this debate closes, will be in proper hands. The gentleman from Louisiana is the bold and eloquent advocate of equal justice, and here is a specimen of equal justice; but they can appeal from the decision of a District Judge to that of a Circuit Judge, and there they must stop. Great as may be the feelings of allegiance which the gentleman from Louisiana acknowledges towards his adopted State, one would suppose he would not be altogether unmindful of what was due to his native State:

"The land of his birth,
"The fairest land on the face of the earth."

We are told by the supporters of the bill, that ten Judges are not now too many, and twelve will not be too many in a very short time; and, in the language of the gentleman from Virginia, we shall, confessedly, now have an army of Judges. If we look to other countries, we shall find no such number. In England, the Court of King's Bench has but four; the Common Pleas and the Exchequer has each but four; but one in the Admiralty Court, and but one in the Court of Chancery. If we look at home, we find a disposition manifested by the several States to diminish and not to increase the number. Massachusetts had formerly five, but has now but four; New York has now but three, and formerly five; he believed the Supreme Court of Connecticut is not so numerous as it once was. He did not know that any State in the Union had at this moment more than five Judges in the Supreme Court. And, is not this sufficiently large for all the purposes of justice? Would not each Judge, if there were only five, make the subject of every decision a more particular object of his study? If the present system be imperfect, because the Western Judge goes to the bench with his local feelings, the evil will be increased as we increase the number. Take the subject in every point of view, the more you increase the number the more you increase the evil. If it is to be an insulated Court, cut off from circuit duties, five is sufficient. Would their labors be increased, or would they consume any more of their valuable time? Separate them from their circuit duties, and, if a further knowledge of local business be necessary, they would have a better opportunity of acquiring it than

by any association with the People. He did not know whether it might be improper or not to revert to the circuit system as it existed in 1801—he was well aware of the violence of the times while that Court was in operation; and, if he had then been old enough to have acted a part on the political stage, it was very probable that he should have joined in the general hue and cry against it. But, thank God, the passion of the times has subsided, and those who knew him best would not condemn him for bestowing merited praise upon any system, nor would his democracy be shaken or the confidence of his friends be lost. In looking into the debates upon the repeal of the act of 1801, it appears that the objections which prevailed, under all the excitement, was not so much to the Court as to the time when the Judges were appointed. In the debates of those days it was alleged, that the Judiciary act was passed on the influx of passion, and ought to be repealed on the reflux of reason. He was free to confess that, if passion prevailed in passing the act, there was a full share of it in operation on its repeal—that system never had a fair trial; but, short as were the services of those of the Northern circuit, they were in office long enough to ingratiate themselves with almost all classes of people. The Eastern States never had a better Court; two of the Judges are now gathered to their fathers, but one still lives, a memento of the excellence of the system of 1801. But the plan proposed was much better, in his view, than the system of 1801; there would be a less number of Judges, less expense, certainly by way of salaries, and justice would be as well, or better, administered.

One remark, Mr. Chairman, in answer to the gentleman from Connecticut, and I have done. That gentleman has told the committee that it is necessary that the Judges of the Supreme Court should perform circuit duties to prevent appeals—to prevent the exercise of rights guarantied by the Constitution; that, without the performance of these circuit duties in this way, the Judge who decides the cause will not be in the Supreme Court to head the vanquished in the lower Court. Sir, if the Constitution has secured to us two trials, is it correct that the Judge who has decided against an individual in the Court below, should go into the Court of appellate jurisdiction, and there prevent a fair trial, or is it proper that his being there should prevent an appeal, when, under other circumstances, an appeal would have been taken? This he did not think to be the administration of justice according to the laws of the land. The gentleman from Illinois tells us that, even in the establishment of our Courts, it is best to attend to what is now expedient, and to let the future take care of itself. If any branch of the Government should be permanent, it is the Judiciary: it restrains your Executive, and checks our National Legislators in their wild, and, sometimes, mad career. It restrains all the powers of Government; it should be seldom touched, and, when altered or amended, all its defects should be remedied.

Mr. ISACKS said, that, as this able and protracted debate was now drawing to a close, he could scarcely expect, and feared he should not deserve, the patient attention of the Committee, to the few remarks which he felt it his duty to make; but he hoped some apology for asking that attention, would be found in the circumstance of his having had the honor, at an early day in the session, of referring to the Committee on the Judiciary, through the House, a resolution, having for its object an amendment of the Judiciary, upon the same basis proposed by this bill. Though he did not pretend that this bill was the result of the inquiry then directed, yet he was much gratified to find that that Committee had, by their report, and the very able arguments by which they had supported it, given to the subject the same direction which he had desired.

The frequent reference which has, during the discussion, been made to the state of things—the nature and extent of business, in the State from which he came, furnished, he hoped, an additional excuse, at least, for this undertaking.

Satisfactory information has been furnished by the members of the Judiciary Committee, (said Mr. I.) and other gentlemen, of the quantity of business actually remaining undone in the Courts within those States comprehended by the provisions of the bill; but I agree with the gentleman from Rhode Island, (Mr. PEARCE) that, while we are making inquiry as to the necessity of further legislation on this subject, we should not limit our view to the number of causes upon the Court dockets, but extend it further—into the nature, the difficulty, and the importance, of that business, and the effect which delay, or denial in performance, must have upon society. Concerning the business in Tennessee, beside that which is common to all the States, under several of the branches of jurisdiction, conferred by the Constitution and laws of the United States on the Federal Courts, from the manner in which land titles had been derived there, the difficulty in their establishment, the uncertainty and conflicting nature of the claims, and the great number of claimants which were non-residents, rendered a large proportion of the business of that State, if not altogether peculiar to itself, at least very different from that which is to be found in some other States. I may be permitted to state the fact, that, in the trial of very many of those causes, from one to three weeks are spent, perhaps necessarily. With the slight impression which a District Judge, once a year, could make upon a docket of two or three hundred causes like these, constantly increasing, and not likely in half an age to be terminated, what inconvenience and wasting expense must the country suffer? or rather, may I not ask, what hardships is it *not* doomed to suffer? By the stagnation in the administration of justice, the improvement of the country is suspended; the farmer is discouraged and impoverished; his hands are tied up in court, while his plough stands still; a doubtful, fearful state of uncertainty, more fatal than present poverty, is continually reminding him that he can neither call his cottage and his fields his own, nor know that he must yield them up to a more successful claimant.

But why, Mr. Chairman, are we required to bring court dockets here? The geographical and statistical information familiar to every member of this Committee, should produce the conviction, that the great variety and magnitude of concerns naturally (according to the organization of our National Judiciary,) belonging to the Circuit Courts of the United States, and necessarily arising in a country so populous, so enterprising, and so extensive, as that embraced by the nine States West of the Alleghany, *must be* a dead and undiminished weight upon it, while its great judicial transactions depend on the labor of *one* man, long since worn down in the service, and prostrated on a bed of languishment.

Another argument, still more forcible, in favor of this bill, is the inequality of the present system; which had been so strikingly shown by other gentlemen, that on this point I will only add, said Mr. I. that right and remedy are, in their very nature, so inseparably connected, that the former, without the latter, is not worth possessing. It is in vain that you extend equal laws to a community, if you withhold from it the equal execution of those laws. It is in vain that my rights are defined, if I am deprived of remedy when those rights are violated. But, sir, if this or any other imperfection, or positive fault, existed, and was felt as an evil common to the whole Union, the People of these new States would move spontaneously with the old ones, in effecting its removal—and if the evil were so stubborn as to baffle their united efforts, *they* would show you an example of patience, forbearance, and fortitude—"for they who can nobly dare, can nobly suffer." If we had no other reason to urge for the exten-

sion of the system, this alone is unanswered, and unanswerable; that, as States, we *are equal*, and have a right to claim *full equality* with the old thirteen; notwithstanding which, we have been deprived of an *equal* participation in the administration of justice.

I will now very briefly consider the grand objection made to this bill, by all the gentlemen who have opposed it—that is, the increase of Judges on the bench of the Supreme Court. This objection has two branches: 1st, To the number ten, in preference to nine. Some of the friends to this bill have intimated their inclination only to extend the increase of Judges to two, instead of three, as the bill proposes, by which the members of the Supreme Court would be fixed at nine. I will beg leave to refer such to the formation of the Circuits pointed out by the bill, which, I am confident, will be found, not only the most judicious, but will altogether remove the objection which is made to the number, on the ground that three additional Judges are not necessary to discharge the business. Beginning with the Circuit of Louisiana and Mississippi: Though Mississippi may not at present, nor even promise in future to, afford an equal half of the employment for an Associate Justice, yet, being joined with Louisiana, which, from its position, the wealth of its citizens, the trade which it carries on with other States, and foreign countries, and being the great depot for almost the whole commerce of those nine States, it cannot fail to produce much more than an equal moiety of employment for the Judge; and I think there is no reason to suppose, that the man who may perform the business of those States, and take a voyage to Washington once a year, to a Supreme Court, will not have his hands full. Alabama, presenting not so formidable a mass of business, is put in a Circuit along with Tennessee, where the excess is amply sufficient to make up for the want of proportion in that furnished by Alabama. Ohio, which, from its increasing importance in every respect, must furnish an amount beyond an equal quota of business for one Circuit—is therefore thrown along with Indiana and Illinois, where that kind of business, for many years to come, is not expected to be so considerable. And Kentucky, with its nine hundred causes, and having, (like Tennessee,) an unfortunate ability for the productiveness of that article, is placed with Missouri, a State much less productive of litigation. I will admit, sir, that, to a certain extent, the gentleman from Virginia, (Mr. MERCER,) in ascribing the great mass of business now on hand in the States of Kentucky, Tennessee, and Ohio, to accumulation on account of the inability of the Judge of that Circuit to dispose of it, is correct, but it is not, by-the-by, on that account, the less an evil. But, if this mass has been some five or seven years accumulating, it is reasonable to conclude, that some three or four years will be necessary, under the proposed arrangement, to master this old business, and reduce it to ordinary income, (if I may so call it.) In the mean time, the tide of emigration will continue to roll to the Northwestern and Southwestern frontiers. Three territories, lying all of them contiguous to some one or more of these new Circuits, will be claiming and obtaining admittance into the Union as States; and I hope they will both claim and obtain an equal participation with other States, in the benefits of the Judiciary System. If, then, the business in the Circuits which we may now create, should be so far diminished, (as I think likely it will be,) as not to afford sufficient employment for their respective Judges, we have then nothing to do but extend those Circuits, so as to embrace the then admitted States, and they will have a Judiciary, with Judges already provided. And, Mr. Chairman, some of the States on the West of the mountains, know by hard experience, how necessary it is for a young community to take a fair and proper start, and pursue a straight forward course in their judicial proceedings. If this argument be sound, and I think it is, it establishes two great positions—that the number of Judges which the bill proposes to create, are not, at present, too *many*, and will not, in future, be too *few*, I mean within any given period to which we can extend our view.

2d. Any increase at all in the number of the Judges of the Supreme Court, is what those opposed to this bill unite in objecting to. They think the present number of seven is too great, and propose that all should wait, like spendthrift heirs, "till two of the oldest die off," when it shall remain at five. Who knows that the oldest will die before the "more young and vigorous?" But I think the gentlemen have altogether failed in showing that ten was too great a number. Where Associate Justices are appointed for their talents, their worth, and the confidence of the country, assisted by the District Judges in the Circuit Courts, it may be expected that appeals to the Supreme Court will very seldom be taken, *unless* upon new and unsettled principles, in causes of great importance, either as to the amount of property involved, or on account of some real or supposed conflict between constitutional or statute laws, which may affect the rights of a whole community. On questions like these, and many others that might be enumerated, I am yet to be convinced, that a majority of ten men are too many to be required to concur in opinion; and feel convinced, that a less number might be too few.

A wise man once said, that, "in the multitude of counsel there is safety;" but there may have been, since his day, many wiser than him, at least "in their own eyes;" and, doubtless, if Solomon himself were here, dictating his proverbs, he would, in the opinion of the *illuminati* of the present age, be considered a sort of old-fashioned gentleman, such another as—as—as Senator MACON, for instance.

But this increase is represented as dangerous to the Judicial tribunal, and even to the Constitution itself. Sir, I envy no man his confidence in the stability of our institutions, who believes that their broad foundations can ever be shaken by three Judges attached to the present system, without patronage—without power—save the mere power of declaring what the law is, especially when we are a minority of a bench composed of ten. Neither am I alarmed at partial irregularities, now in one section of the Union, and then in another, either in the Legislative or Judicial branches of State Governments—no matter whether they have been, or may now be, found in the State of Pennsylvania, Virginia, Georgia, Kentucky, or Tennessee, (though I have not heard the last State charged with *"entertaining notions peculiar to itself."*)

Yes, sir, the gales may blow from the East, and from the West, from the North, and from the South, to agitate and purify the political atmosphere—the leaves on the tree of *liberty* may be shaken; it may, and I hope will be, shorn of its excrescences, but the lightning of Heaven *will not* blast its trunk, while it is nourished by a free and generous soil.

Gentlemen who have discovered so many errors, and so much of danger in the present plan, have not been wanting in proposing expedients. A gentleman from Virginia (Mr. POWELL) convinced (as I presume he must be) of the eminent necessity of doing something to remedy the evils which are felt in the States to which the provisions of the bill relates, has kindly consented that we may have Judges, *titled* Judges of the Supreme Court, but in fact neither Judges of the Supreme or Inferior Court. They may possess talents, integrity, and even receive equal *salaries* with Associate Justices; but they must stay there and not show their faces in the Supreme Court—in the Circuit Courts, but take care that they do not mingle with the assembled Judges of the Nation. They would bring prejudices there; produce factions; and even corrupt the other seven immaculate members. That gentleman must

understand the character of the Western People better than I do. Either he is mistaken in it, or I am: for I hope and believe that there is not a man of talents, strict honor, and elevated character, who drinks of the Western waters, that would consent in his person so far to degrade his country, as to accept a commission of that sort. And if, for want of the necessary materials in the West to make such a sui generis, hermaphrodite kind of Judge out of, they should be transported to us from the Eastern side of the mountain, although we are in the habit of respecting our tribunals of justice; the persons of its members; and cheerfully acquiescing in their decisions; yet, it would be a matter well worthy the consideration of such Judges, and those who might send them, whether *they* were to be respected or despised, by the People among whom they were going.

The plan proposed to be substituted in lieu of the one recommended by the bill, and in which all the opponents of the bill seem to agree, is a separation of the Supreme and Circuit Courts. In whatever view this proposition is presented, it does appear to me surprising, that this system should be preferred, above all others, by those who profess to be alarmed at the increasing strength and influence of the Supreme Court, and at the danger to be apprehended from Executive patronage and control. Sir, the separation proposed, is not merely a separation of Supreme and Circuit duties—if that were all, it would be a matter of small account; but, whenever it is done, it will be a separation *indeed*, an awful separation of the Supreme Court of judicature, *from the Country*. It will require a bold and ruthless hand to draw this separating line. The Judges of the Supreme Court will be told to come out from among the People—to come away from the States—to forget the motion and effect of those great wheels within the greater wheel of the General Government—reside, like foreign ministers, "near the Government of the United States," to reflect the sunshine of Executive influence. This, Mr. Chairman, would be a change at which I would think the nation would have cause of alarm; and against which I enter my feeble but solemn protest. Yes, God forbid that the ermine of Justice should ever become a part of the paraphernalia of the Executive Court.

In support of this proposition, gentlemen insensibly run into inconsistency: by one argument, they oppose the appointment of three additional Judges, on account of the exercise of Executive patronage that this small increase will afford; while, by another argument, they, in effect, say, that this same fearful patronage must be exercised in the appointment of some *ten or twelve* Federal Judges: for all agree, if the Supreme Court is rendered independent of the Circuit Courts, about that number of new Circuit Judges will be necessary. What, then, does all this lead to? Why just this—Don't trust the Executive with the appointment of three Judges, for fear the power will be abused or mis-directed. But, if you will allow us, we will, to avoid this, give you a system in which it will be necessary that the Executive shall be trusted with the appointment of at least ten.

An objection has been made to this bill, which would strike at the root of this, as well any other remedy to the existing evils; that is, a distrust expressed by some gentlemen, in the appointing. That distrust may be felt by others, who have not expressed it; and, as I may justly be supposed to have a fellow-feeling with them, I can venture to address such with the greatest freedom; I may be permitted to say, that *this* measure is much older than *this* Administration. Year after year, the Representatives from the nine Western States, as one man, had called the attention of Congress to this subject. I do not mean to say, that this measure, in the precise form in which it is now presented, has been heretofore acted on. But that, a system, embracing many, if not all, the principles of this bill, has been repeatedly asked for: and it is not now for me to inquire, whether the passage of this bill is desired by the Administration or not; it is enough for me to know, that it is desired by the People of the State from which I come, and to believe that it is, in itself, necessary and right. And as *we* discharge our duty faithfully and impartially, so we may expect, so we may require, others to discharge theirs; earnestly hoping that they "would not, if they could," disappoint the just expectations of the country, in making the selections for these offices. But, if our faith is not strong enough to rest here, let us advance a step farther, and reflect that they, like ourselves, are responsible to the same great tribunal of public opinion, by which their actions, as well as ours, are to be tried. May we not then feel secure, that, surrounded by these guards, and acting under these responsibilities, they "could not, if they would," be wanting in the faithful discharge of this duty?

I must be permitted, as a citizen of the Western country, to thank the gentleman from Rhode Island, (Mr. PEARCE) for the high terms in which he has spoken of the patriotism of the People of that country; he has reminded the Committee that it was Western men, on this floor, previous to the last war, who roused the energies of the nation, and pointed out the enemy by which its rights were violated; and, he might have added, that Western men were most successful in finding and vanquishing that enemy. That gentleman has shown that Western men make able negotiators and excellent legislators; but his jealous policy seems to require that they should be kept away from the Court of the Nation, lest it should also be discovered that they possessed talents and virtue to adorn even that tribunal.

[Here Mr. PEARCE rose and explained, saying, his words and his meaning must have been misunderstood.]

Mr. ISACKS said, he had not undertaken to quote the gentleman's words; and should be glad to find that he had mistaken his meaning.

But, to return to the subject, the whole consideration of which seems to me to result in a few simple propositions, namely: the business in the Western States, must remain undone; the inequality in the system continue; an invidious distinction in the characters of the Judges and People on the two sides of the Alleghany, to the prejudice of the Western, must be drawn; a separation of the Courts, with all its inconveniences and dangers, must be made; or this bill must be passed. It may have its imperfections, and be attended with its inconveniences, of which even its friends do not pretend that it is wholly exempted; but, compared either with the evil of doing nothing, or doing every thing else, I trust its objections will be found to be few and feeble.

Mr. STORRS then said, that it seemed to him, at least, that the debate on the general principle of the bill, was nearly exhausted. It had become extremely desultory, and, perhaps, unprofitable. Not that he had not listened with pleasure, and derived instruction from the views which gentlemen had offered of the subject, but it was clear that it tended to no definitive result. A vote on the motion of the gentleman from Virginia, (Mr. MERCER) to strike out the first section of the bill, would be no test of the opinion of the committee. It was admitted, on all sides of the House, that something should be done, that the Western States may fairly participate in the benefits of the Judiciary System, and this produced much embarrassment in voting on the present question. It is the opinion of many members, that the bill is susceptible of amendments which will relieve those States from the evils and inconveniences which they suffer, without so great an increase of the number of Judges as to destroy the responsibility of the Court, or lead to other dangers which many have apprehended. Mr. S. said, that he felt this embarrassment himself; and as no proposition for amendment was in order while the present motion was pending,

gone upon the ground that the Supreme Court must, under all circumstances, and throughout all time, meet in this City. They ought to meet where the People will be the best accommodated. Why should our Judges, in the language of the gentleman from Pennsylvania, forever breathe the "tainted air of Washington?"—not tainted, he hoped, by Executive patronage. He repeated it, Where is the necessity of sitting here always? Are there so many cases here? It will not be pretended. No: hereafter let our Supreme Court hold one session in this City, for the accommodation of the South; one in New York, for the North; and one in Pittsburg, Louisville, Cincinnati, Frankfort, or Lexington, for the West. By this plan great sums would be saved to the country, in the reduction of the expense of going to those different places. And cannot such a plan be adopted? Are there any objections to it? If gentlemen are bent on equal justice, why not adopt it? But it is said by the gentleman from Massachusetts, that it is necessary for the Judges of the Supreme Court to exercise Circuit duties, in order that they may understand the feelings of the People. Is it necessary for a Judge to travel to acquire knowledge? If, when he presents himself for the bench, he is, like the Stoic's god, all *soul*, and no passion, let him retire to his closet, and, there, communing with his God, and abstracted from the world, let him be "a Judge, altogether a Judge, and nothing but a Judge." He would not let him mingle with the People for the sake of hunting for praise, and inviting local feelings and prejudices. He was always of opinion that a Judge must be great and useful by his books and his Judicial experience; and the more he is separated from the People, the better. At the commencement of the late war, our Courts found it necessary to acquire a knowledge of proceedings in prize causes; yet, to acquire a knowledge of the laws of war, and what appertained to belligerents, they were under no necessity of *travelling* into the enemy's country. Every thing, eventually, went on as formerly, although it is said, when the first prize arrived, there was not a lawyer in the country who could draw a libel in a prize case. Our privateers pursued their wonted courses, and the Judges of our Supreme Court found the decisions of Sir William Scott very accommodating, and to answer all their purposes. But again, if professional men find no difficulty in acquiring a knowledge of naval law, will not the exertions of our Judges be crowned with equal success? Call on the Chairman of your Judiciary Committee next month, whether the cause to be argued is from the East or West, from the North or South, he will be found *semper paratus*. One would suppose, from the remarks of the gentleman from Tennessee, that the causes there are of such a peculiar and complicated nature, that not even a 'Philadelphia Lawyer' would be able to understand or to manage them. Sir, is this so? I trow not—one or two decisions of our Supreme Court would set every thing right, and bring even the land laws of the West down to a level with the understanding of common men. And, after all, why is this great parade made about local law? What is the law of this country, and of the different States? It is the common law in main. We look into the English books for most of our knowledge; we read them for our law of evidence, for our definitions of crimes, with a very few exceptions: the English statute of distributions is almost our law of descents. We look into English books for our proceedings in Chancery, for our proceedings in Admiralty, both in the prize and *instance* side of the Court—for almost every thing we want to know to make us well understand the laws of our own country. Tell *me* not that the Judge of our Northern Circuit, (and I refer to him because I know no other member of the Supreme Court) must go to Kentucky or Tennessee, to gain a knowledge of the *land* law. Such, to be sure, is his thirst for knowledge, that, if necessary to increase it, I do not know but that he would embark in an expedition with John Cleves Symmes, and explore the bowels of the earth, or take an airy flight with Madam Johnson, and explore the regions of the Moon. The winds and the waves are put in requisition by him, and every Eastern gale wafts to him the lore of a foreign kingdom, and the profitable researches of, perhaps, the greatest lawyer living.

But the bill is to extend equal justice, and the gentleman from Louisiana had said, that, if we suffer a Judge to go into one State, we should give such a Judge to every State. He agreed with the honorable gentleman, if he goes into one he ought to go into every district. He understood that it was the object of the bill to extend the equal justice. But, have we not, in all our discussions and deliberations, overlooked a most important section of the Union, containing a million of people? He alluded to the Western part of the State of New York. Does the bill extend to the people of that section equal justice? Pass it in its present form, and you will soon hear a voice of complaint, that will reverberate along the shores of their canal, which will extend from the waters of Erie to where those waters were lately joined in holy wedlock with the waters of the Ocean. You will hear the small voice of twenty-three Representatives on this floor calling on you for equal justice. The People of that country will soon knock at your door, and you cannot but let them in, and heed their complaints. But he forbore: he would not encroach upon the prerogatives of others; comprising as that delegation does, a good share of the best talents in the House, he should not further attempt to represent their wants, when, as he had no manner of doubt, a faithful and more able representation, before this debate closes, will be in proper hands. The gentleman from Louisiana is the bold and eloquent advocate of equal justice, and here is a specimen of equal justice; but they can appeal from the decision of a District Judge to that of a Circuit Judge, and there they must stop. Great as may be the feelings of allegiance which the gentleman from Louisiana acknowledges towards his adopted State, one would suppose he would not be altogether unmindful of what was due to his native State:

"The land of his birth,
"The fairest land on the face of the earth."

We are told by the supporters of the bill, that the Judges are not now too many, and twelve will not be so many in a very short time; and, in the language of the gentleman from Virginia, we shall, confessedly, now have an army of Judges. If we look to other countries we shall find no such number. In England, the Court of King's Bench has but four; the Common Pleas and the Exchequer has each but four; but one in the Admiralty Court, and but one in the Court of Chancery. If we look at home, we find a disposition manifested by the several States to diminish and not to increase the number. Massachusetts had formerly five, but has now but four. New York has now but three, and formerly five; he believed the Supreme Court of Connecticut is not so numerous as it once was. He did not know that any State in the Union had at this moment more than five Judges in the Supreme Court. And, is not this sufficiently large for the purposes of justice? Would not each Judge, if there were only five, make the subject of every decision a particular object of his study? If the present system be imperfect, because the Western Judge goes to the East with his local feelings, the evil will be increased as we increase the number. Take the subject in every point of view, the more you increase the number the more you increase the evil. If it is to be an insulated Court, exempt from circuit duties, five is sufficient. Would their duties be increased, or would they consume any more of their valuable time? Separate them from their circuit duties, and, if a further knowledge of local business be necessary, they would have a better opportunity of acquiring it at

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One remark, Mr. Chairman, in answer to the gentleman from Connecticut, and I have done. That gentleman has told the committee that it is necessary that the Judges of the Supreme Court should perform circuit duties to prevent appeals—to prevent the exercise of rights guaranteed by the Constitution; that, without the performance of these circuit duties in this way, the Judge who decides the cause will not be in the Supreme Court to head the relinquished in the lower Court. Sir, if the Constitution is secured to us two trials, is it correct that the Judge who has decided against an individual in the Court below, should go into the Court of appellate jurisdiction, and there prevent a fair trial, or is it proper that his being there should prevent an appeal, when, under other circumstances, an appeal would have been taken? This he did not think to be the administration of justice according to the laws of the land. The gentleman from Illinois tells us that, even in the establishment of our Courts, it is best to attend to what is now expedient, and to let the future take care of itself. If any branch of the Government should be permanent, it is the Judiciary: it restrains your executive, and checks our National Legislators in their wild, and, sometimes, mad career. It restrains all the powers of Government; it should be seldom touched, and, when altered or amended, all its defects should be remedied.

Mr. ISACKS said, that, as this able and protracted debate was now drawing to a close, he could scarcely expect, and feared he should not deserve, the patient attention of the Committee, to the few remarks which he felt it his duty to make; but he hoped some apology for asking that attention, would be found in the circumstance of his having had the honor, at an early day in the session, of referring the Committee on the Judiciary, through the House, a resolution, having for its object an amendment of the Judiciary, upon the same basis proposed by this bill. Though he did not pretend that this bill was the result of the inquiry then directed, yet he was much gratified to find that that Committee had, by their report, and the very able arguments by which they had supported it, given to the subject the same direction which he had desired.

The frequent reference which has, during the discussion, been made to the state of things—the nature and extent of business, in the State from which he came, furnished, he hoped, an additional excuse, at least, for this undertaking.

Satisfactory information has been furnished by the members of the Judiciary Committee, (said Mr. I.) and other gentlemen, of the quantity of business actually remaining undone in the Courts within those States comprehended by the provisions of the bill; but I agree with the gentleman from Rhode Island, (Mr. PEARCE) that, while we are making inquiry as to the necessity of further legislation on this subject, we should not limit our view to the number of causes upon the Court dockets, but extend it further—into the nature, the difficulty, and the importance, of that business, and the effect which delay, or denial in performance, must have upon society. Concerning the business in Tennessee, beside that which is common to all the States, under several of the branches of jurisdiction, conferred by the Constitution and laws of the United States on the Federal Courts, from the manner in which land titles had been derived there, the difficulty in their establishment, the uncertainty and conflicting nature of the claims, and the great number of claimants which were non-residents, rendered a large proportion of the business of that State, if not altogether peculiar to itself, at least very different from that which is to be found in some other States. I may be permitted to state the fact, that, in the trial of very many of those causes, from one to three weeks are spent, perhaps necessarily. With the slight impression which a District Judge, once a year, could make upon a docket of two or three hundred causes like these, constantly increasing, and not likely in half an age to be terminated, what inconvenience and wasting expense must the country suffer? or rather, may I not ask, what hardships is it *not* doomed to suffer? By the stagnation in the administration of justice, the improvement of the country is suspended; the farmer is discouraged and impoverished; his hands are tied up in court, while his plough stands still; a doubtful, fearful state of uncertainty, more fatal than present poverty, is continually reminding him that he can neither call his cottage and his fields his own, nor know that he must yield them up to a more successful claimant.

But why, Mr. Chairman, are we required to bring court dockets here? The geographical and statistical information familiar to every member of this Committee, should produce the conviction, that the great variety and magnitude of concerns naturally (according to the organization of our National Judiciary,) belonging to the Circuit Courts of the United States, and necessarily arising in a country so populous, so enterprising, and so extensive, as that embraced by the nine States West of the Alleghany, *must be* a dead and undiminished weight upon it, while its great judicial transactions depend on the labor of *one* man, long since worn down in the service, and prostrated on a bed of languishment.

Another argument, still more forcible, in favor of this bill, is the inequality of the present system; which had been so strikingly shown by other gentlemen, that on this point I will only add, said Mr. I. that right and remedy are, in their very nature, so inseparably connected, that the former, without the latter, is not worth possessing. It is in vain that you extend equal laws to a community, if you withhold from it the equal execution of those laws. It is in vain that my rights are defined, if I am deprived of remedy when those rights are violated. But, sir, if this or any other imperfection, or positive fault, existed, and was felt as an evil common to the whole Union, the People of these new States would move spontaneously with the old ones, in effecting its removal—and if the evil were so stubborn as to baffle their united efforts, *they* would show you an example of patience, forbearance, and fortitude—"for they who can nobly dare, can nobly suffer." If we had no other reason to urge for the exten-

sion of the system, this aloue is unanswered, and unanswerable; that, as States, we *are equal*, and have a right to claim *full equality* with the old thirteen; notwithstanding which, we have been deprived of an *equal* participation in the administration of justice.

I will now very briefly consider the grand objection made to this bill, by all the gentlemen who have opposed it—that is, the increase of Judges on the bench of the Supreme Court. This objection has two branches: 1st, To the number ten, in preference to nine. Some of the friends to this bill have intimated their inclination only to extend the increase of Judges to two, instead of three, as the bill proposes, by which the members of the Supreme Court would be fixed at nine. I will beg leave to refer such to the formation of the Circuits pointed out by the bill, which, I am confident, will be found, not only the most judicious, but will altogether remove the objection which is made to the number, on the ground that three additional Judges are not necessary to discharge the business. Beginning with the Circuit of Louisiana and Mississippi: Though Mississippi may not at present, nor even promise in future to, afford an equal half of the employment for an Associate Justice, yet, being joined with Louisiana, which, from its position, the wealth of its citizens, the trade which it carries on with other States, and foreign countries, and being the great depot for almost the whole commerce of those nine States, it cannot fail to produce much more than an equal moiety of employment for the Judge; and I think there is no reason to suppose, that the man who may perform the business of those States, and take a voyage to Washington once a year, to a Supreme Court, will not have his hands full. Alabama, presenting not so formidable a mass of business, is put in a Circuit along with Tennessee, where the excess is amply sufficient to make up for the want of proportion in that furnished by Alabama. Ohio, which, from its increasing importance in every respect, must furnish an amount beyond an equal quota of business for one Circuit—is therefore thrown along with Indiana and Illinois, where that kind of business, for many years to come, is not expected to be so considerable. And Kentucky, with its nine hundred causes, and having, (like Tennessee,) an unfortunate ability for the productiveness of that article, is placed with Missouri, a State much less productive of litigation. I will admit, sir, that, to a certain extent, the gentleman from Virginia, (Mr. MERCER,) in ascribing the great mass of business now on hand in the States of Kentucky, Tennessee, and Ohio, to accumulation on account of the inability of the Judge of that Circuit to dispose of it, is correct, but it is not, by-the-by, on that account, the less an evil. But, if this mass has been some five or seven years accumulating, it is reasonable to conclude, that some three or four years will be necessary, under the proposed arrangement, to master this old business, and reduce it to ordinary income, (if I may so call it.) In the mean time, the tide of emigration will continue to roll to the Northwestern and Southwestern frontiers. Three territories, lying all of them contiguous to some one or more of these new Circuits, will be claiming and obtaining admittance into the Union as States; and I hope they will both claim and obtain an equal participation with other States, in the benefits of the Judiciary System. If, then, the business in the Circuits which we may now create, should be so far diminished, (as I think likely it will be,) as not to afford sufficient employment for their respective Judges, we have then nothing to do but extend those Circuits, so as to embrace the then admitted States, and they will have a Judiciary, with Judges already provided. And, Mr. Chairman, some of the States on the West of the mountains, know by hard experience, how necessary it is for a young community to take a fair and proper start, and pursue a straight forward course in their judicial proceedings. If this argument be sound, and I think it is, it establishes two great positions—that the number of Judges which the bill proposes to create, are not, at present, too *many*, and will not, in future, be too *few*—I mean within any given period to which we can extend our view.

2d. Any increase at all in the number of the Judges of the Supreme Court, is what those opposed to this bill unite in objecting to. They think the present number of seven is too great, and propose that all should wait, like spendthrift heirs, "till two of the oldest die off," when we shall remain at five. Who knows that the oldest will die before the "more young and vigorous?" But I think the gentlemen have altogether failed in showing that ten was too great a number. Where Associate Justices are appointed for their talents, their worth, and the confidence of the country, assisted by the District Judges in the Circuit Courts, it may be expected that appeals to the Supreme Court will very seldom be taken, *unless upon* new and unsettled principles, in causes of great importance, either as to the amount of property involved, or on account of some real or supposed conflict between constitutional or statute laws, which may affect the rights of a whole community. On questions like these, and many others that might be enumerated, I am yet to be convinced, that a majority of ten men are too many to be required to concur in opinion; and feel convinced, that a less number might be too few.

A wise man once said, that, "in the multitude of counsel there is safety;" but there may have been, since his day, many wiser than him, at least "in their own eyes;" and, doubtless, if Solomon himself were here, dictating his proverbs, he would, in the opinion of the illuminati of the present age, be considered a sort of old-fashioned gentleman, such another as—as—as Senator MACON, for instance.

But this increase is represented as dangerous to the Judicial tribunal, and even to the Constitution itself. I envy no man his confidence in the stability of our institutions, who believes that their broad foundations can ever be shaken by three Judges attached to the present system, without patronage—without power—save the mere power of declaring what the law is, especially where they are a minority of a bench composed of ten. Neither am I alarmed at partial irregularities, now in one section of the Union, and then in another, either in the Legislative or Judicial branches of State Governments—no matter whether they have been, or may now be, found in the State of Pennsylvania, Virginia, Georgia, Kentucky, or Tennessee, (though I have not heard the last State charged with "*entertaining notions peculiar to itself.*")

Yes, sir, the gales may blow from the East, and from the West, from the North, and from the South, to agitate and purify the political atmosphere—the leaves on the tree of *liberty* may be shaken; it may, and I hope will be, shorn of its excrescences, but the lightning of Heaven only can blast its trunk, while it is nourished by a free and generous soil.

Gentlemen who have discovered so many errors, and so much of danger in the present plan, have not been wanting in proposing expedients. A gentleman from Virginia, (Mr. POWELL) convinced (as I presume he must be) of the eminent necessity of doing something to remedy the evils which are felt in the States to which the provisions of the bill relates, has kindly consented that we may have Judges, *titled* Judges of the Supreme Court, but they are neither Judges of the Supreme or Inferior Courts. They may possess talents, integrity, and even receive equal *salaries* with Associate Justices; but they must stay at home and not show their faces in the Supreme Court—in the Circuit Courts, but take care that they do not mingle with the assembled Judges of the Nation. They would bring prejudices there; produce factions; and even corrupt the other seven immaculate members. That gentleman must

understand the character of the Western People better than I do. Either he is mistaken in it, or I am: for I hope and believe that there is not a man of talents, strict honor, and elevated character, who drinks of the Western waters, that would consent in his person so far to degrade his country, as to accept a commission of that sort. And if, for want of the necessary materials in the West to make such a sui generis, hermaphrodite kind of Judge out of, they should be transported to us from the Eastern side of the mountain, although we are in the habit of respecting our tribunals of justice; the persons of its members; and cheerfully acquiescing in their decisions; yet, it would be a matter well worthy the consideration of such Judges, and those who might send them, whether *they* were to be respected or despised, by the People among whom they were going.

The plan proposed to be substituted in lieu of the one recommended by the bill, and in which all the opponents of the bill seem to agree, is a separation of the Supreme and Circuit Courts. In whatever view this proposition is presented, it does appear to me surprising, that this system should be preferred, above all others, by those who profess to be alarmed at the increasing strength and influence of the Supreme Court, and at the danger to be apprehended from Executive patronage and control. Sir, the separation proposed, is not merely a separation of Supreme and Circuit duties—if that were all, it would be a matter of small account; but, whenever it is done, it will be a separation *indeed*, an awful separation of the Supreme Court of judicature, *from the Country*. It will require a bold and ruthless hand to draw this separating line. The Judges of the Supreme Court will be told to come out from among the People—to come away from the States—to forget the motion and effect of those great wheels within the greater wheel of the General Government—reside, like foreign ministers, "near the Government of the United States," to reflect the sunshine of Executive influence. This, Mr. Chairman, would be a change at which I would think the nation would have cause of alarm; and against which I enter my feeble but solemn protest. Yes, God forbid that the ermine of Justice should ever become a part of the paraphernalia of the Executive Court.

In support of this proposition, gentlemen insensibly run into inconsistency: by one argument, they oppose the appointment of three additional Judges, on account of the exercise of Executive patronage that this small increase will afford; while, by another argument, they, in effect, say, that this same fearful patronage must be exercised in the appointment of some *ten or twelve* Federal Judges: for all agree, if the Supreme Court is rendered independent of the Circuit Courts, about that number of new Circuit Judges will be necessary. What, then, does all this lead to? Why just this—Don't trust the Executive with the appointment of three Judges, for fear the power will be abused or mis-directed. But, if you will allow us, we will, to avoid this, give you a system in which it will be necessary that the Executive shall be trusted with the appointment of at least ten.

An objection has been made to this bill, which would strike at the root of this, as well any other remedy to the existing evils; that is, a distrust expressed by some gentlemen, in the appointing. That distrust may be felt by others, who have not expressed it; and, as I may justly be supposed to have a fellow-feeling with them, I can venture to address such with the greatest freedom; I may be permitted to say, that *this* measure is much older than *this* Administration. Year after year, the Representatives from the nine Western States, as one man, had called the attention of Congress to this subject. I do not mean to say, that this measure, in the precise form in which it is now presented, has been heretofore acted on. But that, system, embracing many, if not all, the principles of this bill, has been repeatedly asked for: and it is not now for me to inquire, whether the passage of this bill is desired by the Administration or not; it is enough for me to know, that it is desired by the People of the State from which I come, and to believe that it is, in itself, necessary and right. And as *we* discharge our duty faithfully and impartially, so we may expect, so we may require, others to discharge theirs; earnestly hoping that they "would not, if they could," disappoint the just expectations of the country, in making the selections for these offices. But, if our faith is not strong enough to rest here, let us advance a step farther, and reflect that they, like ourselves, are responsible to the same great tribunal of public opinion, by which their actions, as well as ours, are to be tried. May we not then feel secure, that, surrounded by these guards, and acting under these responsibilities, they "could not, if they would," be wanting in the faithful discharge of this duty?

I must be permitted, as a citizen of the Western country, to thank the gentleman from Rhode Island, (Mr. PEARCE) for the high terms in which he has spoken of the patriotism of the People of that country; he has reminded the Committee that it was Western men, on this floor, previous to the last war, who roused the energies of the nation, and pointed out the enemy by which its rights were violated; and, he might have added, that Western men were most successful in finding and vanquishing that enemy. That gentleman has shown that Western men make able negotiators and excellent legislators; but his jealous policy seems to require that they should be kept away from the Court of the Nation, lest it should also be discovered that they possessed talents and virtue to adorn even that tribunal.

[Here Mr. PEARCE rose and explained, saying, his words and his meaning must have been misunderstood.]

Mr. ISACKS said, he had not undertaken to quote the gentleman's words; and should be glad to find that he had mistaken his meaning.

But, to return to the subject, the whole consideration of which seems to me to result in a few simple propositions, namely: the business in the Western States, must remain undone; the inequality in the system continue; an invidious distinction in the characters of the Judges and People on the two sides of the Alleghany, to the prejudice of the Western, must be drawn; a separation of the Courts, with all its inconveniences and dangers, must be made; or this bill must be passed. It may have its imperfections, and be attended with its inconveniences, of which even its friends do not pretend that it is wholly exempted; but, compared either with the evil of doing nothing, or doing every thing else, I trust its objections will be found to be few and feeble.

Mr. STORRS then said, that it seemed to him, at least, that the debate on the general principle of the bill, was nearly exhausted. It had become extremely desultory, and, perhaps, unprofitable. Not that he had not listened with pleasure, and derived instruction from the views which gentlemen had offered of the subject, but it was clear that it tended to no definitive result. A vote on the motion of the gentleman from Virginia, (Mr. MERCER) to strike out the first section of the bill, would be no test of the opinion of the committee. It was admitted, on all sides of the House, that something should be done, that the Western States may fairly participate in the benefits of the Judiciary System, and this produced much embarrassment in voting on the present question. It is the opinion of many members, that the bill is susceptible of amendments which will relieve those States from the evils and inconveniences which they suffer, without so great an increase of the number of Judges as to destroy the responsibility of the Court, or lead to other dangers which many have apprehended. Mr. S. said, that he felt this embarrassment himself; and as no proposition for amendment was in order while the present motion was pending,

he hoped that the gentleman from Virginia would withdraw it for the present, that he might have an opportunity to offer an amendment to the bill.

Mr. MERCER observed, that he should have withdrawn the motion to strike out the first section of the bill before this period of the debate, but felt restrained by the consideration, that he had himself had an opportunity of delivering his views at some length upon the subject, and, as gentlemen had indulged him, by listening to what he had to offer, he considered it indelicate not to leave the same opportunity to them. Many replies had been given to his objections to the bill; but he trusted the committee would do him the justice to believe that he was induced now to consent to withdraw the motion rather by a wish to consult the convenience of the committee, than by any conviction that the arguments which had been adduced on the opposite side were unanswerable.

Mr. M. said, he had listened in unaffected astonishment to what had fallen from some of the gentlemen from the West, whose feelings seemed to have been wounded by some of the observations he had made. It had been said, that his proposition went to produce a system unequal in its distribution of justice; and that he had been influenced in advocating it by a want of confidence in the Western States—and this, notwithstanding the admission on his part, that the wants of the West, if they did exist to the extent spoken of, were entitled to redress. But the system he had advocated, if liable to any other objection, was certainly not liable to that of Judicial inequality; and he could assure gentlemen, that, if the same difficulties had been represented as existing in the East, and the remedy proposed had come from the West, he should have had the same objections to it. It was far from his intention, whatever his language might have seemed to intimate, to express the least want of confidence in the People of the West; and, as to what he had said in respect to his frequent visits to that country, admitted an easy explanation, as all he had, once, lay on the West of the mountains, and his visits were a matter of necessity; yet, some gentlemen had thought proper to hold him up before the country as an enemy of the West. He hoped, before this discussion was brought to its close, to contrast the provisions of the bill with another system which had at one time received all the votes of the Senate of the United States but three—and, if he could not demonstrate that it presented superior advantages to the Western States to any that could arise from an increase of the number of Judges of the Supreme Court, he would be content to submit to the system of the bill, however repugnant to all his ideas of prudence and policy.

Mr. STORRS then moved to amend the first section of the bill, so as to reduce the proposed number of Judges of the Supreme Court, to *nine* instead of *ten*, as the bill now proposes.

This motion, he said, was intended to be made by the member from Delaware, who was not now in his seat. Mr. STORRS made it in his stead; and, wishing that that gentleman might have an opportunity of submitting his views in favor of it, he moved that the committee now rise.

Mr. WEBSTER hoped that this motion would not be pressed. The subject had been already before the committee for a fortnight, and he was opposed to further delay. He regretted, on some accounts, the course which had now been pursued, as he had hoped that the committee would have been allowed to express some opinion on the general principle of the bill, before any amendments were introduced. He did hope that the Committee would have done some act in relation to the bill—but, after a fortnight's discussion, no one thing had yet been done. A longer time has already been consumed on this bill, than was taken by our fathers, in forming the entire Judicial System, with all the other mighty matters they had upon their hands. Motions for amendments, offered in Committee, may be renewed in the House; but, if we leave matters as they now stand, a new motion to strike out the first section of the bill may be made at any time, and the whole ground must be travelled over again. Gentlemen must, by this time, have formed some opinion on the great features of the bill, and be prepared to express some judgment in relation to it. He hoped it would be allowed to pass through the Committee without further delay.

Mr. STORRS said, if there was any prospect of getting the bill out of Committee at this time, he was willing to withdraw his motion for the Committee's rising; and, with that understanding, he did withdraw it.

Mr. MERCER observed, that other gentlemen, as well as the member from New York, had amendments, which they were desirous of presenting.

Mr. STORRS then said, that, as the gentleman from Virginia had consented, at his suggestion, to permit the course of debate to be changed, he hardly felt authorized, by courtesy, to ask that the Committee should rise. He would, therefore, briefly state some of the reasons which had satisfied him that the number of Judges proposed was too large. I shall not, said Mr. S. at this very protracted stage of the debate, offer my views of the general question, which has been so much discussed; but, entertaining as I do, the opinion that, for reasons which have not only been already stated, but for others, which I am not disposed to bring into examination at this time, or discuss at this late hour, we may increase the number of the Judges to a dangerous extent, I am anxious that we should now create no greater addition to the Court than the necessity of the occasion indispensably demands. Gentlemen who represent, on this floor, the States immediately interested in, and affected by, this measure, will, I am confident, do me the justice to believe, that, in proposing this amendment, I am actuated by no feelings of unkindness or hostility to their interests. Since I have had the honor of a place here, it is well known to them that my humble aid and efforts have been cheerfully and uniformly directed to the support of every measure which their wants and necessities called for from the impartial and parental hand of the General Government; and the bill now before us would only receive my support in any shape which it may assume, but for the conviction that they are justly entitled to receive from us adequate relief from the evils and embarrassments which exist in those States in the administration of justice through the Federal Judiciary. The chief, and, perhaps, the only inquiry, on this amendment, is the practicability of administering a remedy to these evils by the addition of only two Judges to the bench of the Supreme Court. I shall not examine the arrangement of the Courts which must follow from this change of the bill, as it will more properly be considered when the opinion of the Committee shall be had on the question immediately before us.

It has been stated by the Chairman of the Judiciary Committee, that, in the last three years, under the present organization of the Courts, no less than two thousand causes have been disposed of in the Circuit Court of Kentucky alone. This has been accomplished by a system which has assigned to the circuits of the Western States only one of the Associate Judges of the Supreme Court. The effect of the amendment will be to retain in the proposed system, two additional Judges, whose circuit duties will be exclusively confined to the Western States. Now, it is well worth our notice, that the result of such an organization, which devotes the time of three Judges only to these duties, will, at the same rate which our experience has shewn to be practicable, probably enable them to dispose of six thousand causes in these States, in the same time, or, in other words, to dispose of two thousand causes per annum. It is almost inconceivable to me, said

Mr. S. that this will not be adequate to all the purposes or necessities of justice in these States. Is it possible that we can seriously think, that these States can be afflicted with Judicial calamities to an extent exceeding the remedy which three Judges can thus apply to the present condition of their dockets? If the evil is greater than this, I should suspect that there must be something inherently unsound in the local systems or the practice of the Courts, to which we may rather attribute the inconveniences they suffer, than to the defects of the Judicial system of the General Government. It requires, in my judgment, an uncommon share of credulity to believe, if that is to be understood from this accumulation of causes on their dockets, that this number of trials can be required to be yearly had even in all their Courts. Though the dockets may be swelled numerically to a great extent, yet it must be, from the very nature of a great part of the subjects of litigation there, that single trials must necessarily dispose large classes of cases, and especially of causes involving the titles to land; from which source this accumulation of litigation is chiefly produced. If we have reason to believe, as I think we have, that this accumulation of causes has already reached its maximum, there can be no necessity, at this time, for creating more than two additional Judges; and if, by this addition to the bench, we can apply a remedy adequate to the causes which call for our interposition, we may relieve the apprehensions of inconvenience and danger which exist, in a too great and sudden extension of the number of Judges. There are said to be, at present, on the docket of the Circuit Court of Kentucky, nine hundred causes. It is clear that, unless some cause unknown to us exists, to render it more difficult to dispose of these than those which have been disposed of in the last three years, that a Judge may clear that docket in a single year; and it is admitted that the Circuit Court for that State is more pressed with the amount of litigation than any other of the Western States. It is further well worth our notice here to compare the representation of the Western States, in this House, with the Atlantic States. I do not, said Mr. S. intend to be understood to mean that this view of the relative population of the States furnishes the criterion by which we are to act on this bill. It is not. But it is well worth taking into the account, on a matter on which we cannot arrive to certainty on the actual and probable future state of things, which calls for legislation on the present subject. There are, on this floor, forty-seven members from the Western States, and this even admits Louisiana, Alabama, and Mississippi, to come within that description—I ought, perhaps, to say the new States. From the Atlantic States, we find here less than one hundred and sixty-five members. Now, the distribution of ten Judges of the Supreme Court among the States, the number which the original bill proposes, the proportion to which these new States would be entitled, on the ratio of representation, would be only two—the Atlantic States *eight*; and yet, as the ten Judges are assigned by the bill, the Western States are provided with *four*, and the Atlantic States remain at the comparatively reduced number of *six*. By the amendment, they will still retain three; leaving to the Atlantic States their present organization with six. Is it probable that, when we consider the great comparative commercial interest and business of the Atlantic States, and the consequent of admiralty and maritime jurisdiction, which scarcely exist in the Western country, that we do not perceive that the distribution of ten Judges, as proposed by the bill, must necessarily be greatly disproportioned to any just rule of distribution? It is admitted by the friends of the measure, that the additional three Judges will very shortly reduce the pressure of causes in the Western States, and indeed this must necessarily take place from other causes. We have no idea that it is to be long; and as two new States, Michigan (to say nothing of Florida) and Arkansas, will shortly be admitted into the Union, is it not safer to create at this time only two new Judges, and reserve the appointment of the tenth Judge until these States are admitted? Are we sure, that, when that period comes, we shall not hear of a claim for more Judges than even ten? We may advance too fast; and although gentlemen now assure us, that even when these States are admitted, ten Judges will be sufficient; yet that very consideration assures me, that two are sufficient now. The evil of the present day is sufficient for us at this time, and I feel some anxiety that we should reserve the creation of one of these new Judges till we arrive at the time when we may feel assured that the number of Judges on the bench is fixed, limited, and no longer uncertain. It does not, in my judgment, conclusively follow, that no more Judges will be asked for; and I at least think, that I can discover that the enlarging of the number of the Court to ten, at this time, may, with the future addition of another, or more Judges, lead to consequences which we may even now, by a more prudent and cautious policy, avert. I did not intend, when I rose, said Mr. S. to say more than merely to state, with great brevity, some of the reasons which satisfy me, that this amendment should be adopted. On the general question of the comparative merits of the present organization of the circuit system with that of independent circuit courts in the several States, by Circuit Judges merely, I cannot consent to change the present system, as the gentleman from Virginia has proposed. The result of my own limited experience has satisfied me, that it would be inexpedient to separate the Judges of the Supreme Court from their circuit duties. The Judiciary being the weakest political branch of the Government, will naturally lean towards the power which protects it; but a certain guaranty for the integrity and impartiality of the Judges, especially in all free Governments, may always be found in the fearless judgment which an enlightened and independent Bar always pronounces on their decisions. So long as the Judges are to pass in review annually before the bar of the country, we may dismiss all apprehensions of encroachments on the just constitutional rights of the States, or the personal rights of their citizens. No local circuit system will command or obtain the qualifications which are indispensable to that enlightened administration of justice, which alone can ensure the perpetuity and preserve the moral power, which all must desire the Federal Courts of the Union forever to maintain.

Mr. WEBSTER said, that, when he had first introduced the bill, he had stated to the House, that there was a way in which, for a time, the country might get along with only two additional Judges; and, that the proposal for three had his assent, rather than his cordial support. He would now state more distinctly his view of the facts of the case: for, we shall never arrive, said Mr. W. at any point, so long as we continue merely to throw out general ideas on the subject. As the Circuits are arranged by this bill, three additional Judges are indispensable—but, if the States of Indiana, Illinois, and Missouri, will consent to do without the system of Circuit Courts, and will content themselves with District Judges, which he thought they might do for some years longer—then only two new Judges will be required. But, if the amendment of the gentleman from New York is adopted, it will necessarily destroy the whole arrangement of the bill as it now stands.

[Mr. STORRS explained. He was aware of this; and, if the amendment prevailed, he should, of course, move to recommit the bill to the Judiciary Committee, that the Circuits may be recast so as to suit the number of Judges.]

Mr. WEBSTER resumed, and went on to shew, that, if nine Judges only should be appointed, the Circuit system could not be extended to all the Western States. He detailed the several arrangements which must, in that

case, be made of the Circuits, and argued that it would be impracticable for the nine Judges to perform the duties of them all. In reply to Mr. STORRS, he observed, that it by no means followed, if we appointed ten Judges now, that hereafter we must keep on adding to the number. He believed that the system, if extended to ten, would answer all the exigencies of the country for twenty years to come—possibly for fifty years. When Michigan and Arkansas become States, they may be added to the Circuits now proposed to be formed, and Florida might, in like manner, be appended to the Southern Circuit as it already exists. As to the question which had so frequently been asked, "Where are we to stop?" it might as well be asked as to the representation on this floor, where is it to stop? The same answer is to be given to both—we must stop at the point of practical inconvenience; and it will be time enough to fix upon that when we get there.

Mr. TRIMBLE observed, that, after a heavy debate of ten days, a few brief remarks, made in the free style of conversation, such as had just occurred, would be more useful than elaborated speeches. In this style he would say a few words upon the new proposition before the committee. The question is, shall we add two or three new Judges to the Supreme Court? The Chairman of the Judiciary Committee states one fact which ought to be decisive of the question. The candor of that gentleman ought to give great weight to his facts as well as his opinions. He says that the Circuit system cannot be extended to all the Western States without an addition of three new Circuits, and, consequently, three new Judges; that, if only two are added, the States of Indiana, Illinois, and Missouri, must be content with the present District System. But why not make the system uniform at once? Why leave those three States in the condition of juridical provinces? Could any statesman give a good reason why such odious distinctions should be made? The right of the States in question to have the Circuit System did not depend upon the quantity of business for the Courts. *Are they in the Union?* That is the *fact* upon which the right depends. It is true that the quantity of business in each of the proposed new Circuits will double the quantity in any three of the old Circuits East of the mountains; but he could not admit that the right of the States to have an equal uniform extension of the Circuit System, could depend upon the number of law-suits to be decided. All the States came into the Union on an equal footing. The Federal Government is divided into three branches, Legislative, Executive, and Judicial. These branches ought to be equal and uniform in their application to the States. What right can a part of the Union have to expound the laws for the whole? What is self Government? A form of Government in which all have an equal share in making, expounding, and executing the laws. We have six Judges East of the Mountains, and only one West of them; and of course the Eastern States will expound the Constitution and the laws for themselves and all the other States. This is wrong in theory, and unjust in practice. Under the present system we have six States in the condition of judicial provinces—they complain of this unjust distinction. Why not put an end to all complaint, by giving each State an effective Circuit System? What shall we gain by reducing the proposed increase of Judges to two only instead of three? We shall save $4,500, the salary of one Judge, and, to effect this paltry saving, we are called upon to violate the rights of some of the States, and the principles of equality in all of them. In every view, it must appear to candid Statesmen, as a plain act of injustice to the States excluded from the Circuit System; an act of *political injustice*, as useless as it would be unfair and impolitic.

But he would waive the right of those States, and join issue with the gentleman from New York, (Mr. STORRS,) upon the point of business. We are told, said he, by the Chairman of the Judiciary Committee, that if the proposed reduction takes place, Ohio and Kentucky will have to form one Circuit. But it was well known to the members of Congress, that the quantity of business in the Federal Courts of those two States, has always been, and will probably continue to be, more than double the aggregate quantity in all the six Circuits on the seaboard, and he would ask gentlemen, if it was fair to compel the Judge of that Circuit, to do as much Circuit duty as all the six Eastern Judges? Those two States, and Tennessee, form the present Circuit West of the mountains, and it might well be supposed that the Judge there, had fallen a martyr to the heavy burden imposed upon him: for he is said to be upon his death bed. It is known that two thousand causes have been decided in the Federal Courts in Kentucky in the last three years; and it is said, that about six hundred are brought annually in that State. This itself, was probably more than all the six Eastern Judges had to do in their Circuits. The gentleman from New York, (Mr. STORRS) supposes that the two thousand causes spoken of, must have been plain cases, or at least there must have been judgments and decrees in some of the cases, which was decisive of many others of them; and he even went so far as to imagine that the cases might be thrown into classes, so as to make the principles of a few cases decide a mass of them at a time. Mr. T. said it was impossible to make any such classification—how causes would not admit of it. The true secret in the dispatch of business in that State, was to be found in the extraordinary abilities of the Federal District Judge, and not in the classification of suits. Nothing, he said, could be more complex than a Kentucky land cause, and no Judge could get along with them, unless he had the benefit of many years' experience in the Courts of that State.

Why not equalize the labor of the Judges? Why impose such heavy duties on the Western Judges? Can any thing be saved by it, except the salary? But it is supposed by the mover of the proposition, that, after a time, the business in the West will diminish, and then nine Judges and nine Circuits will be enough. Ten Circuits are wanted now, and therefore let us have ten. When the business should decrease, we may hereafter reduce the number to nine. It will be as easy to reduce to nine, by death or resignation, as seven to five in the same way. The scheme of reduction proposed by two members from Virginia, (Messrs. POWELL and MERCER) would accomplish the object, if ever it should become expedient. At this time, there is more business for the Judges in the West, than there is for six in the East. We are therefore entitled to them now as a matter of right, as well as justice. Let the future provide for itself. If they are not wanted twenty years hence, reduce them.

It is no argument against us to say, that we shall have as many Judges as our business calls for at that time, because the next generation may not want them. The best way to take care of posterity is to take good care of ourselves. The sum of the whole matter comes to this: Will you add three new Judges to the Court, and make the system uniform and efficient throughout all the States?—or will you make three judicial colonies for the sake of $4,500? He hoped the committee would reject the amendment, and avoid the discontents that would arise in the States referred to, if it should be adopted. If, however, it should be seriously urged, the Western Members might consider it their duty to go more at large into the argument against it.

After Mr. T concluded his remarks, on motion of Mr. WRIGHT, of Ohio, the Committee rose,

And the House adjourned.

THURSDAY, JANUARY 19, 1826.

INTERNAL IMPROVEMENT.

Mr. HEMPHILL, from the Committee on Roads and Canals, reported the following bill:

"A BILL concerning Internal Improvements.

"Whereas it is deemed expedient for the General Government to guaranty the expenditure of a reasonable sum of money to aid in the execution of certain important objects of Internal Improvements: and whereas it is prudent to accomplish this great design in a manner that will be the most reconcileable to all—

"*Be it therefore enacted, &c.* That the money remaining in the Treasury, after the payment of such appropriations as may be made at each session of Congress, shall be set apart, and be considered, as a fund for the purposes of Internal Improvements; which money shall be expended in making subscriptions on the part of the General Government, in such companies as are, or may hereafter be, incorporated by the respective States, and as Congress may approve of, from time to time; or to be expended in aiding any of the States in such objects of improvements as may receive the approbation of Congress.

"Sec. 2. *And be it further enacted,* That, as long as the United States shall own stock in any one State, the Secretary of the Treasury shall receive the dividends on the same, for the use of the United States, and shall vote at any election for the officers of any such incorporated company, according to the number of shares owned by the United States; or if money shall be expended in aiding any of the States, the United States shall receive its proportion of the profits of the work, according to the whole capital expended.

"Sec. 3. *And be it further enacted,* That each State shall, at any time, have a right to purchase the stock so subscribed on the part of the United States, in such State, at a price which, together with the dividends or profits that may have been received, shall reimburse the United States for the principal, and —— per cent. interest thereon, from the time the subscription shall have been made; and on payment thereof, the Secretary of the Treasury shall transfer the same to such State; or if money be expended in aiding the States, the right of purchase, or extinguishment of the debt, shall remain in each State, on the terms aforesaid.

"Sec. 4. *And be it further enacted,* That, in each case, the United States' Board of Engineers shall examine and make a report, in writing, to the Secretary of War, that they are fully satisfied with the route and proposed plan of construction: Provided, however, that this report may be made before or after the passage of the act authorizing the subscription or aid to the State, at the pleasure of Congress; but, in case it shall be made after, it is to be made a condition, that the act is not to go into effect until such report shall have been made."

NAVY TIMBER, &c.

Mr. HOLCOMBE offered the following resolution

"*Resolved,* That the Secretary of the Navy be directed to furnish this House with estimates of the probable cost of the following lots of live oak timber, to be distributed in the several Navy Yards of the United States; together with the cost of erecting permanent sheds for their preservation.

Six Frames of Steam Batteries,
Twelve do. of Ships of the Line,
Fifteen do. of Frigates of the largest class,
Fifteen do. of Sloops of War.

And resolved, That the Secretary of the Navy be also directed to report to this House, what further legislation, if any, is necessary for the more effectual preservation of the live oak, and red cedar timber on the Public Lands of the United States."

This resolution lies on the table one day.

JUDICIARY BILL.

On motion of Mr. WEBSTER, the House again went into committee of the whole, Mr. TOMLINSON in the chair, on the bill "further to amend the Judicial system of the United States;" and the question being on the motion offered by Mr. STORRS, for amending the bill so as to appoint nine Judges instead of ten—

Mr. WRIGHT rose, and said, that he was very conscious there would be some difficulty, at so late a period in the discussion of this bill, both in obtaining and in holding the attention of the Committee to any remarks he might have to offer—nor could he even hope, although rising chiefly with a view of communicating information in relation to the state of facts, to be listened to with any very lively interest. Still, however, his sense of duty to one of the greatest States of the West, which he had the honor, in part, to represent, and which had a peculiar interest in the question, impelled him, under whatever disadvantages, to endeavor to present to the Committee his views in opposition to the amendment which was yesterday proposed by the gentleman from New York, directly impairing that interest. In doing this, it would be necessary for him, in the first place, to inquire whether there does exist any important inconveniences in the administration of the laws of the United States, in any part of this Union, which calls for the intervention of Congress; and, in the next place, if such inconveniences do exist, whether the propositions contained in the bill upon the table, are calculated to remove them; and to provide for extending the privileges and facilities enjoyed in one section of the country to those parts of it which are now, and have for a long time been, deprived of them.

It is now, said Mr. W. more than ten years since the attention of Congress was called to this subject by President Madison—it was at that time the opinion not only of that distinguished officer, but of other gentlemen of great intelligence, that the then existing organization of our judicial tribunals was not adapted to the wants and extent of the country. A revision of it was recommended by a succeeding President: it was recommended by the Legislatures of several of the States: it was recommended by the Bars of several States, and by various individuals in different parts of the Union. All these recommendations concurred in calling the attention of the National Legislature to this subject. I hold in my hand several of the memorials to which I have adverted; others of them are in the archives of Congress.

A memorial from the Legislature of Indiana, which State is now excluded from the judicial pale, sets forth, in very strong terms, the inconveniences experienced in that State from the existing state of the judicial system, as applied to the Western States—amounting to a denial of justice; and it proposes the organization of a new Circuit Court, including that State, precisely according with the provisions of the present bill. Among the inconveniences enumerated, is that of a District Court, clothed with Circuit Court powers, the Judge of which has alone the power of exercising the jurisdiction of a Circuit Court. From his extensive practice, before he was called to the bench, many of the cases brought before him are those in which he was interested, or had been engaged in professionally, in all of which he declines to take jurisdiction. The only remedy, as the memorial states, is an appeal to a neighboring Circuit Court, whose docket is crowded with causes of its own, requiring the exclusive attention of the Judges, and amounting, in practice, to a total denial of justice to all in the State of Indiana, who are obliged to resort to the Federal Courts. The memorial states further, that the causes of the accumulation of business are of such a nature, that there is no prospect, under the present judicial organization, of any diminution. This statement was made to this House as early as January, 1823.

I have, also, a memorial of the Bar of Tennessee, a Bar composed of as respectable and intelligent lawyers as can be found in any part of the United States. They present, in clear and strong language, the judicial evils existing in that State; and they present the remedy which is now contained in the bill upon your table. They concur with the Legislature of Indiana in declaring that the causes which have produced the present difficulties will continue to operate, and to produce a continual increase of business: and they shew, very clearly, that the system, as at present organized, is totally inadequate to the wants of the country, from the extent of labor required of the Judges, and their physical inability to perform it; and that neither the Judge of the Seventh Circuit, or any other one Judge, is adequate to the disposal of all the mass of business on file; and they propose the remedy provided for in the bill.

Another of these memorials is from the Bar of the Circuit Court in Ohio, in which the evils experienced in that State are very fully set forth, and they are declared to be such as practically to amount to a denial of justice. The remedy these memorialists propose is, an extension of the Circuit Court system, giving that State a Judge of the Supreme Court, whose time may be more devoted to the disposition of causes in the Circuit Court.

Mr. Chairman, I have adverted more particularly to these three memorials, because they proceed from a most respectable source, and the facts set forth may, consequently, be received as entitled to great weight; because of the clear manner in which they present the disadvantages arising from the existing judicial organization; and because two of them come from two of those three States, which alone, of all the Western States, are embraced by the judicial system. From Kentucky, you have representations, equally clear and forcible, of the inconveniences felt there, of the great mass of business accumulated in the Circuit Court there, and the hopeless prospect, as to their court, in its present organization, being able to dispose of the causes now existing, or to keep the docket so far down as to prevent a constant increase of cases. This information is given by the Representatives from that State, and comes from a source equally entitled to credit as the memorials adverted to. The whole shew an almost incredible amount of business in the Seventh Circuit.

We are not, sir, without information from the other Western States. The gentleman from Illinois has declared, in his place, that evils of a similar kind exist there. The gentleman from Missouri has told us the same thing exists in that State; and we are advised the same inconveniences are felt in Mississippi and Alabama, though in a somewhat less degree. We have a similar, though much stronger statement, from the gentleman from Louisiana, as to that State. There are, it is true, no memorials from these States, but the declarations of gentlemen, made upon this floor, are entitled to equal credit. They unitedly present to this Committee a mass of information on this subject, to which they are certainly bound to attend.

But, sir, independently of these considerations, supposing none of these evils to have existence at all, the People of the Western States, by the Constitution, have a *right*, yes, sir, a right, to *demand* that all the privileges and immunities extended to any other State, or to any other citizen, shall be extended equally to them. They enjoy this right not only by an express clause in the Constitution to that effect—"the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States"—but by the provision for admitting new States into the Union. They can only be admitted as sovereign States. All the powers of sovereignty pertain to them in a degree as unlimited as to any of the original States of the Confederacy. Dependent on this Constitutional right, they have another—that of having a voice in a judicial tribunal of the last resort, where the most important questions of State and Federal laws, and of the Constitution, are decided, and their construction settled: to carry there, clothed with power, their views in relation to their own legislation and yours, and to procure, as far as practicable, a correct construction of all. This may be called a mere matter of pride: be it so—they have a right to this constitutional participation, and they claim it as a matter of pride. It is a feeling of just and honorable pride, which urges them to assert this right before you: a feeling which will forever prevent the people of the West from voluntarily submitting to degradation.

Mr. Chairman, I think I have shewn that evils do exist in the Western States, in relation to the administration of justice, and that they are such as to require a remedy at your hands. The next question that occurs, is, are they temporary, or are they permanent in their character? I do not know that I can better answer this question, than by presenting to the Committee a view of the existing state of things in the State I have, in part, the honor to represent.

It is known to you, sir, and to all the members of this Committee, that the land which constitutes that State, was originally owned by other States, or the inhabitants of other States; and, in consequence of this circumstance, is subject to the action of the Federal Court jurisdiction. On the Northern boundary of the State, a large tract, equal in size to the State of Connecticut, familiarly known as the Connecticut Reserve, was formerly the property of that State, and has been mostly granted out by it to various individuals, principally non-residents. This is, of course, subjected to the action of the Federal jurisdiction. On the West of this, lies another large tract, granted out to certain sufferers by fire. South of this is another tract, appropriated as bounty land to the officers and soldiers of the Revolutionary war. Another to the refugees from Canada and Nova Scotia. Another, larger tract, and much more fruitful of litigation than either of those last mentioned, is that extending between the Miami and Scioto rivers, reserved by Virginia for her Revolutionary officers and soldiers. Besides all these, there is a grant to the Ohio Company; the grant to Symmes' Company, and smaller grants to various other land companies, connected with the early sales of public lands at New York and Pittsburg; the whole of which are, from the circumstances of the case, subject to the jurisdiction of the United States Courts. The right in the soil in the Territories over which the sovereignty of Ohio stretches, not being in the State, but in the General Government, and the States and individuals before adverted to, the whole of the soil has been subjected to the controlling legislation of the Union, as it has been parcelled out by the United States.

If it be true, then, as contended, and has been decided, that the judicial power in this Government is co-extensive and co-extensive with the Legislative power, all questions relating to the land grants in Ohio are subject to the action of Federal jurisdiction. These circumstances, peculiar to the Western States, and applicable to all of them except Kentucky and Tennessee, to all whose soil is owned by the United States, or other States, afford abundant reason for the great increase of business in the Federal Courts in the Western States, and why that business must always be great. These reasons do not apply to the States East of the Allegany Ridge, because in those States the right of soil and jurisdiction is united. The great influx of aliens into the country, a great proportion of whom settle themselves in the West, furnishes an additional reason for increased business in the Federal Courts; because it is a constitutional right of aliens to claim the aid of the United States' Courts in all their litigation with citizens. Another source, and a most fertile source, of litigation, common to all new countries, with a new and sparse population, suddenly thrown together from different countries and States, bringing their own peculiar moral and legal notions, &c.

ordant, possessing little capacity for harmonious action, will be found in the loose, careless, and oftentimes ignorant method of transacting judicial or other proceedings, when there are no precedents to guide, nor any settled rules of decision. In such cases, the entries and records, if any are kept, are often found so totally defective as to afford no satisfactory evidence of what has been done, and those questions supposed to be settled, are brought up for re-examination and adjudication. Another source of increased litigation in the Federal Courts of the West, which has been adverted to by the gentleman from Illinois, (Mr. COOK) will be found, in its interior situation, cut off from direct foreign commercial intercourse, destitute of importers among themselves, and constrained to multiply their engagements with citizens of other States. Need I go further? Have I not sufficiently shewn the causes of the accumulation of business? Are these causes permanent, or only temporary? I think, sir, I can shew that, if they are not *entirely* permanent, they may be regarded as *nearly* so. The great region of the West is only now beginning to develop itself; its population, great as it is, is still thinly scattered, and actually covers but a small portion of its territory. Of the 15,233,032 acres of land in Ohio alone, surveyed for sale by the United States, 7,630,838 now remain unsold. This country has settled and improved with a rapidity that has astonished every one, and its increase at this time is equal to what it has been at any former period. The land litigation we have seen is permanent; the increase of population will naturally multiply contracts and other subjects of litigation, and will make that class of cases permanent also.

I will proceed, sir, to submit, as immediately connected with this subject, a few considerations relative to the existing state of the Seventh Circuit. That circuit comprises the States of Tennessee, Kentucky, and Ohio. There are now annually commenced in its court, seventeen hundred suits, and the information from gentlemen here, and memorials, advise you they are constantly increasing. The Judge assigned to that circuit, has to travel twelve hundred miles in the performance of his circuit duties, and fourteen hundred miles to attend the Supreme Court. Has any other of your Judges to perform labor like this? Has any Judge, in any country, equal labor to perform? I may safely answer in the negative. This alone will satisfy you, that, from the vast labor required of the Judge, it is impossible to remedy the evils complained of in the West, while this circuit retains its present organization. When the circuit was established in 1807, the number of inhabitants comprised within it was about 742,000. In 1820, its population had increased to 1,568,534. A census of free white males has recently been taken in Ohio, and, calculating from the data it furnishes, I feel warranted in assuring the committee, the population of that single State now falls little, if any, short of a million. If this fact furnishes any rule by which to estimate the increase of the other two States, the present population of the Seventh Circuit exceeds two millions and a half. In 1807, Ohio, which now has a million of inhabitants, had but one Representative on this floor; she now has fourteen. Is it not apparent, then, whether you regard population, extent of territory, or the quantum of litigation, that no one Judge is adequate to go through with the judicial duties of this circuit? If Congress, in forming this circuit in 1807, performed its duty faithfully, by adapting it to the then existing wants of its people—if, when the population was less than one-third what it now is, this court was deemed necessary—if its legislation was suited to these three States then, it cannot be adapted to their situation now. Any arrangement requiring *one* Judge to perform all the circuit duties of either two of the three States now composing the Seventh Circuit, would fail to afford the desired remedy. No single Judge would be able to perform these duties: if, therefore, Kentucky and Ohio are to remain united in the same circuit, the remedy would not be efficacious. As it regarded Ohio, the remedy would be worse than useless—it would hold out to her a pretence of relief, which we knew was unsubstantial—a mere shadow. The memorial from Ohio informs you, the District Judge is unable to attend regularly to business, on account of indisposition, already protracted, and which indicated a long continuance. The Circuit Judge, whose fine constitution has been ruined and broken by the severe labor you have imposed upon him, is in as bad, or even worse, situation—wholly unable to attend the court. The bill proposes to separate these three great States of the West, and to unite with each, one or more, of less population and business. It is predicated on the only correct principle, and is well fitted in its convenient arrangement of circuits, to facilitate the administration of justice. I much fear, sir, no advantage whatever would result to either of these States, from a different arrangement of the circuits, or from any one, predicated on the addition of *only* two Judges to the present number. When gentlemen advert to the vast amount of business in the West, and the prospect of its increase, will they not be satisfied, that if we keep either two of these large States together, we shall frustrate the design of the bill?

I am met here, sir, by the declaration of the Chairman of the Judiciary Committee—a declaration of most extraordinary character—that the three small States lying in the Northwestern angle of the Union, (Indiana, Illinois, and Missouri,) might get along as they are, a little while longer, and take a circuit with a Judge of the Supreme Court by and by! What is the situation of those States? Is there no business, there, for the United States' Courts? We have seen there is, and that the present system operates, as to them, a denial of justice. Why call on these States for longer forbearance, while you extend the system to other States? We *now* know their wants, and why not *now* apply the remedy? If it be important to extend the judicial system into any of the Western States, it is equally important to extend it to the whole. One State has the same right to participate in these privileges as another. The bill provides for the wants of all; and let me ask, on what grounds the three States in the Northwest should be excluded? Is it wise to adapt our legislation to the wants of this day only, and to invite the attention of every new Congress to the subject? I think not. The less frequently this subject is brought before Congress, the less probable is it that any alarm will be excited throughout the country, as to the stability of our judicial system. What extraordinary claims have Mississippi and Alabama, that they should enjoy the advantages of the system, while Indiana, Illinois, and Missouri, are excluded? Have the first named States the greater amount of business? I have taken some pains to collect information, and feel warranted in saying, the largest amount of business is found in the Northwestern States. The information I possess, derived from memorials and conversations with gentlemen here, and letters, shew about 40 causes a year in Indiana; 80 in Illinois; 60 in Alabama; and 40 in Mississippi. We may collect from this information, although it may not be precisely correct, that there is a remarkable equality, as to business, amongst these four States; and when we advert to the memorial so long ago presented from the Legislature of Indiana, and the statements of the gentleman from Illinois, on this floor, we shall be satisfied, if the claim of either is to be *preferred*, it is that of the Northwestern States: but, sir, they are all equally entitled to the benefit of the system now.

I have made, sir, with considerable labor in collecting the materials from different parts of the country, a statement, shewing the population of the different circuits, as they are now organized, and of those proposed by the bill; with the number of suits brought in each, in a year, and the distance the Judge is required to travel to perform his Circuit and Supreme Court duties; to which I ask the attention of gentlemen:

CIRCUITS.	Population.	Suits per year.	Travel to Circuit Court.	To Supreme Court.	Total travel.
1. Maine, N. Hampshire, Massachusetts, Rhode Island.	1,148,842	130	940	1000	1940
2. Vermont, Connecticut, New York.	1,883,820	130	1000	500	1500
3. New Jersey, Pennsylvania.	1,327,035	110	380	36	116
4. Delaware, Maryland.	480,099	57	420	30	450
5. Virginia, N. Carolina,	1,704,195	70	750	250	1000
6. S. Carolina, Georgia.	843,730	100	550	1400	1950
7. Tennessee, Kentucky, Ohio.	1,568,534	1700	1200	1400	2600
Proposed Circuits.					
8. Ohio, Indiana, Illinois.	783,770	530	1700	1100	2800
7. Kentucky, Missouri.	630,903	840	1200	1400	2600
9. Tennessee, Alabama.	550,714	560	2550	1200	3750
10. Louisiana, Mississippi.	228,855	120	2100	2000	4100

An examination of the business in the different circuits, will shew how greatly the amount in the Western, exceeds that in the Eastern circuits, and how much more labor the Western Judges have to perform, and gentlemen will see that it is impossible to impose any new duties on the Western Judges, if you expect them to be performed. No number less than three will be adequate to do the immense labor of the Western circuits.

Sir, what was the situation of the United States in 1789, when the Judiciary was first organized under the new Constitution? There were then only ten States in the Union—Vermont, Rhode Island and North Carolina, were not then in. The population of these ten States, at that time, did not exceed three millions; but if we admit that, in adopting the system, the Union of these three States was anticipated, and were taken into view, the whole population did not exceed four millions. Six Judges were then thought necessary to administer justice to these four millions of people in thirteen States, and they were provided for in that act. Rhode Island and North Carolina, having ratified the Constitution, had this judicial system extended to them in June, 1790. Vermont had it extended to her in March, 1791. It is a little extraordinary, that gentlemen from two of the three States, who were not present at the wedding, but coming at the eleventh hour, were admitted to a full share of the feast, should be among the first to raise their voices against the extension to other States of that system, which had been so promptly and generously extended to them. Surely the gentleman from Rhode Island—a State, where, he believed, the majority in favor of ratifying the Constitution was not very great—should not have been so tenacious of excluding her younger sisters from enjoying the privileges it conferred, or to claim to exclude from the judicial pale these forward children of the West, to let the old thirteen States enjoy their pittance.

In 1807, when the Seventh Circuit was organized, embracing the then three Western States, the population of the country bore a greater disproportion to the number of Judges, than in 1789. At the time the Seventh Judge was added to the Supreme Court, there were about six and a half millions of inhabitants in the Union. Seven Judges for six and a half millions, was not equal to six for three, or at most four millions. We have now upwards of twelve millions of People, and we propose to add to the court three new Judges, and to make the court consist of ten. I ask, again, if ten Judges is a greater number for twelve millions, than six was for four millions, or ten for twenty-four States, more than six was for thirteen? The ratio adopted in 1789, would give eighteen Judges now. Yet we are told this trifling extension of the existing system, is pressing it beyond its limit, and will produce distraction, instability, and ruin.

When this system was first adopted, and the United States' Judges were sent into the States, they were looked upon with great jealousy, and all their acts were closely scrutinized by the People. Satisfaction has taken the place of jealousy and distrust, and we are told, the whole People of the States East of the Allegheny Ridge, are perfectly satisfied with the court and its decisions. If such beneficial results have followed the sending your Judges into the fourteen Atlantic States, why will you still exclude the Western States from participation in these results, and keep them ignorant of the operation of your laws? Why have you afforded your aid to quiet the alarms, and remove the jealousies of the People in the Atlantic States, and refuse to dissipate the fears and disquietudes, said to be so prevalent in the West? If all that had been said against the West were true, that would furnish additional arguments for sending Judges to put things right. But the fear is not, that the new Judges will injure the West, but that the discontents of the West will injure the new Judges, and through them, the old ones. I deny that there is any thing in the habits or temper of the Western people, to justify any alarm, and I call on gentlemen who throw out such aspersions, for their proof.

The gentleman from New York (Mr. STORRS) thinks we had better take only two steps now, and wait a little before we take a third—to appoint two Judges now, and another by-and-by, than, by appointing all three at once, alarm the fears of gentlemen. He seems to admit, the time is rapidly approaching when you cannot avoid taking the third step. If three Judges are necessary, why not have them at once? Is it wise to forbear now, and agitate the subject anew, year after year, to quiet the fears some gentlemen have? I see no reason for this timidity. It is said, the Territories will shortly become States, and then you can provide for the third Judge. In 1789, the wants of the People did not require six Judges, but it was then thought wise to provide six, to answer the increase population of the States on the Atlantic, and it has been found to answer from that day to this. Why shall we reject this example? Why pass a law so narrow in its operation as to require immediate revision and re-enactment? It is your duty to give some character for permanency to your legislation, as well as your adjudications. The act of 1789, was found to answer its object till 1807—eighteen years—and, by adding one Judge at that time, and extending its system over the then three Western States, has been continued to the present period—nineteen years longer. With these examples and this policy before us, shall we limit our views in legislation to the present moment, and shut our eyes upon the future? We are told that by increasing the number of Judges to ten, you incorporate into the judicial system, principles tending to its ruin

destruction—that new Judges must be added, from time to time, as new States arise, until you make it too numerous a body for business, and weaken, if not take from it entirely, its responsibility. There is little expectation that any other States, than the present organized Territories, will claim admission into this Union for fifty years, and these Territories, when States, can conveniently be attached to the proposed circuits—Michigan to the Ohio circuit; Florida to that of Alabama, and Arkansas to that of Louisiana. We may, therefore, fairly presume, the circuits now proposed, will answer all the purposes of justice for fifty years.

Sir, what are these fears of gentlemen, and what the cause of alarm at the proposed increase of Judges? It seems not denied that there is not, either in the number seven or nine, any magic charm; and we have found, from experience, that no serious inconvenience results from an even number in the court. But gentlemen tell us, the representative principle is carried into the scheme—that the addition of three Judges will make the court a political, popularity-hunting tribunal—that the Judges coming from the West, and mixing with the people of the West, will imbibe their *feelings of hostility* to the Court, and, to the Atlantic country, their *factious principles*, their *corruption*; and, armed with these weapons, will corrupt the court, overturn its previous decisions, and control its future ones—destructive alike of good order, uniformity of decision, and the principles of the Constitution. Are not all these apprehensions gratuitous? Does the character of the court of the Western country, or the Western People, furnish any foundation for them? The gentleman from Rhode Island (Mr. PEARCE) had said, the people of the West are to bring on to the bench of the Supreme Court all their feelings of hostility to the Court and its decisions. The gentleman from North Carolina (Mr. MANGUM) said, the three Judges would bring with them feelings known to be adverse to the Court.

[Mr. MANGUM explained. What he had said was, that the appointments would be made from sections known heretofore to have been opposed to the decisions of that court.]

Mr. WRIGHT resumed. The gentleman from North Carolina states, that, instead of making the observations imputed to him, he had expressed his fears that the selection of Judges would be made from those States which were known heretofore to be hostile to the decisions of that Court. How does this affect the argument? What States does he mean? What proof does he offer of that heretofore known hostility? I have lived in the West many years, and am entirely ignorant of any feeling of this character there. How has it been manifested? Where is it? It is true, Ohio was dissatisfied with a decision of the Supreme Court, and she caused a case to be appealed from the Circuit to the Supreme Court, and presented certain points for decision, requiring a re-examination of the cause she was dissatisfied with, having perfect confidence in the court. The examination was had, and the decision quietly acquiesced in, though leaving unnoticed one of the principal points relied on. These facts, instead of sustaining the gentleman's argument, prove the reverse of it true. I am also ignorant of any hostile feeling in the other Western States. Has not the gentleman failed to establish his charge? But the court is to be based on the representative principle, and to become a political, popularity-hunting body; and the gentleman from North Carolina (Mr. MANGUM) thought the court would become ridiculous, abominable, and contemptble, if the Judges mixed with the People, and brought there the *principles* and feelings of the People. I know not how the gentleman can reconcile it to himself to pronounce it abominable to mix with the people from whom we derive our power, and with whom rests the sovereignty. It may be so in his opinion, but I differ from him most widely. Your Government, sir, is a Representative Democracy—the principle of representation is that on which the whole fabric rests—and the Supreme Court is a part of your Government. The Constitution, clothing the Court with power to determine the construction and Constitutional obligation of your laws, and those of the States, has made it political in a highly important view. Increasing the number of Judges to ten, will not make it more political than when composed of seven. Mixing with the People, and learning their local laws, feelings, and principles, has not been found injurious to the Judges East of the Allegheny Ridge, nor to induce them to hunt for popularity. Why should it have that effect on the West only? I would not place Judges under the control of popular influence and prejudice, to be the governing rule on the bench of justice, but I should be equally unwilling to say they should hold themselves entirely disconnected from the People, regardless of their opinions and the operation of judicial decisions. I do not envy the gentleman the feelings which lead him to a contrary conclusion.

[Mr. WEBSTER rose, and called to order. Some conversation followed between him, the CHAIRMAN, Mr. MERCER, and Mr. WRIGHT, as to the point of order; and the Chair determined Mr. W. was taking too wide a range, &c.

Mr. MANGUM explained. The discussion had gone into an eloquent tirade against his opinion. He would repeat what he had said as to representation. He was desirous that the Supreme Bench should not represent the passions, principles, or prejudices, peculiar to any particular section of the country. He said such a representation would be abominable; and he would sustain that opinion. He thought he had been unkindly treated—but he hoped it was not done with any unfair intention. He had only objected to giving the bench any representation but that of justice, and the principles of the Government. But that the Judges should not feel respect for the Constitution, or the laws, or the great mass of the People, from whom we all derive our power, was not what he intended to say.]

Mr. WRIGHT resumed. He said, in speaking on the motion to reduce the new Judges from three to two, he had supposed himself in order to reply to arguments used against sending any Judges into the West. He had endeavored to shew that the Western country was inhabited by a people as virtuous, respectable, and orderly, as their brethren on this side the mountains, and that they had amongst them men in all respects fit for the duties of the judicial office, untainted by bad principles; faithful and intelligent: and he had also endeavored to shew that that country was entitled to three Judges instead of two.

The gentleman from Virginia, (Mr. POWELL) had said it would hazard the dignity of the Judge to mix with the People of the West. Has it lessened the dignity of the Judge to go among the People in the East? No, sir, on the contrary, the result has proved highly satisfactory.

[Mr. POWELL explained, and said he was not aware of having made such an assertion.]

Mr. WRIGHT said he had taken a note of the expression at the time, and compared it with a printed report, but still might have misconceived the gentleman's expressions. The other gentleman from Virginia, (Mr. MERCER) thought the Western People factious, turbulent, and corrupt; that the Judge sent among them would imbibe the corrupt taint, and return to innoculate the bench with it: but, sir, it may be wrong in me to allude to that gentleman's remarks, as he has explained away and taken back so much of his speech, that I am at a loss to tell what remains of it. If it be true, that the Western People were so factious and prejudiced, that no Judges could be selected in their country without carrying faction, discord, and turbulence, on to the bench, I would not ask you for three, or two, or even one Judge. Are Western People distinguished for playing the demagogue, and hunting popularity, or for their turbulent or factious spirit? These traits

belong not to their character; on the contrary, they are remarkable for their open, steady, and fearless marching to their object; and I may say, without injustice to the feelings of citizens of other States, that they have as little cunning, and as much frankness in their character, as any other People. How are they here, on this floor? Turbulent and factious? Or do the Western Representatives go side by side with those of other States, in perfect harmony, and as little temper, as any? If such be the conduct and character of those who come directly from the People, whom the gentleman would suppose the very source of corruption, how much less likely is it that the Judges, who would be carefully selected by the Executive, would be infected with the feelings imputed to them? But why are we not told why this taint should be imbibed in the West more than in the East? The feeling to which I have before adverted, that existed there in relation to a decision of the Supreme Court, was not sufficient to justify any apprehension. This kind of feeling has not been confined to the Western States. Other States have felt it to as great an extent. It had existed in Georgia, South Carolina, Virginia, Pennsylvania, New York, New Hampshire, and Vermont. Georgia and South Carolina submitted with reluctance. Virginia exerted her judicial power to resist. Pennsylvania raised her military arm. Yet we of the West are not found charging the People of these States with being factious, and turbulent, and corrupt. The feeling subsided without generating the passions so ungenerously attributed to the West. Has the Western atmosphere any thing peculiar in it to excite turbulence and faction? Although supposed to possess this taint, gentlemen have showered compliments upon the Western People in great abundance. We are generous and brave, ready to rush into danger, and to repel our country's foes. We are entitled to thanks and confidence, a seat on this floor, and to any thing but a Judge on the Supreme Court bench, or to have a Judge from the Supreme Court sent to us to try our causes. I have no inclination to find fault with the Judges, nor disposed to flatter them. It is not congenial to my disposition to do either. They have performed their duties to the satisfaction of the People, and need no praise. Yet these Judges, so highly gifted and extolled, exalted so as to be but little lower than the angels, are to surrender their opinions to the three Western Judges. The one now in the West having been admitted to have performed his duties satisfactorily, is not obnoxious to the charge. These three new Judges are to reverse all the decisions of the Supreme Court. They must be wonderful men, if the three can control and overrule seven. If the argument was predicated on the opinion that the Atlantic Judges would neglect their duties in the Supreme Court, and leave the seats for the Western Judges, a moment's reflection would shew to the contrary. The bad roads, increased distances, and other inconveniences, from which the Eastern Judges will be exempt, will retard the Western Judge in his arrival, and give those from the East the advantage.

The gentleman from Rhode Island, (Mr. PEARCE) and from Virginia, (Mr. POWELL) think these Judges must not be appointed, because the Constitution does not authorize you to confer on the Judge of the Supreme Court, the duties of a Judge of the Circuit Court. It is a sufficient answer to this objection to say, the contemporaneous exposition of the Constitution, made by a Congress composed, in part, of the framers of the instrument, in the act of 1789, and ever since acquiesced in, is in opposition to the gentleman.

[The CHAIR pronounced the discussion not to be in order.]

Mr. WRIGHT resumed. The gentleman from Rhode Island (Mr. PEARCE) has expressed his fears also, that, if new Judges are appointed from the West, some of the decisions of the Court, which had given so much satisfaction to the Atlantic States, would be reversed: among those enumerated, was one as to the conclusive character of a record of a foreign court of Admiralty, (in accordance with which, he thinks, there was but a bare majority of the court,)—one as to the liability of individual members of a corporation in the Circuit Court, when any one of them lived within the State or district; another denying to the court jurisdiction at common law in criminal cases, in opposition to what he conceives the conclusive argument of Judge Story; and another sustaining the Constitutionality of the law imposing Circuit duties on the Judges of the Supreme Court. Let me quiet the gentleman's fears in these respects, and assure him there is no danger from our quarter, in relation to either of his cases. In the West, the first decision is not regarded as of much consequence either way: with the second, no dissatisfaction is felt. For myself, I had supposed it indisputable, that one individual, enjoying a personal privilege, could not extend that privilege so as to include or protect others associated with him in contract or tort. As to common law criminal jurisdiction of crimes in the United States, the Western lawyers are only astonished it should have entered into the mind of any man to conceive that court had such jurisdiction. The question as to the Constitutional authority of the Court, never has been raised in all the litigation in the West, or elsewhere, except in the case alluded to by Judge Parsons. I hazard nothing in asserting, that such a question will now be raised in the West; and if such were raised, the decision there would accord with that of the Supreme Court. The gentleman says, that the common law and Constitutional questions were decided *wrong*. Yet he is much alarmed lest Western Judges should reverse them, and decide *right*. Does the gentleman think it is wrong for Western Judges to do *right?* How are decisions to be reversed? The Judges are not to overturn them without a case. When a case is properly made and presented, and fully argued, is your Supreme Court to be deprived of the power to decide as they think right, through fear of disturbing some former decision—a privilege enjoyed by all other courts, existing in the very nature of things? Where error is discovered, is it an act of wisdom or integrity to persist in it?

The gentleman from North Carolina, (Mr. MACON) would have no increase of Judges, because the time is inauspicious: discontent prevails, and, in some sections, all the elements of revolution are in motion; heaving and tossing in great agitation. [Heaven preserve us amidst this frightful commotion!] He says, "we have a new *President*, and however loyal and devoted his loving constituents may be, the *Prince* is scarcely yet firm in his seat. He may require new strength to sustain him. It may be found expedient that patronage should scatter its delicious manna in the West." Where is this discontent and agitation? I know of no discontent against the General Government, and imagine its existence is limited to the gentleman's own fancy. True, sir, I have heard of a slight breeze in the South, on account of an Indian treaty, made by a late administration: and I have heard, more recently, of a disturbance in an Eastern city, remarkable for its steady habits, on account of some play-actor; but it never occurred to me, that either furnished evidence that "the elements of revolution were in motion, heaving and tossing in great agitation." As to all the rest of the country, it is as quiet, as when the gentleman, in his boyish days, indulged in his favorite amusement "of fishing for minnows with a pin." Again, the same gentleman is alarmed, and would give no Judges to the West, because this is a sudden innovation, and he is opposed to sudden innovations. In another part of his discourse, the gentleman tells us, the question has been agitated here for seven or eight years, and expresses his great surprise that it has suddenly become an administration measure, popular, rallying around it so many *new* friends! The gentleman, himself, pro-

ıe measure not to be a very sudden one. The gentleman as yet another alarm. We have now, he says, fifty 'ederal Judges, and he is afraid of any increase. I imagine ıe gentleman is under a small mistake here: In the twen-y-four States, there are but thirty districts, and only twen-y-eight District Judges, (eighteen in the Eastern, ten in he Western States,) to which, if you add the seven Jud-es of the Supreme Court, you have, in all, thirty-five. I m now told, the Territorial Judges were included. Sir, hey are unknown to your Constitution, and hold their laces by a very different tenure from that of the Federal udges. It is again said, that the addition of three Judges ill retard the proceedings in the Supreme Court. The udges of that Court say, time only is wanted to dispose of heir term business, and you have another bill on your able, providing the proper remedy.

But, sir, how will you arrange your circuits, if you have ut two new Judges? We have seen, that the great press f business in the West cannot be disposed of by two new udges. Upon which of our Eastern Judges, will gentle-n impose new burthens? Which of them will they send ıto the West to hold circuits? The Eastern Judges already erform great labor, though much less than is required of ıe Western Judges, and I cannot see how we can require ıem to hold courts in the Western States.

Mr. Chairman, perfectly satisfied myself, I have endea-ored to satisfy you, that the appointment of two Judges nly, will not afford a remedy for the great evils felt in the Vest, and that at least three is necessary to afford the emedy. I confidently appeal to the good sense of the committee to afford us the relief we seek.

Mr. KREMER said, he should vote not only against this mendment, but against the bill also. There was nothing f which he was more firmly convinced, than that the hole Judicial system of this country, as it now stands, is adically wrong; and he was satisfied that the bill would ot in practice, answer the end proposed by its friends. his end, it is argued, is to prevent the delay of justice. s to the existence of such delays, there could be no ques-on—there was not any man who could doubt the fact. he evil prevails every where through the country: but is ıultiplying courts a likely way to remedy it? So far from , it will only be multiplying the evil. It is with courts as is with Banks—the moment you begin to create the want f them, you will have to go on to satisfy that want: so in ew countries they cry out that the delay they experience for want of more courts. The argument is specious, ut is it solid? I appeal to all, whether, when the number f Judges was once before increased, the same evils did ot prevail? Besides, where is the evidence that the delay ıd expense complained of is so very enormous? What re we told by the friends of the bill? That the Bar of ennessee and the Bar of Ohio have come forward and etitioned this House; but, Mr. Chairman, the best evi-ence should be produced, which the case will admit: and this the best evidence? Is it not admitted as a principle, ıat the more interest any party has in that, concerning hich he testifies, the less is his testimony worthy to be eceived? Have we any memorial from the Court? Do the onest suitors come here, and ask you to multiply their vils by increasing the courts? For, what does the present ıdicial system amount to? Is it not, in practice, a denial f justice? If you wish to benefit the People, you must re-ıodel the entire system: for, as it is, the suitors have but ıo much reason to adopt the language of the unfortunate ıan, who, having succeeded in his cause, after several ppeals, said to his friend, "one verdict more in my favor, ıd I am quite ruined." Notwithstanding all the fine eulo-ies which have been pronounced on the Judiciary of this ountry, and the Judiciary of England, the gentleman om Rhode Island, (Mr. PEARCE) tells you that a single uit in the Supreme Court, cost 6,500 dollars, when the hole sum in dispute was less than that. We have heard something said, about the excitement which once existed in Pennsylvania, (I conclude gentlemen allude to Olmstead's case,) and they tell us that the people in Pennsylvania are now quiet, and make no resistance. Mr. Chairman, so should I be, if a robber had met me in the Pennsylvania Avenue, and knocked me down: but nothing can ever erase from my memory, or take out of my heart, the conviction of the oppression and injustice which was done in that case: nor will the People of Pennsylvania ever cease to remember and to feel it too. Sir, you can never reconcile them to that decision. But, sir, I must here enter my solemn protest against the whole doctrine, that the Supreme Court has power to pronounce acts of this House to be unconstitutional. In vain did our armies shed their blood in the field, and our sages toil in the cabinet, to secure our liberty, if it is to be subjected to the arbitrary decision of these Judges.

We have heard a great deal about the illustrious talents of the Judges of the Supreme Court; and we have been told a great deal about the incorruptible purity of the English courts; but do gentlemen forget the words of the poet?

"Do parts allure thee? Look how BACON shin'd,
"The greatest, wisest, meanest of mankind."

This man was bribed—and about a hundred years after, another of their Chancellors was convicted of enormous crimes. If some Judges are corrupt, others may be so too: he believed nothing of the infallibility of men in any station. He again protested against the doctrine that they had power to set aside the acts of this House: and even if he had at first been friendly to the bill, this bold avowal would be sufficient to induce him to pause before he voted for it. He called upon gentlemen to pause before they took a step so important. He would first be well assured that the People wish this change, before he could be persuaded to vote for it.

The question was then taken on Mr. STORRS' amendment, (to reduce the proposed number of additional Judges from three to two,) and decided in the negative.—Ayes 45; noes 105.

On motion of Mr. COOK, the committee then rose, and reported the bill without amendment.

Mr. WEBSTER moved that it be ordered to be engrossed for a third reading.

Mr. MERCER opposed this motion, and moved an adjournment. The House refused to adjourn—ayes 54; noes 99.

Mr. POWELL then moved that the bill lie on the table. This motion also was negatived.

Mr. LITTLE then moved an adjournment. Negatived: ayes 77; noes 91.

Mr. STORRS now renewed in the House, the motion he had made in committee, to strike out nine, (the number of Associate Judges,) and insert eight. On this question, Mr. SAUNDERS called for the yeas and nays; which were ordered, and are as follows;

YEAS—Messrs. Allen, of Mass., Alston, Ashley, Barbour, of Va., Bassett, Bryan, Burleigh, Cambreleng, Carter, Cassedy, Condict, Conner, Deitz, Dwight, Eastman, Edwards, of N. C., Gist, Govan, Hallock, Harris, Hasbrouck, Hines, Hobart, Hoffman, Humphrey, Ingham, Johnson, of N. Y., Kellogg, Lincoln, Mangum, Markell, Marvin, of N. Y., McCoy, McDuffie, McKean, McNeill, Mercer, Merriwether, Miller, of Pa., Newton, O'Brien, Peter, Plumer, Powell, Reed, Ross, Saunders, Sawyer, Smith, Stevenson, of Pa., Stevenson, of Va., Storrs, Strong, Swan, Taliaferro, Thompson, of Geo., Trezvant, Tucker, of S. C., Henry Wilson, Wilson, of S. C.—60.

NAYS.—Messrs. Adams, of N. Y., Addams, of Penn., Alexander, of Va., Alexander of Tenn., Allen, of Tenn., Anderson, Archer, Armstrong, Bailey, Badger, Baldwin, Bartlett, Bartley, Barber, of Con., Barney, Baylies, Blair, Brent, Brown, Buchanan, Campbell, Cary, Claiborne,

he hoped that the gentleman from Virginia would withdraw it for the present, that he might have an opportunity to offer an amendment to the bill.

Mr. MERCER observed, that he should have withdrawn the motion to strike out the first section of the bill before this period of the debate, but felt restrained by the consideration, that he had himself had an opportunity of delivering his views at some length upon the subject, and, as gentlemen had indulged him, by listening to what he had to offer, he considered it indelicate not to leave the same opportunity to them. Many replies had been given to his objections to the bill; but he trusted the committee would do him the justice to believe that he was induced now to consent to withdraw the motion rather by a wish to consult the convenience of the committee, than by any conviction that the arguments which had been adduced on the opposite side were unanswerable.

Mr. M. said, he had listened in unaffected astonishment to what had fallen from some of the gentlemen from the West, whose feelings seemed to have been wounded by some of the observations he had made. It had been said, that his proposition went to produce a system unequal in its distribution of justice; and that he had been influenced in advocating it by a want of confidence in the Western States—and this, notwithstanding the admission on his part, that the wants of the West, if they did exist to the extent spoken of, were entitled to redress. But the system he had advocated, if liable to any other objection, was certainly not liable to that of Judicial inequality; and he could assure gentlemen, that, if the same difficulties had been represented as existing in the East, and the remedy proposed had come from the West, he should have had the same objections to it. It was far from his intention, whatever his language might have seemed to intimate, to express the least want of confidence in the People of the West; and, as to what he had said in respect to his frequent visits to that country, admitted an easy explanation, as all he had, once, lay on the West of the mountains, and his visits were a matter of necessity; yet, some gentlemen had thought proper to hold him up before the country as an enemy of the West. He hoped, before this discussion was brought to its close, to contrast the provisions of the bill with another system which had at one time received all the votes of the Senate of the United States but three—and, if he could not demonstrate that it presented superior advantages to the Western States to any that could arise from an increase of the number of Judges of the Supreme Court, he would be content to submit to the system of the bill, however repugnant to all his ideas of prudence and policy.

Mr. STORRS then moved to amend the first section of the bill, so as to reduce the proposed number of Judges of the Supreme Court, to *nine* instead of *ten*, as the bill now proposes.

This motion, he said, was intended to be made by the member from Delaware, who was not now in his seat. Mr. STORRS made it in his stead; and, wishing that that gentleman might have an opportunity of submitting his views in favor of it, he moved that the committee now rise.

Mr. WEBSTER hoped that this motion would not be pressed. The subject had been already before the committee for a fortnight, and he was opposed to further delay. He regretted, on some accounts, the course which had now been pursued, as he had hoped that the committee would have been allowed to express some opinion on the general principle of the bill, before any amendments were introduced. He did hope that the Committee would have done some act in relation to the bill—but, after a fortnight's discussion, no one thing had yet been done. A longer time has already been consumed on this bill, than was taken by our fathers, in forming the entire Judicial System, with all the other mighty matters they had upon their hands. Motions for amendments, offered in Committee, may be renewed in the House; but, if we leave matters as they now stand, a new motion to strike out the first section of the bill may be made at any time, and the whole ground must be travelled over again. Gentlemen must, by this time, have formed some opinion on the great features of the bill, and be prepared to express some judgment in relation to it. He hoped it would be allowed to pass through the Committee without further delay.

Mr. STORRS said, if there was any prospect of getting the bill out of Committee at this time, he was willing to withdraw his motion for the Committee's rising; and, with that understanding, he did withdraw it.

Mr. MERCER observed, that other gentlemen, as well as the member from New York, had amendments, which they were desirous of presenting.

Mr. STORRS then said, that, as the gentleman from Virginia had consented, at his suggestion, to permit the course of debate to be changed, he hardly felt authorized, by courtesy, to ask that the Committee should rise. He would, therefore, briefly state some of the reasons which had satisfied him that the number of Judges proposed was too large. I shall not, said Mr. S. at this very protracted stage of the debate, offer my views of the general question, which has been so much discussed; but, entertaining, as I do, the opinion that, for reasons which have not only been already stated, but for others, which I am not disposed to bring into examination at this time, or discuss at this late hour, we may increase the number of the Judges to a dangerous extent, I am anxious that we should now create no greater addition to the Court than the necessity of the occasion indispensably demands. Gentlemen who represent, on this floor, the States immediately interested in, and affected by, this measure, will, I am confident, do me the justice to believe, that, in proposing this amendment, I am actuated by no feelings of unkindness or hostility to their interests. Since I have had the honor of a place here, it is well known to them that my humble talents and efforts have been cheerfully and uniformly directed to the support of every measure which their wants and necessities called for from the impartial and parental hand of the General Government; and the bill now before us would only receive my support in any shape which it may assume, but for the conviction that they are justly entitled to receive from us adequate relief from the evils and embarrassments which exist in those States in the administration of justice through the Federal Judiciary. The only, and, perhaps, the only inquiry, on this amendment, is the practicability of administering a remedy to these evils by the addition of only two Judges to the bench of the Supreme Court. I shall not examine the arrangement of the Courts which must follow from this change of the bill, as it will more properly be considered when the opinion of the Committee shall be had on the question immediately before us.

It has been stated by the Chairman of the Judiciary Committee, that, in the last three years, under the present organization of the Courts, no less than two thousand causes have been disposed of in the Circuit Court of Kentucky alone. This has been accomplished by a system which has assigned to the circuits of the Western States only one of the Associate Judges of the Supreme Court. The effect of the amendment will be to retain in the proposed system, two additional Judges, whose circuit duty will be exclusively confined to the Western States. Now it is well worth our notice, that the result of such an organization, which devotes the time of three Judges only to these duties, will, at the same rate which our experience has shewn to be practicable, probably enable them to dispose of six thousand causes in these States, in the same time, or, in other words, to dispose of two thousand causes per annum. It is almost inconceivable to me, sir

Mr. S. that this will not be adequate to all the purposes or necessities of justice in these States. Is it possible that we can seriously think, that these States can be afflicted with Judicial calamities to an extent exceeding the remedy which three Judges can thus apply to the present condition of their dockets? If the evil is greater than this, I should suspect that there must be something inherently unsound in the local systems or the practice of the Courts, to which we may rather attribute the inconveniences they suffer, than to the defects of the Judicial system of the General Government. It requires, in my judgment, an uncommon share of credulity to believe, if that is to be understood from this accumulation of causes on their dockets, that this number of trials can be required to be yearly had even in all their Courts. Though the dockets may be swelled numerically to a great extent, yet it must be, from the very nature of a great part of the subjects of litigation there, that single trials must necessarily dispose large classes of cases, and especially of causes involving the titles to land; from which source this accumulation of litigation is chiefly produced. If we have reason to believe, as I think we have, that this accumulation of causes has already reached its maximum, there can be no necessity, at this time, for creating more than two additional Judges; and if, by this addition to the bench, we can apply a remedy adequate to the causes which call for our interposition, we may relieve the apprehensions of inconvenience and danger which exist, in a too great and sudden extension of the number of Judges. There are said to be, at present, on the docket of the Circuit Court of Kentucky, nine hundred causes. It is clear that, unless some cause unknown to us exists, to render it more difficult to dispose of these than those which have been disposed of in the last three years, that a Judge may clear that docket in a single year; and it is admitted that the Circuit Court of that State is more pressed with the amount of litigation than any other of the Western States. It is further well worth our notice here to compare the representation of the Western States, in this House, with the Atlantic States. I do not, said Mr. S. intend to be understood to mean that this view of the relative population of the States furnishes the criterion by which we are to act on this bill. It is not so. But it is well worth taking into the account, on a matter on which we cannot arrive to certainty on the actual and probable future state of things, which calls for legislation on the present subject. There are, on this floor, forty-seven members from the Western States, and this even admits Louisiana, Alabama, and Mississippi, to come within that description—I ought, perhaps, to say the new States. From the Atlantic States, we find here no less than one hundred and sixty-five members. Now, in the distribution of ten Judges of the Supreme Court among the States, the number which the original bill proposes, the proportion to which these new States would be entitled, on the ratio of representation, would be only *two*—the Atlantic States *eight*; and yet, as the ten Judges are assigned by the bill, the Western States are provided with *four*, and the Atlantic States remain at the comparatively reduced number of *six*. By the amendment, they will still retain three; leaving to the Atlantic States their present organization with six. Is it probable that, when we consider the great comparative commercial interest and business of the Atlantic States, and the extent of admiralty and maritime jurisdiction, which scarcely exist in the Western country, that we do not perceive that the distribution of ten Judges, as proposed by the bill, must necessarily be greatly disproportioned to any just rule of distribution? It is admitted by the friends of the measure, that the additional three Judges will very shortly reduce the pressure of causes in the Western States, and indeed this must necessarily take place from other causes. We have no idea that it is to last long; and as two new States, Michigan (to say nothing of Florida) and Arkansas, will shortly be admitted into the Union, is it not safer to create at this time only two new Judges, and reserve the appointment of the tenth Judge until these States are admitted? Are we sure, that, when that period comes, we shall not hear of a claim for more Judges than even ten? We may advance too fast; and although gentlemen now assure us, that even when these States are admitted, ten Judges will be sufficient; yet that very consideration assures me, that two are sufficient now. The evil of the present day is sufficient for us at this time, and I feel some anxiety that we should reserve the creation of one of these new Judges till we arrive at the time when we may feel assured that the number of Judges on the bench is fixed, limited, and no longer uncertain. It does not, in my judgment, conclusively follow, that no more Judges will be asked for; and I at least think, that I can discover that the enlarging of the number of the Court to ten, at this time, may, with the future addition of another, or more Judges, lead to consequences which we may even now, by a more prudent and cautious policy, avert. I did not intend, when I rose, said Mr. S. to say more than merely to state, with great brevity, some of the reasons which satisfy me, that this amendment should be adopted. On the general question of the comparative merits of the present organization of the circuit system with that of independent circuit courts in the several States, by Circuit Judges merely, I cannot consent to change the present system, as the gentleman from Virginia has proposed. The result of my own limited experience has satisfied me, that it would be inexpedient to separate the Judges of the Supreme Court from their circuit duties. The Judiciary being the weakest political branch of the Government, will naturally lean towards the power which protects it; but a certain guaranty for the integrity and impartiality of the Judges, especially in all free Governments, may always be found in the fearless judgment which an enlightened and independent Bar always pronounces on their decisions. So long as the Judges are to pass in review annually before the bar of the country, we may dismiss all apprehensions of encroachments on the just constitutional rights of the States, or the personal rights of their citizens. No local circuit system will command or obtain the qualifications which are indispensable to that enlightened administration of justice, which alone can ensure the perpetuity and preserve the moral power, which all must desire the Federal Courts of the Union forever to maintain.

Mr. WEBSTER said, that, when he had first introduced the bill, he had stated to the House, that there was a way in which, for a time, the country might get along with only two additional Judges; and, that the proposal for three had his assent, rather than his cordial support. He would now state more distinctly his view of the facts of the case: for, we shall never arrive, said Mr. W. at any point, so long as we continue merely to throw out general ideas on the subject. As the Circuits are arranged by this bill, three additional Judges are indispensable—but, if the States of Indiana, Illinois, and Missouri, will consent to do without the system of Circuit Courts, and will content themselves with District Judges, which he thought they might do for some years longer—then only two new Judges will be required. But, if the amendment of the gentleman from New York is adopted, it will necessarily destroy the whole arrrangement of the bill as it now stands.

[Mr. STORRS explained. He was aware of this; and, if the amendment prevailed, he should, of course, move to recommit the bill to the Judiciary Committee, that the Circuits may be recast so as to suit the number of Judges.]

Mr. WEBSTER resumed, and went on to shew, that, if nine Judges only should be appointed, the Circuit system could not be extended to all the Western States. He detailed the several arrangements which must, in that

case, be made of the Circuits, and argued that it would be impracticable for the nine Judges to perform the duties of them all. In reply to Mr. STORRS, he observed, that it by no means followed, if we appointed ten Judges now, that hereafter we must keep on adding to the number. He believed that the system, if extended to ten, would answer all the exigencies of the country for twenty years to come—possibly for fifty years. When Michigan and Arkansas become States, they may be added to the Circuits now proposed to be formed, and Florida might, in like manner, be appended to the Southern Circuit as it already exists. As to the question which had so frequently been asked, "Where are we to stop?" it might as well be asked as to the representation on this floor, where is it to stop? The same answer is to be given to both—we must stop at the point of practical inconvenience; and it will be time enough to fix upon that when we get there.

Mr. TRIMBLE observed, that, after a heavy debate of ten days, a few brief remarks, made in the free style of conversation, such as had just occurred, would be more useful than elaborated speeches. In this style he would say a few words upon the new proposition before the committee. The question is, shall we add two or three new Judges to the Supreme Court? The Chairman of the Judiciary Committee states one fact which ought to be decisive of the question. The candor of that gentleman ought to give great weight to his facts as well as his opinions. He says that the Circuit system cannot be extended to all the Western States without an addition of three new Circuits, and, consequently, three new Judges; that, if only two are added, the States of Indiana, Illinois, and Missouri, must be content with the present District System. But why not make the system uniform at once? Why leave those three States in the condition of juridical provinces? Could any statesman give a good reason why such odious distinctions should be made? The right of the States in question to have the Circuit System did not depend upon the quantity of business for the Courts. *Are they in the Union?* That is the *fact* upon which the right depends. It is true that the quantity of business in each of the proposed new Circuits will double the quantity in any three of the old Circuits East of the mountains; but he could not admit that the right of the States to have an equal uniform extension of the Circuit System, could depend upon the number of law-suits to be decided. All the States came into the Union on an equal footing. The Federal Government is divided into three branches, Legislative, Executive, and Judicial. These branches ought to be equal and uniform in their application to the States. What right can a part of the Union have to expound the laws for the whole? What is self Government? A form of Government in which all have an equal share in making, expounding, and executing the laws. We have six Judges East of the Mountains, and only one West of them; and of course the Eastern States will expound the Constitution and the laws for themselves and all the other States. This is wrong in theory, and unjust in practice. Under the present system we have six States in the condition of judicial provinces—they complain of this unjust distinction. Why not put an end to all complaint, by giving each State an effective Circuit System? What shall we gain by reducing the proposed increase of Judges to two only instead of three? We shall save $4,500, the salary of one Judge, and, to effect this paltry saving, we are called upon to violate the rights of some of the States, and the principles of equality in all of them. In every view, it must appear to candid Statesmen, as a plain act of injustice to the States excluded from the Circuit System; an act of *political injustice*, as useless as it would be unfair and impolitic.

But he would waive the right of those States, and join issue with the gentleman from New York, (Mr. STORRS,) upon the point of business. We are told, said he, by the Chairman of the Judiciary Committee, that if the proposed reduction takes place, Ohio and Kentucky will have to form one Circuit. But it was well known to the members of Congress, that the quantity of business in the Federal Courts of those two States, has always been, and will probably continue to be, more than double the aggregate quantity in all the six Circuits on the seaboard; and he would ask gentlemen, if it was fair to compel the Judge of that Circuit, to do as much Circuit duty as all the six Eastern Judges? Those two States, and Tennessee, form the present Circuit West of the mountains, and it might well be supposed that the Judge there, had fallen a martyr to the heavy burden imposed upon him: for he is said to be upon his death bed. It is known that two thousand causes have been decided in the Federal Courts in Kentucky in the last three years; and it is said, that about six hundred are brought annually in that State. This itself, was probably more than all the six Eastern Judges had to do in their Circuits. The gentleman from New York, (Mr. STORRS) supposes that the two thousand causes spoken of, must have been plain cases, or at least there must have been judgments and decrees in some of the cases, which was decisive of many others of them; and he even went so far as to imagine that the cases might be thrown into classes, so as to make the principles of a few cases decide a mass of them at a time. Mr. T. said, it was impossible to make any such classification—land causes would not admit of it. The true secret in the despatch of business in that State, was to be found in the extraordinary abilities of the Federal District Judge, and not in the classification of suits. Nothing, he said, could be more complex than a Kentucky land cause, and no Judge could get along with them, unless he had the benefit of many years' experience in the Courts of that State.

Why not equalize the labor of the Judges? Why impose such heavy duties on the Western Judges? Could any thing be saved by it, except the salary? But it is supposed by the mover of the proposition, that, after a time, the business in the West will diminish, and the nine Judges and nine Circuits will be enough. Ten Circuits are wanted now, and therefore let us have ten. If the business should decrease, we may hereafter reduce the number to nine. It will be as easy to reduce ten to nine, by death or resignation, as seven to five in the same way. The scheme of reduction proposed by two members from Virginia, (Messrs. POWELL and MERCER,) would accomplish the object, if ever it should become expedient. At this time, there is more business for four Judges in the West, than there is for six in the East. We are therefore entitled to them now as a matter of right, as well as justice. Let the future provide for itself. If they are not wanted twenty years hence, reduce them.

It is no argument against us to say, that we shall not have as many Judges as our business calls for at this time, because the next generation may not want them. The best way to take care of posterity is to take good care of ourselves. The sum of the whole matter comes to this. Will you add three new Judges to the Court, and make the system uniform and efficient throughout all the States?—or will you make three judicial colonies, for the sake of $4,500? He hoped the committee would reject the amendment, and avoid the discontents which would arise in the States referred to, if it should be adopted. If, however, it should be seriously urged, the Western Members might consider it their duty to go more at large into the argument against it.

After Mr. T concluded his remarks, on motion of Mr. WRIGHT, of Ohio, the Committee rose,

And the House adjourned.

THURSDAY, JANUARY 19, 1826.

INTERNAL IMPROVEMENT.

Mr. HEMPHILL, from the Committee on Roads and Canals, reported the following bill:

"A BILL concerning Internal Improvements.

"Whereas it is deemed expedient for the General Government to guaranty the expenditure of a reasonable sum of money to aid in the execution of certain important objects of Internal Improvements; and whereas it is prudent to accomplish this great design in a manner that will be the most reconcileable to all—

"*Be it therefore enacted, &c.* That the money remaining in the Treasury, after the payment of such appropriations as may be made at each session of Congress, shall be set apart, and be considered, as a fund for the purposes of Internal Improvements; which money shall be expended in making subscriptions on the part of the General Government, in such companies as are, or may hereafter be, incorporated by the respective States, and as Congress may approve of, from time to time; or to be expended in aiding any of the States in such objects of improvements as may receive the approbation of Congress.

"Sec. 2. *And be it further enacted*, That, as long as the United States shall own stock in any one State, the Secretary of the Treasury shall receive the dividends on the same, for the use of the United States, and shall vote at any election for the officers of any such incorporated company, according to the number of shares owned by the United States; or if money shall be expended in aiding any of the States, the United States shall receive its proportion of the profits of the work, according to the whole capital expended.

"Sec. 3. *And be it further enacted*, That each State shall, at any time, have a right to purchase the stock so subscribed on the part of the United States, in such State, at a price which, together with the dividends or profits that may have been received, shall reimburse the United States for the principal, and —— per cent. interest thereon, from the time the subscription shall have been made; and on payment thereof, the Secretary of the Treasury shall transfer the same to such State; or if money be expended in aiding the States, the right of purchase, or extinguishment of the debt, shall remain in each State, on the terms aforesaid.

"Sec. 4. *And be it further enacted*, That, in each case, the United States' Board of Engineers shall examine and make a report, in writing, to the Secretary of War, that they are fully satisfied with the route and proposed plan of construction: Provided, however, that this report may be made before or after the passage of the act authorizing the subscription or aid to the State, at the pleasure of Congress; but, in case it shall be made after, it is to be made a condition, that the act is not to go into effect until such report shall have been made."

NAVY TIMBER, &c.

Mr. HOLCOMBE offered the following resolution

"*Resolved*, That the Secretary of the Navy be directed to furnish this House with estimates of the probable cost of the following lots of live oak timber, to be distributed in the several Navy Yards of the United States; together with the cost of erecting permanent sheds for their preservation.

Six Frames of Steam Batteries,
Twelve do. of Ships of the Line,
Fifteen do. of Frigates of the largest class,
Fifteen do. of Sloops of War.

And resolved, That the Secretary of the Navy be also directed to report to this House, what further legislation, if any, is necessary for the more effectual preservation of the live oak, and red cedar timber on the Public Lands of the United States."

This resolution lies on the table one day.

JUDICIARY BILL.

On motion of Mr. WEBSTER, the House again went into committee of the whole, Mr. TOMLINSON in the chair, on the bill "further to amend the Judicial system of the United States;" and the question being on the motion offered by Mr. STORRS, for amending the bill so as to appoint nine Judges instead of ten—

Mr. WRIGHT rose, and said, that he was very conscious there would be some difficulty, at so late a period in the discussion of this bill, both in obtaining and in holding the attention of the Committee to any remarks he might have to offer—nor could he even hope, although rising chiefly with a view of communicating information in relation to the state of facts, to be listened to with any very lively interest. Still, however, his sense of duty to one of the greatest States of the West, which he had the honor, in part, to represent, and which had a peculiar interest in the question, impelled him, under whatever disadvantages, to endeavor to present to the Committee his views in opposition to the amendment which was yesterday proposed by the gentleman from New York, directly impairing that interest. In doing this, it would be necessary for him, in the first place, to inquire whether there does exist any important inconveniences in the administration of the laws of the United States, in any part of this Union, which calls for the intervention of Congress; and, in the next place, if such inconveniences do exist, whether the propositions contained in the bill upon the table, are calculated to remove them; and to provide for extending the privileges and facilities enjoyed in one section of the country to those parts of it which are now, and have for a long time been, deprived of them.

It is now, said Mr. W. more than ten years since the attention of Congress was called to this subject by President Madison—it was at that time the opinion not only of that distinguished officer, but of other gentlemen of great intelligence, that the then existing organization of our judicial tribunals was not adapted to the wants and extent of the country. A revision of it was recommended by a succeeding President: it was recommended by the Legislatures of several of the States: it was recommended by the Bars of several States, and by various individuals in different parts of the Union. All these recommendations concurred in calling the attention of the National Legislature to this subject. I hold in my hand several of the memorials to which I have adverted; others of them are in the archives of Congress.

A memorial from the Legislature of Indiana, which State is now excluded from the judicial pale, sets forth, in very strong terms, the inconveniences experienced in that State from the existing state of the judicial system, as applied to the Western States—amounting to a denial of justice; and it proposes the organization of a new Circuit Court, including that State, precisely according with the provisions of the present bill. Among the inconveniences enumerated, is that of a District Court, clothed with Circuit Court powers, the Judge of which has alone the power of exercising the jurisdiction of a Circuit Court. From his extensive practice, before he was called to the bench, many of the cases brought before him are those in which he was interested, or had been engaged in professionally, in all of which he declines to take jurisdiction. The only remedy, as the memorial states, is an appeal to a neighboring Circuit Court, whose docket is crowded with causes of its own, requiring the exclusive attention of the Judges, and amounting, in practice, to a total denial of justice to all in the State of Indiana, who are obliged to resort to the Federal Courts. The memorial states further, that the causes of the accumulation of business are of such a nature, that there is no prospect, under the present judicial organization, of any diminution. This statement was made to this House as early as January, 1823.

I have, also, a memorial of the Bar of Tennessee, a Bar composed of as respectable and intelligent lawyers as can be found in any part of the United States. They present, in clear and strong language, the judicial evils existing in that State; and they present the remedy which is now contained in the bill upon your table. They concur with the Legislature of Indiana in declaring that the causes which have produced the present difficulties will continue to operate, and to produce a continual increase of business: and they shew, very clearly, that the system, as at present organized, is totally inadequate to the wants of the country, from the extent of labor required of the Judges, and their physical inability to perform it; and that neither the Judge of the Seventh Circuit, or any other one Judge, is adequate to the disposal of all the mass of business on file; and they propose the remedy provided for in the bill.

Another of these memorials is from the Bar of the Circuit Court in Ohio, in which the evils experienced in that State are very fully set forth, and they are declared to be such as practically to amount to a denial of justice. The remedy these memorialists propose is, an extension of the Circuit Court system, giving that State a Judge of the Supreme Court, whose time may be more devoted to the disposition of causes in the Circuit Court.

Mr. Chairman, I have adverted more particularly to these three memorials, because they proceed from a most respectable source, and the facts set forth may, consequently, be received as entitled to great weight; because of the clear manner in which they present the disadvantages arising from the existing judicial organization; and because two of them come from two of those three States, which alone, of all the Western States, are embraced by the judicial system. From Kentucky, you have representations, equally clear and forcible, of the inconveniences felt there, of the great mass of business accumulated in the Circuit Court there, and the hopeless prospect, as to their court, in its present organization, being able to dispose of the causes now existing, or to keep the docket so far down as to prevent a constant increase of cases. This information is given by the Representatives from that State, and comes from a source equally entitled to credit as the memorials adverted to. The whole shew an almost incredible amount of business in the Seventh Circuit.

We are not, sir, without information from the other Western States. The gentleman from Illinois has declared, in his place, that evils of a similar kind exist there. The gentleman from Missouri has told us the same thing exists in that State; and we are advised the same inconveniences are felt in Mississippi and Alabama, though in a somewhat less degree. We have a similar, though much stronger statement, from the gentleman from Louisiana, as to that State. There are, it is true, no memorials from these States, but the declarations of gentlemen, made upon this floor, are entitled to equal credit. They unitedly present to this Committee a mass of information on this subject, to which they are certainly bound to attend.

But, sir, independently of these considerations, supposing none of these evils to have existence at all, the People of the Western States, by the Constitution, have a *right*, yes, sir, a right, to *demand* that all the privileges and immunities extended to any other State, or to any other citizen, shall be extended equally to them. They enjoy this right not only by an express clause in the Constitution to that effect—"the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States"—but by the provision for admitting new States into the Union. They can only be admitted as sovereign States. All the powers of sovereignty pertain to them in a degree as unlimited as to any of the original States of the Confederacy. Dependent on this Constitutional right, they have another—that of having a voice in a judicial tribunal of the last resort, where the most important questions of State and Federal laws, and of the Constitution, are decided, and their construction settled: to carry there, clothed with power, their views in relation to their own legislation and yours, and to procure, as far as practicable, a correct construction of all. This may be called a mere matter of pride: be it so—they have a right to this constitutional participation, and they claim it as a matter of pride. It is a feeling of just and honorable pride, which urges them to assert this right before you: a feeling which will forever prevent the people of the West from voluntarily submitting to degradation.

Mr. Chairman, I think I have shewn that evils do exist in the Western States, in relation to the administration of justice, and that they are such as to require a remedy at your hands. The next question that occurs, is, are they temporary, or are they permanent in their character? I do not know that I can better answer this question, than by presenting to the Committee a view of the existing state of things in the State I have, in part, the honor to represent.

It is known to you, sir, and to all the members of this Committee, that the land which constitutes that State, was originally owned by other States, or the inhabitants of other States; and, in consequence of this circumstance, is subject to the action of the Federal Court jurisdiction. On the Northern boundary of the State, a large tract, equal in size to the State of Connecticut, familiarly known as the Connecticut Reserve, was formerly the property of that State, and has been mostly granted out by it to various individuals, principally non-residents. This is, of course, subjected to the action of the Federal jurisdiction. On the West of this, lies another large tract, granted out to certain sufferers by fire. South of this is another tract, appropriated as bounty land to the officers and soldiers of the Revolutionary war. Another to the refugees from Canada and Nova Scotia. Another, larger tract, and much more fruitful of litigation than either of those I have mentioned, is that extending between the Miami and Scioto rivers, reserved by Virginia for her Revolutionary officers and soldiers. Besides all these, there is a grant to the Ohio Company; the grant to Symmes' Company; and smaller grants to various other land companies, connected with the early sales of public lands at New York and Pittsburg; the whole of which are, from the circumstances of the case, subject to the jurisdiction of the United States' Courts. The right in the soil in the Territories over which the sovereignty of Ohio stretches, not being in the State, but in the General Government, and the States and individuals before adverted to, the whole of the soil has been subjected to the controlling legislation of the Union, and been parcelled out by the United States.

If it be true, then, as contended, and has been decided, that the judicial power in this Government is co-existent and co-extensive with the Legislative power, all questions relating to the land grants in Ohio are subject to the action of Federal jurisdiction. These circumstances, peculiar to the Western States, and applicable to all of them, except Kentucky and Tennessee, to all whose soil is owned by the United States, or other States, afford abundant reason for the great increase of business in the Federal Courts in the Western States, and why that business must always be great. These reasons do not apply to the States East of the Allegany Ridge, because in those States the right of soil and jurisdiction is united. The great influx of aliens into the country, a great proportion of whom settle themselves in the West, furnishes an additional reason for increased business in the Federal Courts; because it is the constitutional right of aliens to claim the aid of the United States' Courts in all their litigation with citizens. Another source, and a most fertile source, of litigation, common to all new countries, with a new and sparse population, and densly thrown together from different countries and States, bringing their own peculiar moral and legal notions, &c.

cordant, possessing little capacity for harmonious action, will be found in the loose, careless, and oftentimes ignorant method of transacting judicial or other proceedings, when there are no precedents to guide, nor any settled rules of decision. In such cases, the entries and records, if any are kept, are often found so totally defective as to afford no satisfactory evidence of what has been done, and those questions supposed to be settled, are brought up for re-examination and adjudication. Another source of increased litigation in the Federal Courts of the West, which has been adverted to by the gentleman from Illinois, (Mr. COOK) will be found, in its interior situation, cut off from direct foreign commercial intercourse, destitute of importers among themselves, and constrained to multiply their engagements with citizens of other States. Need I go further? Have I not sufficiently shewn the causes of the accumulation of business? Are these causes permanent, or only temporary? I think, sir, I can shew that, if they are not *entirely* permanent, they may be regarded as *nearly* so. The great region of the West is only now beginning to develop itself; its population, great as it is, is still thinly scattered, and actually covers but a small portion of its territory. Of the 15,233,032 acres of land in Ohio alone, surveyed for sale by the United States, 7,630,838 now remain unsold. This country has settled and improved with a rapidity that has astonished every one, and its increase at this time is equal to what it has been at any former period. The land litigation we have seen is permanent; the increase of population will naturally multiply contracts and other subjects of litigation, and will make that class of cases permanent also.

I will proceed, sir, to submit, as immediately connected with this subject, a few considerations relative to the existing state of the Seventh Circuit. That circuit comprises the States of Tennessee, Kentucky, and Ohio. There are now annually commenced in its court, seventeen hundred suits, and the information from gentlemen here, and memorials, advise you they are constantly increasing. The Judge assigned to that circuit, has to travel twelve hundred miles in the performance of his circuit duties, and fourteen hundred miles to attend the Supreme Court. Has any other of your Judges to perform labor like this? Has any Judge, in any country, equal labor to perform? I may safely answer in the negative. This alone will satisfy you, that, from the vast labor required of the Judge, it is impossible to remedy the evils complained of in the West, while this circuit retains its present organization. When the circuit was established in 1807, the number of inhabitants comprised within it was about 742,000. In 1820, its population had increased to 1,568,534. A census of free white males has recently been taken in Ohio, and, calculating from the data it furnishes, I feel warranted in assuring the committee, the population of that single State now falls little, if any, short of a million. If this fact furnishes any rule by which to estimate the increase of the other two States, the present population of the Seventh Circuit exceeds two millions and a half. In 1807, Ohio, which now has a million of inhabitants, had but one Representative on his floor; she now has fourteen. Is it not apparent, then, whether you regard population, extent of territory, or the quantum of litigation, that no one Judge is adequate to go through with the judicial duties of this circuit? If Congress, in forming this circuit in 1807, performed its duty faithfully, by adapting it to the then existing wants of its people—if, when the population was less than one-third what it now is, this court was deemed necessary—if its legislation was suited to these three States then, it cannot be adapted to their situation now. Any arrangement requiring *one* Judge to perform all the circuit duties of either two of the three States now composing the Seventh Circuit, would fail to afford the desired remedy. No single Judge would be able to perform these duties: if, therefore, Kentucky and Ohio are to remain united in the same circuit, the remedy would not be efficacious. As it regarded Ohio, the remedy would be worse than useless—it would hold out to her a pretence of relief, which we knew was unsubstantial—a mere shadow. The memorial from Ohio informs you, the District Judge is unable to attend regularly to business, on account of indisposition, already protracted, and which indicated a long continuance. The Circuit Judge, whose fine constitution has been ruined and broken by the severe labor you have imposed upon him, is in as bad, or even worse, situation—wholly unable to attend the court. The bill proposes to separate these three great States of the West, and to unite with each, one or more, of less population and business. It is predicated on the only correct principle, and is well fitted in its convenient arrangement of circuits, to facilitate the administration of justice. I much fear, sir, no advantage whatever would result to either of these States, from a different arrangement of the circuits, or from any one, predicated on the addition of *only* two Judges to the present number. When gentlemen advert to the vast amount of business in the West, and the prospect of its increase, will they not be satisfied, that if we keep either two of these large States together, we shall frustrate the design of the bill?

I am met here, sir, by the declaration of the Chairman of the Judiciary Committee—a declaration of most extraordinary character—that the three small States lying in the Northwestern angle of the Union, (Indiana, Illinois, and Missouri,) might get along as they are, a little while longer, and take a circuit with a Judge of the Supreme Court by and by! What is the situation of those States? Is there no business, there, for the United States' Courts? We have seen there is, and that the present system operates, as to them, a denial of justice. Why call on these States for longer forbearance, while you extend the system to other States? We *now* know their wants, and why not *now* apply the remedy? If it be important to extend the judicial system into any of the Western States, it is equally important to extend it to the whole. One State has the same right to participate in these privileges as another. The bill provides for the wants of all; and let me ask, on what grounds the three States in the Northwest should be excluded? Is it wise to adapt our legislation to the wants of this day only, and to invite the attention of every new Congress to the subject? I think not. The less frequently this subject is brought before Congress, the less probable is it that any alarm will be excited throughout the country, as to the stability of our judicial system. What extraordinary claims have Mississippi and Alabama, that they should enjoy the advantages of the system, while Indiana, Illinois, and Missouri, are excluded? Have the first named States the greater amount of business? I have taken some pains to collect information, and feel warranted in saying, the largest amount of business is found in the Northwestern States. The information I possess, derived from memorials and conversations with gentlemen here, and letters, shew about 40 causes a year in Indiana; 80 in Illinois; 60 in Alabama; and 40 in Mississippi. We may collect from this information, although it may not be precisely correct, that there is a remarkable equality, as to business, amongst these four States; and when we advert to the memorial so long ago presented from the Legislature of Indiana, and the statements of the gentleman from Illinois, on this floor, we shall be satisfied, if the claim of either is to be *preferred*, it is that of the Northwestern States: but, sir, they are all equally entitled to the benefit of the system now.

I have made, sir, with considerable labor in collecting the materials from different parts of the country, a statement, shewing the population of the different circuits, as they are now organized, and of those proposed by the bill; with the number of suits brought in each, in a year, and the distance the Judge is required to travel to perform his Circuit and Supreme Court duties; to which I ask the attention of gentlemen:

CIRCUITS.	Population.	Skits per year.	Travel to Circuit Court.	To Supreme Court.	Total travel.
1. Maine, N. Hampshire, Massachusetts, Rhode Island.	1,148,842	130	940	1000	1940
2. Vermont, Connecticut, New York.	1,883,820	130	1000	500	1500
3. New Jersey, Pennsylvania.	1,327,035	110	380	36	116
4. Delaware, Maryland.	480,099	57	420	30	450
5. Virginia, N. Carolina,	1,704,195	70	750	250	1000
6. S. Carolina, Georgia.	843,730	100	550	1400	1950
7. Tennessee, Kentucky, Ohio.	1,568,534	1700	1200	1400	2600
Proposed Circuits.					
8. Ohio, Indiana, Illinois.	783,770	530	1700	1100	2800
7. Kentucky, Missouri.	630,903	840	1200	1400	2600
9. Tennessee, Alabama.	550,714	560	2550	1200	3750
10. Louisiana, Mississippi.	228,855	120	2100	2000	4100

An examination of the business in the different circuits, will shew how greatly the amount in the Western, exceeds that in the Eastern circuits, and how much more labor the Western Judges have to perform, and gentlemen will see that it is impossible to impose any new duties on the Western Judges, if you expect them to be performed. No number less than three will be adequate to do the immense labor of the Western circuits.

Sir, what was the situation of the United States in 1789, when the Judiciary was first organized under the new Constitution? There were then only ten States in the Union—Vermont, Rhode Island and North Carolina, were not then in. The population of these ten States, at that time, did not exceed three millions; but if we admit that, in adopting the system, the Union of these three States was anticipated, and were taken into view, the whole population did not exceed four millions. Six Judges were then thought necessary to administer justice to these four millions of people in thirteen States, and they were provided for in that act. Rhode Island and North Carolina, having ratified the Constitution, had this judicial system extended to them in June, 1790. Vermont had it extended to her in March, 1791. It is a little extraordinary, that gentlemen from two of the three States, who were not present at the wedding, but coming at the eleventh hour, were admitted to a full share of the feast, should be among the first to raise their voices against the extension to other States of that system, which had been so promptly and generously extended to them. Surely the gentleman from Rhode Island—a State, where, he believed, the majority in favor of ratifying the Constitution was not very great—should not have been so tenacious of excluding her younger sisters from enjoying the privileges it conferred, or to claim to exclude from the judicial pale these forward children of the West, to let the old thirteen States enjoy their pittance.

In 1807, when the Seventh Circuit was organized, embracing the then three Western States, the population of the country bore a greater disproportion to the number of Judges, than in 1789. At the time the Seventh Judge was added to the Supreme Court, there were about six and a half millions of inhabitants in the Union. Seven Judges for six and a half millions, was not equal to six for three, or at most four millions. We have now upwards of twelve millions of People, and we propose to add to the court three new Judges, and to make the court consist of ten. I ask, again, if ten Judges is a greater number for twelve millions, than six was for four millions, or ten for twenty-four States, more than six was for thirteen? The ratio adopted in 1789, would give eighteen Judges now. Yet we are told this trifling extension of the existing system, is pressing it beyond its limit, and will produce distraction, instability, and ruin.

When this system was first adopted, and the United States' Judges were sent into the States, they were looked upon with great jealousy, and all their acts were closely scrutinized by the People. Satisfaction has taken the place of jealousy and distrust, and we are told, the whole People of the States East of the Allegheny Ridge, are perfectly satisfied with the court and its decisions. If such beneficial results have followed the sending your Judges into the fourteen Atlantic States, why will you still exclude the Western States from participation in these results, and keep them ignorant of the operation of your laws? Why have you afforded your aid to quiet the alarms, and remove the jealousies of the People in the Atlantic States, and refuse to dissipate the fears and disquietudes, said to be so prevalent in the West? If all that had been said against the West were true, that would furnish additional arguments for sending Judges to put things right. But the fear is not, that the new Judges will injure the West, but that the discontents of the West will injure the new Judges, and through them, the old ones. I deny that there is any thing in the habits or temper of the Western people, to justify any alarm, and I call on gentlemen who throw out such aspersions, for their proof.

The gentleman from New York (Mr. STORRS) thinks we had better take only two steps *now*, and *wait a little* before we take a third—to appoint two Judges now, and another by-and-by, than, by appointing all three at once, alarm the fears of gentlemen. He seems to admit, the time is rapidly approaching when you cannot avoid taking the third step. If three Judges are necessary, why not have them at once? Is it wise to forbear now, and agitate the subject anew, year after year, to quiet the fears some gentlemen have? I see no reason for this timidity. It is said, the Territories will shortly become States, and then you can provide for the third Judge. In 1789, the real wants of the People did not require six Judges, but it was then thought wise to provide six, to answer the increased population of the States on the Atlantic, and it has been found to answer from that day to this. Why shall we reject this example? Why pass a law so narrow in its operation as to require immediate revision and re-enactment? It is your duty to give some character for permanence to your legislation, as well as your adjudications. The act of 1789, was found to answer its object till 1807—eighteen years—and, by adding one Judge at that time, and extending its system over the then three Western States, has been continued to the present period—nineteen years longer. With these examples and this policy before us, shall we limit our views in legislation to the present moment, and shut our eyes upon the future? We are told that, by increasing the number of Judges to ten, you incorporate into the judicial system, principles tending to its total

destruction—that new Judges must be added, from time to time, as new States arise, until you make it too numerous a body for business, and weaken, if not take from it entirely, its responsibility. There is little expectation that any other States, than the present organized Territories, will claim admission into this Union for fifty years, and these Territories, when States, can conveniently be attached to the proposed circuits—Michigan to the Ohio circuit; Florida to that of Alabama, and Arkansas to that of Louisiana. We may, therefore, fairly presume, the circuits now proposed, will answer all the purposes of justice for fifty years.

Sir, what are these fears of gentlemen, and what the cause of alarm at the proposed increase of Judges? It seems not denied that there is not, either in the number seven or nine, any magic charm; and we have found, from experience, that no serious inconvenience results from an even number in the court. But gentlemen tell us, the representative principle is carried into the scheme—that the addition of three Judges will make the court a political, popularity-hunting tribunal—that the Judges coming from the West, and mixing with the people of the West, will imbibe their *feelings of hostility* to the Court, and, to the Atlantic country, their *factious principles*, their *corruption*; and, armed with these weapons, will corrupt the court, overturn its previous decisions, and control its future ones—destructive alike of good order, uniformity of decision, and the principles of the Constitution. Are not all these apprehensions gratuitous? Does the character of the court of the Western country, or the Western People, furnish any foundation for them? The gentleman from Rhode Island (Mr. PEARCE) had said, the people of the West are to bring on to the bench of the Supreme Court all their feelings of hostility to the Court and its decisions. The gentleman from North Carolina (Mr. MANGUM) said, the three Judges would bring with them feelings known to be adverse to the Court.

[Mr. MANGUM explained. What he had said was, that the appointments would be made from sections known heretofore to have been opposed to the decisions of that court.]

Mr. WRIGHT resumed. The gentleman from North Carolina states, that, instead of making the observations imputed to him, he had expressed his fears that the selection of Judges would be made from those States which were known heretofore to be hostile to the decisions of that court. How does this affect the argument? What States does he mean? What proof does he offer of that heretofore known hostility? I have lived in the West many years, and am entirely ignorant of any feeling of this character there. How has it been manifested? Where is it? It is true, Ohio was dissatisfied with a decision of the Supreme Court, and she caused a case to be appealed from the Circuit to the Supreme Court, and presented certain points for decision, requiring a re-examination of the cause she was dissatisfied with, having perfect confidence in the court. The examination was had, and the decision quietly acquiesced in, though leaving unnoticed one of the principal points relied on. These facts, instead of sustaining the gentleman's argument, prove the reverse of it true. I am also ignorant of any hostile feeling in the other Western States. Has not the gentleman failed to establish his charge? But the court is to be based on the representative principle, and to become a political, popularity-hunting body; and the gentleman from North Carolina (Mr. MANGUM) thought the court would become ridiculous, abominable, and contemptible, if the Judges mixed with the People, and brought there the *principles* and feelings of the People. I know not how the gentleman can reconcile it to himself to pronounce it abominable to mix with the people from whom we derive our power, and with whom rests the sovereignty. It may be so in his opinion, but I differ from him most widely. Your Government, sir, is a Representative Democracy—the principle of representation is that on which the whole fabric rests—and the Supreme Court is a part of your Government. The Constitution, clothing the Court with power to determine the construction and Constitutional obligation of your laws, and those of the States, has made it political in a highly important view. Increasing the number of Judges to ten, will not make it more political than when composed of seven. Mixing with the People, and learning their local laws, feelings, and principles, has not been found injurious to the Judges East of the Allegheny Ridge, nor to induce them to hunt for popularity. Why should it have that effect on the West only? I would not place Judges under the control of popular influence and prejudice, to be the governing rule on the bench of justice, but I should be equally unwilling to say they should hold themselves entirely disconnected from the People, regardless of their opinions and the operation of judicial decisions. I do not envy the gentleman the feelings which lead him to a contrary conclusion.

[Mr. WEBSTER rose, and called to order. Some conversation followed between him, the CHAIRMAN, Mr. MERCER, and Mr. WRIGHT, as to the point of order; and the Chair determined Mr. W. was taking too wide a range, &c.

Mr. MANGUM explained. The discussion had gone into an eloquent tirade against his opinion. He would repeat what he had said as to representation. He was desirous that the Supreme Bench should not represent the passions, principles, or prejudices, peculiar to any particular section of the country. He said such a representation would be abominable; and he would sustain that opinion. He thought he had been unkindly treated—but he hoped it was not done with any unfair intention. He had only objected to giving the bench any representation but that of justice, and the principles of the Government. But that the Judges should not feel respect for the Constitution, or the laws, or the great mass of the People, from whom we all derive our power, was not what he intended to say.]

Mr. WRIGHT resumed. He said, in speaking on the motion to reduce the new Judges from three to two, he had supposed himself in order to reply to arguments used against sending any Judges into the West. He had endeavored to shew that the Western country was inhabited by a people as virtuous, respectable, and orderly, as their brethren on this side the mountains, and that they had amongst them men in all respects fit for the duties of the judicial office, untainted by bad principles; faithful and intelligent: and he had also endeavored to shew that that country was entitled to three Judges instead of two.

The gentleman from Virginia, (Mr. POWELL) had said it would hazard the dignity of the Judge to mix with the People of the West. Has it lessened the dignity of the Judge to go among the People in the East? No, sir, on the contrary, the result has proved highly satisfactory.

[Mr. POWELL explained, and said he was not aware of having made such an assertion.]

Mr. WRIGHT said he had taken a note of the expression at the time, and compared it with a printed report, but still might have misconceived the gentleman's expressions. The other gentleman from Virginia, (Mr. MERCER) thought the Western People factious, turbulent, and corrupt; that the Judge sent among them would imbibe the corrupt taint, and return to innoculate the bench with it: but, sir, it may be wrong in me to allude to that gentleman's remarks, as he has explained away and taken back so much of his speech, that I am at a loss to tell what remains of it. If it be true, that the Western People were so factious and prejudiced, that no Judges could be selected in their country without carrying faction, discord, and turbulence, on to the bench, I would not ask you for three, or two, or even one Judge. Are Western People distinguished for playing the demagogue, and hunting popularity, or for their turbulent or factious spirit? These traits

belong not to their character; on the contrary, they are remarkable for their open, steady, and fearless marching to their object; and I may say, without injustice to the feelings of citizens of other States, that they have as little cunning, and as much frankness in their character, as any other People. How are they here, on this floor? Turbulent and factious? Or do the Western Representatives go side by side with those of other States, in perfect harmony, and as little temper, as any? If such be the conduct and character of those who come directly from the People, whom the gentleman would suppose the very source of corruption, how much less likely is it that the Judges, who would be carefully selected by the Executive, would be infected with the feelings imputed to them? But why are we not told why this taint should be imbibed in the West more than in the East? The feeling to which I have before adverted, that existed there in relation to a decision of the Supreme Court, was not sufficient to justify any apprehension. This kind of feeling has not been confined to the Western States. Other States have felt it to as great an extent. It had existed in Georgia, South Carolina, Virginia, Pennsylvania, New York, New Hampshire, and Vermont. Georgia and South Carolina submitted with reluctance. Virginia exerted her judicial power to resist. Pennsylvania raised her military arm. Yet we of the West are not found charging the People of these States with being factious, and turbulent, and corrupt. The feeling subsided without generating the passions so ungenerously attributed to the West. Has the Western atmosphere any thing peculiar in it to excite turbulence and faction? Although supposed to possess this taint, gentlemen have showered compliments upon the Western People in great abundance. We are generous and brave, ready to rush into danger, and to repel our country's foes. We are entitled to thanks and confidence, a seat on this floor, and to any thing but a Judge on the Supreme Court bench, or to have a Judge from the Supreme Court sent to us to try our causes. I have no inclination to find fault with the Judges, nor disposed to flatter them. It is not congenial to my disposition to do either. They have performed their duties to the satisfaction of the People, and need no praise. Yet these Judges, so highly gifted and extolled, exalted so as to be but little lower than the angels, are to surrender their opinions to the three Western Judges. The one now in the West having been admitted to have performed his duties satisfactorily, is not obnoxious to the charge. These three new Judges are to reverse all the decisions of the Supreme Court. They must be wonderful men, if the three can control and overrule seven. If the argument was predicated on the opinion that the Atlantic Judges would neglect their duties in the Supreme Court, and leave the seats for the Western Judges, a moment's reflection would shew to the contrary. The bad roads, increased distances, and other inconveniences, from which the Eastern Judges will be exempt, will retard the Western Judge in his arrival, and give those from the East the advantage.

The gentleman from Rhode Island, (Mr. PEARCE) and from Virginia, (Mr. POWELL) think these Judges must not be appointed, because the Constitution does not authorize you to confer on the Judge of the Supreme Court, the duties of a Judge of the Circuit Court. It is a sufficient answer to this objection to say, the contemporaneous exposition of the Constitution, made by a Congress composed, in part, of the framers of the instrument, in the act of 1789, and ever since acquiesced in, is in opposition to the gentleman.

[The CHAIR pronounced the discussion not to be in order.]

Mr. WRIGHT resumed. The gentleman from Rhode Island (Mr. PEARCE) has expressed his fears also, that, if new Judges are appointed from the West, some of the decisions of the Court, which had given so much satisfaction to the Atlantic States, would be reversed: among those enumerated, was one as to the conclusive character of a record of a foreign court of Admiralty, (in accordance with which, he thinks, there was but a bare majority of the court,)—one as to the liability of individual members of a corporation in the Circuit Court, when any one of them lived within the State or district; another denying to that court jurisdiction at common law in criminal cases, in opposition to what he conceives the conclusive argument of Judge Story; and another sustaining the Constitutionality of the law imposing Circuit duties on the Judges of the Supreme Court. Let me quiet the gentleman's fears in these respects, and assure him there is no danger from our quarter, in relation to either of his cases. In the West, the first decision is not regarded as of much consequence either way: with the second, no dissatisfaction is felt. For myself, I had supposed it indisputable, that one individual, enjoying a personal privilege, could not extend that privilege so as to include or protect others associated with him in contract or tort. As to common law criminal jurisdiction of crimes in the United States, the Western lawyers are only astonished it should have entered into the mind of any man to conceive that court had such jurisdiction. The question as to the Constitutional authority of the Court, never has been raised in all the litigation in the West, or elsewhere, except in the case alluded to by Judge Parsons I hazard nothing in asserting, that such a question will not be raised in the West; and if such were raised, the decision there would accord with that of the Supreme Court. The gentleman says, that the common law and Constitutional questions were decided *wrong*. Yet he is much alarmed lest Western Judges should reverse them, and decide *right*. Does the gentleman think it is *wrong* for Western Judges to do *right*? How are decisions to be reversed? The Judges are not to overturn them without a case. When a case is properly made and presented, and fully argued, is your Supreme Court to be deprived of the power to decide as they think right, through fear of disturbing some former decision—a privilege enjoyed by all other courts, existing in the very nature of things? When error is discovered, is it an act of wisdom or integrity to persist in it?

The gentleman from North Carolina, (Mr. MANGUM) would have no increase of Judges, because the time is inauspicious: discontent prevails, and, in some sections, all the elements of revolution are in motion; heaving and tossing in great agitation. [Heaven preserve us amidst this frightful commotion!] He says, "we have a *new President*, and however loyal and devoted his loving commons may be, the *Prince* is scarcely yet firm in his seat. He may require new strength to sustain him. It may be found expedient that patronage should scatter its delicious manna in the West." Where is this discontent and agitation? I know of no discontent against the General Government, and imagine its existence is limited to the gentleman's own fancy. True, sir, I have heard of a slight breeze in the South, on account of an Indian treaty, made by a late administration: and I have heard, more recently, of a disturbance in an Eastern city, remarkable for its steady habits, on account of some play-actor; but it never occurred to me, that either furnished evidence that "the elements of revolution were in motion, heaving and tossing in great agitation." As to all the rest of the country, it is as quiet, as when the gentleman, in his boyish days, indulged in his favorite amusement "of fishing for minnows with a pin." Again, the same gentleman is alarmed, and would give no Judges to the West, because this is a sudden innovation, and he is opposed to sudden innovations. In another part of his discourse, the gentleman tells us, the question has been agitated here for seven or eight years, and expresses his great surprise that it has suddenly become an administration measure, popular, rallying around it so many *new* friends! The gentleman, himself, proves

the measure not to be a very sudden one. The gentleman has yet another alarm. We have now, he says, fifty Federal Judges, and he is afraid of any increase. I imagine the gentleman is under a small mistake here: In the twenty-four States, there are but thirty districts, and only twenty-eight District Judges, (eighteen in the Eastern, ten in the Western States,) to which, if you add the seven Judges of the Supreme Court, you have, in all, thirty-five. I am now told, the Territorial Judges were included. Sir, they are unknown to your Constitution, and hold their places by a very different tenure from that of the Federal Judges. It is again said, that the addition of three Judges will retard the proceedings in the Supreme Court. The Judges of that Court say, time only is wanted to dispose of their term business, and you have another bill on your table, providing the proper remedy.

But, sir, how will you arrange your circuits, if you have but two new Judges? We have seen, that the great press of business in the West cannot be disposed of by two new Judges. Upon which of our Eastern Judges, will gentlemen impose new burthens? Which of them will they send into the West to hold circuits? The Eastern Judges already perform great labor, though much less than is required of the Western Judges, and I cannot see how we can require them to hold courts in the Western States.

Mr. Chairman, perfectly satisfied myself, I have endeavored to satisfy you, that the appointment of two Judges only, will not afford a remedy for the great evils felt in the West, and that at least three is necessary to afford the remedy. I confidently appeal to the good sense of the Committee to afford us the relief we seek.

Mr. KREMER said, he should vote not only against this amendment, but against the bill also. There was nothing of which he was more firmly convinced, than that the whole Judicial system of this country, as it now stands, is radically wrong; and he was satisfied that the bill would not in practice, answer the end proposed by its friends. This end, it is argued, is to prevent the delay of justice. As to the existence of such delays, there could be no question—there was not any man who could doubt the fact. The evil prevails every where through the country: but is multiplying courts a likely way to remedy it? So far from it, it will only be multiplying the evil. It is with courts as it is with Banks—the moment you begin to create the want of them, you will have to go on to satisfy that want: so in new countries they cry out that the delay they experience is for want of more courts. The argument is specious, but is it solid? I appeal to all, whether, when the number of Judges was once before increased, the same evils did not prevail? Besides, where is the evidence that the delay and expense complained of is so very enormous? What are we told by the friends of the bill? That the Bar of Tennessee and the Bar of Ohio have come forward and petitioned this House; but, Mr. Chairman, the best evidence should be produced, which the case will admit: and is this the best evidence? Is it not admitted as a principle, that the more interest any party has in that, concerning which he testifies, the less is his testimony worthy to be received? Have we any memorial from the Court? Do the honest suitors come here, and ask you to multiply their evils by increasing the courts? For, what does the present Judicial system amount to? Is it not, in practice, a denial of justice? If you wish to benefit the People, you must remodel the entire system: for, as it is, the suitors have but too much reason to adopt the language of the unfortunate man, who, having succeeded in his cause, after several appeals, said to his friend, "one verdict more in my favor, and I am quite ruined." Notwithstanding all the fine eulogies which have been pronounced on the Judiciary of this country, and the Judiciary of England, the gentleman from Rhode Island, (Mr. PEARCE) tells you that a single suit in the Supreme Court, cost 6,500 dollars, when the whole sum in dispute was less than that. We have heard something said, about the excitement which once existed in Pennsylvania, (I conclude gentlemen allude to Olmstead's case,) and they tell us that the people in Pennsylvania are now quiet, and make no resistance. Mr. Chairman, so should I be, if a robber had met me in the Pennsylvania Avenue, and knocked me down: but nothing can ever erase from my memory, or take out of my heart, the conviction of the oppression and injustice which was done in that case: nor will the People of Pennsylvania ever cease to remember and to feel it too. Sir, you can never reconcile them to that decision. But, sir, I must here enter my solemn protest against the whole doctrine, that the Supreme Court has power to pronounce acts of this House to be unconstitutional. In vain did our armies shed their blood in the field, and our sages toil in the cabinet, to secure our liberty, if it is to be subjected to the arbitrary decision of these Judges.

We have heard a great deal about the illustrious talents of the Judges of the Supreme Court; and we have been told a great deal about the incorruptible purity of the English courts; but do gentlemen forget the words of the poet?

"Do parts allure thee? Look how BACON shin'd,
"The greatest, wisest, meanest of mankind."

This man was bribed—and about a hundred years after, another of their Chancellors was convicted of enormous crimes. If some Judges are corrupt, others may be so too: he believed nothing of the infallibility of men in any station. He again protested against the doctrine that they had power to set aside the acts of this House: and even if he had at first been friendly to the bill, this bold avowal would be sufficient to induce him to pause before he voted for it. He called upon gentlemen to pause before they took a step so important. He would first be well assured that the People wish this change, before he could be persuaded to vote for it.

The question was then taken on Mr. STORRS' amendment, (to reduce the proposed number of additional Judges from three to two,) and decided in the negative.—Ayes 45; noes 105.

On motion of Mr. COOK, the committee then rose, and reported the bill without amendment.

Mr. WEBSTER moved that it be ordered to be engrossed for a third reading.

Mr. MERCER opposed this motion, and moved an adjournment. The House refused to adjourn—ayes 54; noes 99.

Mr. POWELL then moved that the bill lie on the table. This motion also was negatived.

Mr. LITTLE then moved an adjournment. Negatived: ayes 77; noes 91.

Mr. STORRS now renewed in the House, the motion he had made in committee, to strike out nine, (the number of Associate Judges,) and insert eight. On this question, Mr. SAUNDERS called for the yeas and nays; which were ordered, and are as follows;

YEAS—Messrs. Allen, of Mass., Alston, Ashley, Barbour, of Va., Bassett, Bryan, Burleigh, Cambreleng, Carter, Cassedy, Condict, Conner, Deitz, Dwight, Eastman, Edwards, of N. C., Gist, Govan, Hallock, Harris, Hasbrouck, Hines, Hobart, Hoffman, Humphrey, Ingham, Johnson, of N. Y., Kellogg, Lincoln, Mangum, Markell, Marvin, of N. Y., McCoy, McDuffie, McKean, McNeill, Mercer, Merriwether, Miller, of Pa., Newton, O'Brien, Peter, Plumer, Powell, Reed, Ross, Saunders, Sawyer, Smith, Stevenson, of Pa., Stevenson, of Va., Storrs, Strong, Swan, Taliaferro, Thompson, of Geo., Trezvant, Tucker, of S. C., Henry Wilson, Wilson, of S. C.—60.

NAYS.—Messrs. Adams, of N. Y., Addams, of Penn., Alexander, of Va., Alexander of Tenn., Allen, of Tenn., Anderson, Archer, Armstrong, Bailey, Badger, Baldwin, Bartlett, Bartley, Barber, of Con., Barney, Baylies, Blair, Brent, Brown, Buchanan, Campbell, Cary, Claiborne,

Clarke, Cocke, Cook, Crowninshield, Davis, Dorsey, Drayton, Estill, Everett, Findlay, of Ohio, Forsyth, Fosdick, Garnsey, Garrison, Gurley, Hamilton, Harvey, Hayden, Healy, Henry, Herrick, Holmes, Houston, Hugunin, Ingersoll, Isacks, Jennings, of Ohio, Jennings of Ind., Johnson, of Va., James Johnson, Francis Johnson, Kerr, Kidder, Kremer, Lathrop, Lawrence, Lecompte, Letcher, Little, Livingston, Locke, Mallary, Marable, Martindale, Martin, Mattocks, McLean, of Ohio, McManus, Meech, Metcalfe, Miller, of N. Y., Miner, James S. Mitchell, Mitchell, of Md., Mitchell, of S. C., Mitchell, of Tenn., Moore, of Ken., Moore, of Alab., Orr, Owen, Pearce, Polk, Porter, Rives, Sands, Scott, Sloane, Stewart, Taylor, of Va., Test, Thomson, of Pa., Thompson, of Ohio, Tomlinson, Trimble, Tucker, of N. J., Van Rensselaer, Vance, Varnum, Verplanck, Vinton, Wales, Ward, Webster, Whipple, White, Whittemore, Whittlesey, Wickliffe, James Wilson, Wilson, of Ohio, Wolf, Wood, of N. Y., Woods, of Ohio, Worthington, Wright, Young.—119.

So the amendment was rejected.

Mr. MERCER then moved the following resolution:

Resolved, That the bill be recommitted to the committee that brought it in, with an instruction so to amend it as to discharge the Judges of the Supreme Court from attendance on the Circuit Courts of the United States; to provide for the gradual reduction of their present number to five; and, further, to provide an uniform efficient system for the administration of justice in the inferior courts of the United States.

Mr. VAN RENSSELAER now moved that the House adjourn; which motion was carried—ayes 89; noes 84.

FRIDAY, JANUARY 20, 1826.

Mr. STORRS, from the Naval Committee, reported the following bill:

"A Bill for the establishment of a Naval School.

Sec. 1. *Be it enacted, &c.* That the President of the United States be, and he is hereby, authorized to establish a Naval School for the improvement and instruction of the Midshipmen and other Officers in the Navy of the United States, who may from time to time, be attached thereto, and shall be subject to the regulations thereof.

Sec. 2. *And be it further enacted*, That the said School may be located, under the direction of the President of the United States, on any of the lands now held by the United States for Naval or Military purposes, and shall be subject to such regulations as shall be, from time to time, directed by the President of the United States.

Sec. 3. *And be it further enacted*, That the President of the United States is hereby authorized, to appoint, for the said School, one Commandant, who shall be taken from the Captains in the Navy of the United States; one Professor of Natural and Experimental Philosophy and Astronomy; one Professor of Mathematics and Navigation; one Teacher of Geography and History; one Teacher of the French and Spanish Languages; and one Fencing Master; the said Professors to receive, respectively, for their services, a yearly compensation of —— dollars; the said Teachers to receive, respectively, a yearly compensation of —— dollars; and the said Fencing Master the yearly compensation of —— dollars. And the Secretary of the Department of the Navy is hereby authorized, at the public expense, to provide the necessary books, implements, and apparatus, for the use and benefit of the said institution, not exceeding, in the whole, the amount of —— dollars, to be paid out of any moneys in the Treasury, not otherwise appropriated.

Sec. 4. *And be it further enacted*, That the sum of —— dollars be, and the same is hereby, appropriated, to be paid out of any moneys in the Treasury, not otherwise appropriated, for erecting buildings, the payment of the Professors and Teachers, and for such contingent expenses as may be necessary and proper for said School, under the direction of the President of the United States."

The bill was twice read and committed.

NAVY TIMBER, &c.

The resolutions offered yesterday, by Mr. HOLCOMBE, respecting Navy timber, were taken up:

Mr. STORRS, (Chairman of the Committee on Naval Affairs,) said, that he was not aware that the interests of the service called, at this time, for the estimates proposed—that there was nothing in the present state of the Country which required the House now to consider the subject. No proposition had been made, to his knowledge, from any quarter, to enlarge the existing naval establishment. It would be in time to examine that subject, when we heard from the Executive Department that it was necessary or expedient to act upon it. The adoption of the first resolution, might lead to inferences altogether unfounded, and actually injurious to the Naval service. He should, therefore, vote against that resolution.

Mr. HOLCOMBE said, that he would briefly explain the reasons which had induced him to submit the resolutions under consideration. From information received from the most respectable sources, he could inform the House that the live-oak timber was rapidly disappearing from the public lands of the United States, and that, unless some decisive measures were speedily adopted for its preservation, the whole supply of this invaluable timber would be entirely cut off in a few years. The law of 1822, Mr. H. said, was totally inoperative; indeed, it was worse than useless. He was assured that more of the live-oak timber had been removed, perhaps thrice as much, in the few years which have followed its enactment than for any same number of years before that period. This was owing, he presumed, to the apprehension of the agents of foreign ship-yards, that this law was to be considered as an indication that Congress was determined to perserve its public timber, and hence they had availed themselves of the lax provisions of the existing law, and made every effort to supply themselves abundantly, in anticipation of future wants. And such had been their success in procuring their timber, that he felt warranted in asserting, that there was more good live-oak timber to be found, at this moment, in British ship-yards, and in other situations beyond the control of this Government, than was growing on the public lands of the United States, at least in accessible situations. With such facts before him, Mr. H. thought it was a subject of proper inquiry, whether some more effectual measures than the present should not be adopted to secure the timber left; and whether it would not be prudent to provide for the future exigencies of the service, in the manner proposed in the resolutions. The live-oak, if properly secured, instead of deteriorating, grows better—so he was informed—for any indefinite period. Mr. H. said, (and the House, he perfectly knew, was aware of the fact) that the supply of live-oak is limited, and is not, like the white-oak, and ordinary timber, scattered over the Union, but confined to the sea-board region of the Southern States, and the margin of the Gulf of Mexico. With such views, Mr. H. had presented the resolutions, and hoped they would be adopted.

The question was then taken on the first Resolution, and carried in the affirmative—Ayes 64, Noes 60.

The question then being on the second Resolution, Mr. STORRS observed that he had no objection to having this information obtained; but he doubted if it was a proper course for this House to call on one of the

Heads of Departments to know if legislation is, or is not, necessary on a given subject. It was at all times proper to call on him for facts which were officially within his knowledge; but it was evidently unbecoming for the House of Representatives to ask any Head of Department how they shall perform their duty. He therefore moved to amend the Resolution by striking out "the Secretary of the Navy," and inserting, in lieu thereof, "the Committee on Naval Affairs."

The amendment was agreed to, and the Resolution, as amended, was then adopted.

DECEASE OF MR. FARRELLY.

Mr. STEVENSON, of Pennsylvania, rose, and said—

Mr. SPEAKER: I rise to announce the unpleasant information of the death of one of my colleagues, Mr. PATRICK FARRELLY, a gentleman known here from having acted as a Member of this House for several years, and who had been again returned as one of the members from Pennsylvania. He died at Pittsburg, on the 12th of this month, on his way to take his seat in this body.

Mr. INGHAM said, the annunciation of the death of a fellow member, who had been associated with us, by the voice of his constituents, in our labors for the common good of our country, cannot fail to excite the sympathetic sensibilities of our nature, which I am persuaded would induce the members of this House to accord the customary testimonials of respect to the memory of my venerated colleague. But, with those who had an opportunity of knowing his worth, many of whom I now see around me, there must be additional motives for paying respect to his memory, not only in the exhibition of suitable external forms, but through the indulgence of the best affections of the human heart. Whether in public or private life, the worth of the deceased was of no common order. All who had the happiness of knowing him as well as did the humble individual upon whom has devolved the melancholy duty of addressing you on this occasion, will bear me testimony that his character combined an association of the most estimable qualities of humanity—an amiableness of disposition, unsullied integrity, and inflexible virtue, adorned by an highly cultivated and ingenuous intelligence. But it is not for me to attempt a delineation of the virtues of so excellent a man, so devoted a patriot. I beg permission, therefore, only to add, for the information of the House, that, ever anxious to be where his duty called him, the deceased left his residence about the commencement of the present session, with a view to take his seat among us. He had travelled, on his journey to this Metropolis, as far as the City of Pittsburg, where he was arrested by the hand of a disease which terminated his journey of life, at the time stated by my worthy colleague. He was, therefore, in the way of his duty as a Member; he was entitled by the law and the Constitution to the privileges of a Member; and the case, though not precisely that of a Member dying after his arrival at the Seat of Government, is altogether analogous, and in no material circumstance distinguishable from it. There is, however, a class of cases embracing a wider extent, in which the House, with unanimity, accorded the customary testimonials of respect. I allude to the well-known case of the ever-to-be-lamented Mr. LOWNDES, and others, which I need only mention to bring to the recollection of the House. But I will not do injustice to the proper sensibilities of any Member, by anticipating objections to the resolution which I now submit for the consideration of the House.

[The motion of Mr. INGHAM was, in effect, that, in testimony of respect for the memory of Mr. FARRELLY, the Members of this House would wear crape on the left arm for the space of thirty days.]

The resolution was unanimously adopted.

And then the House adjourned.

SATURDAY, JANUARY 21, 1826.

Mr. STORRS, from the Committee on Naval Affairs, made the following report:

"The Committee on Naval Affairs, to whom was referred the memorial of Isaac Phillips, formerly a Post Captain in the Navy of the United States, respectfully report:

"That the memorialist was appointed a Captain in the Navy, on the third day of July, 1798, and ordered to the command of the sloop of War Baltimore, then employed on the American coast; and, during her cruise, while convoying several American merchantmen to the Havana, she fell in with a British squadron near that port, under the command of Commodore Loring, by whose orders she was boarded by a British lieutenant and party of men, who mustered her crew and took away a number of her seamen. On the return of the memorialist to the United States, he was, by an order addressed to him by the then Secretary of the Navy Department, on the 10th day of January, 1799, dismissed from the Naval service for alleged misconduct on that occasion. He now prays to be restored to his rank of Post Captain in the Navy; and states that his dismission was not sanctioned by the Executive Department; and that the letter of the Secretary of the Navy was written without the authority or knowledge of the President. That the circumstances under which he was placed, when his command of said sloop was violated, were such, for the reasons alleged by him, that his dismission was not justified by any misconduct on his part; and that the Executive Department possessed no power to separate him from the Naval service without a trial by Court Martial.

"The committee are of opinion, that it would be wholly unsafe to act upon the suggestion that the order referred to was issued without authority; and that, if the subject of relief to the memorialist was even properly addressed to the Legislative power of Congress, yet the lapse of time since this order was issued, his acquiescence until this period, and the consequent injurious, if not unjust, disturbance of rank which might be produced in the Naval service, present insuperable objections to any examination of the circumstances which, in the opinion of the President, required that exercise of Executive authority in the case of the memorialist.

"The committee, therefore, recommend to the House the following resolution:

Resolved, That the petitioner have leave to withdraw his petition."

The report was read and laid on the table.

REVOLUTIONARY PENSIONERS.

The following resolution, yesterday offered by Mr. WICKLIFFE, was read:

Resolved, That the Secretary of War report to the House the names of the officers and soldiers of the Revolutionary Army, whose applications to be continued or placed upon the pension roll under the provisions of the acts of Congress of the 18th day of March, 1818, and the 1st day of May, 1820, have been rejected, with the cause of such rejection; the amount of value of estate contained in the schedule exhibited by such applicant; and the State or Territory in which he resided.

On the question of considering it, the ayes were 89, the noes 21.

A quorum not having voted, the question was taken again. The ayes were then 99, and the motion was accordingly taken into consideration.

Mr. WICKLIFFE observed, on introducing this resolution, that the House had had for some days upon its table a bill, which went to extend the pension system to certain classes of persons who are now not included within its operation. He was not prepared to say, what number of individuals, or what classes of persons, this bill would operate

upon, for want of that information for which he now wished to call, and he knew no other way to obtain it than by an application to the War Department, where a record was preserved of all the applications under the pension laws of 1818 and 1820. In 1818, Congress, influenced by feelings of gratitude which certainly did them honor, passed an act granting pensions to those who had served and suffered in the late war. Whether the provisions of this law were sufficiently guarded he could not say; but it was found necessary, in the course of two years, for Congress to retrace its steps, and to reduce and fritter down the provisions of the law, in order that the resources of the Treasury might meet the demands of applicants, so great was their number. And now he might be permitted to ask, if the House should pass the bill on its table, whether it was not possible they would again be under the necessity of retracing their steps? It was surely proper, before indulging our feelings of gratitude, and our desire to discharge the debts which it imposed, to look a little to our means of discharging them. As the matter now stands, it is impossible to say how far the bill will reach. When the House is furnished with the list now proposed to be called for, they can form some better estimate of what they are asked to do, because they will then see on what classes of persons the provisions of the bill operate. With this explanation, he should submit the resolution to the judgment of the House.

Mr. WOOD, of New York, questioned whether the resolution as now worded, would effect the object the gentleman from Kentucky had in view. The law of 1818, contained no qualification as to the property of the pensioners—it included all who had served nine months in the army. In consequece of this act, about 18,000 names were entered upon the roll. This amount created alarm; and, in 1820, a qualification was introduced, by which it was required that the applicants should possess property under a fixed amount, or should not receive a pension. In consequence of this rule, about 6000 names were stricken off. Now, unless the list called for specified, also, the time of service of the individuals, it would not give any information that would have a bearing upon the bill to which the gentleman had referred.

Mr. CAMPBELL said, it was very rarely that he rose to oppose a call for information of whatever kind; particularly, when those who proposed the call thought the information requisite to correct legislation. But, it might be proper for the House to understand, that, if the present resolution should be adopted, it will be necessary that the number of clerks in the War Department be greatly increased; otherwise, the lists called for could not be obtained before the close of the Session, if at all. Under the act of 1818, eighteen thousand names were placed upon the roll, and, in 1820, there were twenty-seven thousand applications: from which it appeared that there were then nine thousand applicants, whose cases had not been reached by the law of 1818. Many applications were, no doubt, withdrawn; many others, who had before applied, were required to adduce proof, which should bring their cases within the latter law: and no doubt there were others, who never presented their cases at all, when they found that, by the law of 1820, they were obliged to produce a schedule of their property, with proof that they were not worth $200. Great inconvenience must be encountered, if the resolution is complied with. The Secretary of War is required to furnish a list of the officers and soldiers who applied for pensions. As many of their applications were withdrawn, and (as he apprehended) no record of those was preserved, it would be difficult, if not impossible, to get the information called for. But, even if they were all on file, he would venture to say, it would require, at the least, ten additional clerks, to transcribe them during the Session.

Mr. BURGES expressed his sense of the desirable nature of the information called for in the resolution; but agreed with the gentleman who preceded him, as to the labor and inconvenience of obtaining it. He testified to the accommodating disposition of the gentlemen in the public offices: but, as each application was wrapped in a distinct envelope, from 27,000 to 30,000 packages would have to be opened and examined, before the call could be complied with; he thought a general sketch might be furnished, however, which would convey all the information that was material in the case.

The discussion was further pursued by Messrs. WICKLIFFE, WOOD, CAMPBELL, McCOY, and LITTLE, and finally resulted in laying the resolution upon the table.

Mr. JAMES JOHNSON, of Kentucky, offered the following:

Resolved, That the Committee on Military Affairs be instructed to inquire into the expediency of making an appropriation by law, for the purpose of repairing the public buildings at Newport, Kentucky, opposite Cincinnati.

Mr. JOHNSON accompanied the resolution by a statement, at some length, of the past and present state of the post referred to. During the late war, as well as prior to it, this spot had been viewed by Government of so much importance, that they had erected several valuable buildings there, which, for want of a small appropriation to keep them in repair, were now fallen to decay; one of these was an arsenal; others contained quarters for officers and soldiers. As this point had been used as a rendezvous for the soldiers of the Northwestern Army, it was still a recruiting rendezvous—and the records of our little army would shew, that, with the exception of one other rendezvous in one of our Atlantic cities, (Philadelphia,) and perhaps one other, (Plattsburg,) the business of recruiting had been more successful here than in any other part of the United States. It was a central position for its whole of the Western country—it was surrounded by a dense population; the climate was healthy; provisions plentiful and cheap. The public property would be increased in value. The people of the vicinity had last year petitioned the Legislature for the erection of a bridge across the Ohio and Licking Rivers; and if completed, one end of that bridge would be within one hundred rods of the establishment contemplated in the resolution. He was desirous of calling the attention of the Military Committee to this subject; and to the propriety of a small appropriation to keep the public buildings in repair. [From Mr. J.'s distant position, he was imperfectly heard at our Reporter's table.]

The resolution was adopted.

LAND DISTRICTS IN MICHIGAN.

An engrossed bill "to alter the lines between the Land Districts in the Territory of Michigan," having been read a third time—

Mr. WING, of Michigan, moved that the bill be recommitted to the Committee on the Public Lands, with instructions to extend the boundary upon the meridian line North until it be intersected by the boundary line between townships 6 and 7, North of the base line, thence, West, to Lake Michigan.

Mr. WING accompanied this motion by some explanatory remarks. He was aware that the present boundaries between the Land Districts was attended with inconvenience, being a serpentine, stream, not navigable. The Commissioner of the General Land Office had recommended, as a substitute for it, the line described in the bill reported by the committee. But he thought that recommendation resulted from a want of acquaintance with the state of the country, and the wishes and convenience of the inhabitants. One of the Land Districts, into which the Territory is now divided, is large, and the other much smaller. The bill proposes to take a certain portion fr-

the smaller district and attach it to the larger; the only effect of which, in his apprehension, would be to create some little dissatisfaction.

Mr. SCOTT replied, and vindicated the committee and the bill. The committee had, and could have, no interest in the particular course of this boundary line. They had been governed by representations made by the Commissioner of the General Land Office, and by their own conviction of what the public convenience seemed most to demand. If the line proposed by the Delegate were adopted, the inhabitants of one Land District (Monroe District) would have to pass the Land Office of the other, Detroit District, in order to get to their own Land Office.

Mr. WING said a few words in further explanation, and was answered by Mr. WHIPPLE; when

The question being taken, the motion of Mr. WING was decided in the negative.

The bill was then PASSED, and sent to the Senate.

JUDICIARY SYSTEM.

The House then passed to the unfinished business of Thursday, and the question being on the following resolution, offered by Mr. MERCER:

Resolved, That the bill be recommitted to the committee that brought it in, with an instruction so to amend it as to discharge the Judges of the Supreme Court from attendance on the Circuit Courts of the United States; to provide for the gradual reduction of the present number to five; and, further to provide an uniform efficient system for the administration of justice in the inferior Courts of the United States:

Mr. MERCER modified the resolution, by omitting that clause in the instructions which goes to reduce the number of the Judges of the Supreme Court to five.

Mr. HEMPHILL said, that, notwithstanding his indisposition, with the permission of the honorable gentleman from Virginia, (Mr. MERCER) who was entitled to the floor, he would ask the indulgence of the House for a short time; and he did it with much reluctance, as he was not in the habit of engaging in the general debates in Congress, but usually contented himself with listening to others, and making up his own mind, and giving a silent vote, except on those subjects which proceeded from Committees to which he belonged. But this, he said, was an occasion of great interest, and it seemed to him that there would be no impropriety in taking a part in it.

The subject, involved as it was in various considerations, assumed a peculiar character. Indeed, his mind, at first, had been a little bewildered respecting it. On one point, he never had any difficulty: and that was, in his decided preference of another system, which would be uniform in substance, and not in name only: but his doubts were, whether, if the system he preferred did not carry, he would vote for an addition of one or two Judges to the bench of the Supreme Court—he had never had any inclination to vote for three.

The question had been presented as a Western one, [which, he said, he would speak of hereafter] and he had been in the habit of acting with the West on many important measures of the country. This, he said, might have biassed his mind a little, as we are all frail.

The high standing and respectability of the Judiciary Committee, for a while had a very imposing effect upon him; but the more he had listened to the debate, and the more he examined for himself, the more objectionable the bill appeared to him, and he had finally formed his own conclusion to vote against it.

He said, he knew that he was but imperfectly prepared to discuss the question, his mind having been occupied on the claims of the Continental officers of the Revolution, and on the subject of Roads and Canals. But there are occasions, even when no new light can be expected to be thrown on a subject, still, a person may wish to express his own sentiments in his own way. He would, in the first instance, observe, that it was with diffidence that he differed, in particular, with the honorable gentleman from Virginia, (Mr. POWELL) whose general sentiments he had so much admired. He was of opinion that an uniform organization of the Federal tribunals of justice was of high and essential importance.

The English history furnishes us with the knowledge of the various customs of that country, and the manner in which England has, at length, attained her present power. The difference between the courts in Wales, and the Court of King's Bench, is ancient; and, like many other local usages of that country, some of which relate to the descent of land, and to the representation in the House of Commons. But it appeared to him that, in this country, where we have written Constitutions of similar character, and where it is of importance that we should act alike, and think alike—as public opinion, and not the sword, is our strength—among ourselves, it would seem but sound policy that the General Government, in its legislation, should always aim to spread equality over the land, and that, even in the administration of justice, although, abstractedly speaking, justice might be fairly done in courts differently constituted, still, to be certain, and to prevent jealousy and dissatisfaction, he thought it was of great moment that there should exist an exact uniformity in the Federal Courts all over the Union.

Much has been said, by several gentlemen, in relation to the necessity of a new organization of our Judicial system. But he must confess that, from all which had appeared, the necessity does not appear so great as he had imagined. A certificate of the Clerk of the District and Circuit Courts of Kentucky had been referred to, from which it appears that nine hundred and fifty cases were depending in these courts. There are one hundred and sixty cases in the Western district of Tennessee, and about as many in the Eastern district. There are two hundred or two hundred and fifty in the Circuit Court of Ohio. In the other Western and Southwestern States, it has not been shewn how many cases are depending. In the States from which we have information, there are about fifteen hundred cases.

A uniformity of system, in the organization of Courts of the United States, was, in his opinion, of the highest importance. He would not care so much how little business was to be done; but he would be peremptory in this particular, that, whether it was little or much, it should be done in the same way. He perfectly accorded with the gentleman from South Carolina, (Mr. DRAYTON) that the administration of justice, which is allowed in any part of this extensive country, ought not to be denied to another. It should be the same every where, if wished, even to the trial of a single cause. With regard, however, to some minor points, which have been noticed, he did not consider them of much consequence in the debate on the general system, which ought at this time to be adopted by the country. He referred principally to the difference in the mode of proceeding between a Circuit Court, properly so called, and a District Court possessing Circuit powers. In the one case, if there is a division of opinion, it is to be certified to the Supreme Court of the United States, and the point of law is presented before them in that shape. In case of the District Judge possessing Circuit powers, there can be no division; but the law might be changed, so as to permit an appeal, or writ of error from the decision of the District Judge, in cases under two thousand dollars. But as these Courts are composed of different materials, no system can be formed which will exactly fit them, unless a writ of error or appeal was allowed from the decisions of both Courts, in all cases within their jurisdiction: still, there would remain the advantage of two Judges in the Circuit Courts, and but one in the District Courts, possessing Circuit powers. This system, then,

is defective. The Federal judicial system has never been uniform since the commencement of the Government; and now, after so much has been said on the subject, and after so many propositions have been introduced in the two branches of Congress, if we touch the subject at all, if we adopt any system, let it be one that will not be liable to the imputation of the want of uniformity. But, in this very respect, the bill before us is objectionable.

The Western district of New York, the Western district of Pennsylvania, and the Western district of Virginia, in which the Judges possess Circuit Court jurisdiction, are left without the aid and advantage of a Judge of the Supreme Court. How long will they wait, without becoming clamorous too, when they are denied advantages which are enjoyed in many other parts of the country? The Western part of the State of New York has, for some time, been attracting the gaze of the nation, by her canal connection with the lakes, and by the cultivation of her fine lands. Extensive villages have also made their appearance with a rapidity that has not been witnessed in any other part of our country; and her manufacturing establishments are daily increasing. In this district, where there will be such great transactions of business, and in connection with the citizens of other States, business for the Federal Courts must naturally increase.

Many of the above remarks will apply also to the Western part of the State of Pennsylvania. Pittsburg is a busy city, filled with manufacturing establishments, and largely connected in trade with the citizens of other States. The population of Western Pennsylvania is growing fast; land is held by foreigners, or citizens of other States; and land titles are as various and as difficult to settle as in Tennessee or any other State. Business for the Federal Courts will, therefore, daily increase.

With the Western district of Virginia he was not so well acquainted, but it is to be presumed that the business will also increase there, nearly in the same degree as in the other States.

Let us look at these Western districts of the three largest States of the Union, in another point of view; and their importance will be seen by their representation on this floor. From the Western district of New York, there are twenty-two members; from the Western district of Pennsylvania, seven; and from the Western district of Virginia, seven; making thirty-six members: and if he was not mistaken in his calculation, there are but thirty-five members from the eight States of Tennessee, Alabama, Louisiana, Mississippi, Missouri, Indiana, Illinois, and Ohio.

It is most certain that the population does not always furnish a true criterion of the quantity of business which may exist in the different parts of the Union, and which is of Federal jurisdiction. In New Orleans, for instance, he supposed a comparison could not be made with any of the places he had mentioned. In Kentucky and Tennessee, there are, as he was informed, many land cases, some of which would be of Federal jurisdiction. But, in the other Western States, the titles are made so plain as not to admit of many controverted cases. What, then, he would ask, is the nature of the transactions of any other business in all these new States, that should so widely distinguish them from the Western districts of New York, Pennsylvania, and Virginia? If such great differences do exist, he would very gladly listen to any information on the subject. He claimed no preference—he asked nothing but what he was willing to give to Missouri, which is the last State admitted into the Union. All he asked, is an equality in the administration of justice, corresponding with the sentiments of the honorable member from South Carolina.

There are circumstances, too, which must occur, which are worthy of remark here. It will not be long before one or two, and perhaps three, new States will be admitted into the Union: and it will not be long before the People in the Western districts of those three large States, which he had alluded to, will become uneasy at being neglected. What, he asked, will be the consequence? If no provision can be made now, with the ten Judges, for these districts, how can it be expected to be done hereafter, when new States are erected, and when there shall be an augmentation of Federal Judicial business everywhere? We may all rest assured that, in a very few years, there will be as great a necessity for the eleventh Judge as there is at this time for the eighth, ninth, and tenth: and how can the claims be resisted on any principle of fair and honest legislation? Congress cannot stand still: it must retrograde or advance; to run back will be exceedingly difficult; and to go forward will be dangerous and impolitic. Why should we place the Government of the country in a situation so precarious and unpleasant?

If we touch the subject, as he had already said, let us adopt a system that will be uniform—a system that can expand itself, as far as we can conceive of the advancement of population in the country; and, at the same time, carry with it its own uniformity and original features; and this can only be done by the erection of separate and distinct Courts; and not by the Supreme Court commingling with the Circuit Courts in the trial of jury causes.

A Judge of the Supreme Court, strictly speaking, can only act as such; they were designed to consult with each other; but the present complex system compels them, by a naked law, and without any new commission, to compose a part of another Court, and to act in union with the will of a Judge not belonging to the Supreme Court. I am not prepared to say it is unconstitutional; but such a system has no claims to admiration or extension. A Circuit Court, composed of the District and another Judge, it is true, is liable in part to the same objection. I agree with the honorable Chairman of the Judiciary Committee, that the principal question to be decided is, whether the Judges of the Supreme Court shall cease to be Judges of the Circuit Court, or whether they shall continue to try jury causes as heretofore, and be increased to the number of ten? This question I will pursue, but it is a question that cannot be maintained on either side by any close and logical reasoning; it must rest pretty much on opinion, and such general reflections as have arisen from theory and practice. The system I prefer, and which is proposed as a substitute, is contained in a bill which passed the Senate very unanimously, in 1819; I would alter the fourth section of it, so as to make the districts in the Western country correspond with the districts contained in the bill reported by the Judiciary Committee. The first circuit would then consist of the districts of Maine, New Hampshire, and Rhode Island; the second, of the districts of Connecticut, Vermont, and the Northern and Southern districts of New York; the third, of the districts of New Jersey and Delaware, and the Eastern and Western districts of Pennsylvania; the fourth, of the districts of Maryland and Virginia; the fifth, of the districts of North Carolina, South Carolina, and Georgia; the sixth, of the districts of Ohio, Indiana, and Illinois; the seventh, of the districts of Kentucky and Missouri; the eighth, of the districts of Tennessee and Alabama; the ninth, of the districts of Louisiana and Mississippi.

In each of these districts, a Judge would have to be commissioned, who, together with the District Judge, would compose the Circuit Court. The Western country then would be accommodated with as many Judges as are provided for them in the bill reported by the committee; the system then would be uniform throughout the Union, and no part of the country left without its fair proportion of Judicial advantage. I am of opinion that three distinct Courts, with the usual right of appeal or writ of error, are better adapted to the fair and unbiassed administration of justice, than the complexed system that

exists. I think that there is not as fair a prospect of justice being done, when a cause is to commence and be finally ended before the same set of Judges. A Judge may get his mind prejudiced in the hasty trial of a cause, and he is not as fit to revise his own decisions as another man; nor do I think that his own brethren on the bench are at all times as well qualified for a revision of his opinion as another independent Court would be. On many interesting occasions, the opinion of the Judge on the Circuit may be of great importance to him to sustain his legal reputation, and it may happen, in high party times, that great and unusual excitement may arise in the trial of a cause, when the feelings of all engaged will become enlisted; at such a moment, a keen anxiety will naturally rest on the mind of the Judge to have his opinion confirmed; but it is to be reheard in his own Court, where he is present, and clothed with a right to take a part in the decision. If we have frailties, such an occasion would invite them to action, although nothing would be visible, or even known or felt in the breasts of the Judges. If the error was seen and known, it would be crime and not frailty; that, however, is guarded against sufficiently under the impeaching power; but we should guard as well as we can, in our legislation, against what may be called the invisible frailties of man. I was in a situation for eight years which was calculated to form in my mind a different opinion; it was in a Court of entire civil jurisdiction, in which every cause that was tried was liable to a writ of error to the Supreme Court. The Judges below, sometimes become displeased with the reversal of their opinions, but my mind on this subject never experienced any change. I well recollect a conversation with a gentleman of the bar, of long experience; he is now no more, but the profession in Philadelphia will bear me out in saying, that his virtue was excelled by none, and that, perhaps, a better lawyer never plead at any of the American Bars. It was his opinion, that a cause should never commence and end before the same Judges; this may have strengthened my own opinion, and made it as unchangeable as it appears to be. The principle of two distinct Courts is perfectly familiar to the People of this country. I presume that there is scarcely a State in the Union in which it has not been practised. In Pennsylvania, where I am the best acquainted with the subject, both modes have been practised. Courts of Common Pleas have always existed, in which causes originated, and were liable to be carried up to the Supreme Court by a writ of error. The Judges of the Supreme Court, likewise, for a long time, held Courts of Nisi Prius throughout the State, but it became impracticable, in so large a State, for the Judges of the Supreme Court to try jury causes all over the State, and keep down the business in Bank, and they have been relieved from the fatigue of jury trials, except in the City and County of Philadelphia. The construction, therefore, of the Circuit Courts, in 1801, contained nothing that was novel and not congenial with the opinions and practice of the People. It divided the country into six circuits, and three Judges were to be appointed in each, except in one, in which I think two Judges were to be appointed. Mr. Adams, then President of the United States, did not fill up all the commissions: but Mr. Jefferson, his successor, instead of making appointments in the few cases that remained, caused an inquiry to be made concerning the number of cases that were pending in the Federal Courts, and presented a statement of it to the next session of Congress; and, in order to shew that there was no dispute then, in relation to the construction of the system, I will read that part of Mr. Jefferson's message, which is in these words: "The Judicial system of the United States, and "especially that portion of it recently erected, will, of "course, present itself to the contemplation of Congress: "and, that they may be able to judge of the proportion "which the institution bears to the business it has to perform, I have caused to be procured from the several "States, and now lay before Congress, an exact statement "of all the causes decided since the first establishment of "the Courts, and of those which were depending when "additional Judges were brought in to their aid." And the statement furnished, shewed that eight thousand two hundred and seventy-six cases had been instituted, and that one thousand five hundred and thirty-nine were then depending.

The bill which was proposed to repeal the act of 1801, was supported on the ground that there was no necessity for the Court; and much latitude of debate ensued, as it was a time when passion and party spirit were at their height. The repeal of the law was resisted, because it was said it would be an open violation of the Constitution to remove Judges who had been appointed under the Constitution, during their good behaviour: but the model of the system formed no part of the discussion; and by agreeing to a similar system now, Congress would not be adopting a particle of any thing which gave rise to the unpopularity of that law.

The system now proposed, is different from it, but it would be strange, if any thing that took place on that occasion should now influence our minds in the least respecting the model of a Judicial system. Suppose, instead of the Circuit Courts, the Supreme Judges had then been increased to ten, how much more odious and unpopular the law would have been. This is a subject which the People well understand, and it would be an affront to their good judgment to insinuate that they are incapable of making the true distinctions. Indeed, it is creditable to the Rulers of the Nation, and to the People, that, as soon as political passion subsided, they did not act on any illiberal principle. For a time, the measures of the old administrations were suffered to decay, but, as soon as it was seen that they were calculated to promote the prosperity of the country, they were resuscitated, and, with the exception of the alien and sedition bill, which I always thought an indiscreet act, I know of no important measures of the old administrations, that were calculated to be permanent, which the experience of the country has not honestly approved of. This has reconciled me to the rulers, and, during the six years I have been here, I have never given a vote to embarrass the administration.

The system which is now proposed, is the one destined for the country. It is acknowledged that it must be finally adopted. The Judges of the Supreme Court cannot try jury causes from the Atlantic to the Pacific Ocean. It is the natural offspring of the Federal Constitution, in connexion with the extension and growing prosperity of the country. It cannot, therefore, be objectionable in point of principle.

As to the expenses of the different systems, it is a little remarkable that, if the Supreme Judges should be reduced to five, and nine Circuit Judges should be appointed, at two thousand five hundred dollars each, the expense of the nine Judges would be twenty-two thousand five hundred dollars, and the saving of the salaries of the five Judges would amount to exactly the same sum. But I agree with the honorable Chairman of the committee, that the present number of the Judges of the Supreme Court ought to remain, which would only make a difference of expense of nine thousand dollars, and that would be less than the expense of the bill reported by the committee by four thousand five hundred dollars: but I think the expense, even if considerably more than either system would produce, is not a matter of importance.

It is the preference I give to the transaction of business in separate Courts, and my objection to an increase of the Judges of the Supreme Court, which actuates me. I look at the Supreme Court, when sitting in Bank, as one of the most grave and dignified judicial tribunals on the earth. It is there, where all its mighty functions, which have been

confided to it by the Constitution, are to be performed; it is there, where the opinions of the Supreme Judges of a State can, in many cases, be reversed, and the constitutionality of State laws inquired into: it is there, where questions that may have occasioned strife and ill-temper among the People of a State, and even questions that may have agitated the great political parties of the country, are to be settled; and it is there, where sovereign States themselves are obliged to submit to its will and decree. For all these, and its other important transactions in Bank, it seems like a miracle that there should be such a general opinion that the present number is the fortunate one to expound the laws, to investigate the facts, and to preserve its own dignity.

Why should this beautiful edifice be disfigured? Why should we add three Judges, who will now be unnecessary in Bank—who we know will forever hereafter be unnecessary? If we can assume any thing as a safe criterion, it is, that, when there are as many Judges as are necessary for the Court in Bank, we should add no more. This, of itself, is evidence that the time has arrived when the Judges ought to cease from Circuit duties. When they are sufficient in number to transact their important duties in Bank, but not sufficient to do this and Circuit duties, they ought to be confined to the Court in Bank. This is the natural progress, and what has actually taken place in several of the large States. The trial of issues, where nothing but facts are to be finally settled, is not of the same importance; as all the points of law on which the cause depends can be taken to the Supreme Court.

It is said to be only an extension of the present system, but it appears to me to be a prodigious departure from the reality of our present practice. It is the adding of as many unnecessary Judges in Bank as amounts to one-third, as near as can be, of the present number of Judges. It must produce bad effects. The Judges will be impressed with the opinion themselves that three of them are unnecessary, and the profession will so understand it. They will naturally become relaxed, and unable to proceed with the same spirit and industry which have gained them their present laurels, and sustained them in difficult times.

We had better submit to many inconveniences than to change the Supreme Court. The bill proposed will give uniformity to every spot of the Union, and save the Supreme Court. Maine and Missouri will be on a footing. Instead of three Judges, the President will have to appoint nine Judges, and I have full confidence that he will appoint the best men he can get, who will accept of judicial situations. The present Judges of the District Courts, and those appointed to associate with them, will then belong to the same Court, on terms of equality. At present, the District Judges are overshadowed, by being placed by the side of the Judges of the first Court in the country. As it is a system which is acknowledged on all sides must ultimately prevail, if we should make a mistake as to a little time, it cannot be of serious consequence. Our disputation is in substance more about time than any thing else. Mr. Madison's last message contains these words: "The time seems to have arrived which claims for the members of the Supreme Court a relief from itinerary fatigues."

Mr. Speaker, what are the objections against the system I propose? My honorable colleague, (Mr. BUCHANAN) if I understood him, said—for I have not read his speech, which was an excellent one—I understood him to say, that the Circuit Courts would try causes so much to the satisfaction of the People, that it would render the Judges of the Supreme Court unpopular, to reverse their decisions. To the latter part of this I dissent. I would not avail myself of any gentleman's argument in haste, as a point admitted, and then argue from it, if I did not approve, myself, of its correctness. I agree, in substance, that the trial, in the first instance, could be disposed of with the ordinary satisfaction, without the presence of a Judge of the Supreme Court. The Jury trial, then, does not need a Judge of the Supreme Court, on its own account. It would be tried by Judges living on the spot, possessed of every necessary local information. If a Supreme Judge must participate in the trial, it is only to qualify him the better to give a decision in Bank.

I listened with attention to the argument of the honorable member from Massachusetts, (Mr. WEBSTER) that the Judges of the Supreme Court ought to go on the Circuits to try causes, as the organ of contact between them and the People, to make them the better acquainted with local practices and local laws and local feelings. It certainly would be of no disadvantage to them, but I cannot conceive it of as much importance as many of the honorable gentlemen who have spoken, seem to attach to it. I would ask the good sense of this House, whether a statute of Vermont could be any better understood by being read in a Court House in Vermont, than in a Court here? or, whether the principles of the common law could be better expounded in the one place than in the other? As to any technical practice of a particular Court, departing from the ordinary rules of practice generally known—they are usually contained in a little paper book, consisting of a few rules, which can be read with equal advantage any where: and, if there are decisions of the local Courts, in relation to its rules of practice, or the local laws of the State, and not contained in any reported case, they can be related, and, I should suppose, as easily understood, at one place as another.

As to the Judges coming in contact with the People, and of being made better acquainted with local feelings—this can be of no use, in my apprehension, in the trying of the merits of the cause—they must be tried upon the sound exposition of the common or statute law. The honorable gentleman from Louisiana candidly concedes this point, that local and sectional feelings ought not to infuse themselves into the trial of a cause.

But, it will be seen how partial this system is in its operation, on this delicate subject of feeling. One Judge travels a circuit in the East; one in the West; one in the South; the others in the middle parts of the State—and, generally speaking, where they had long lived before, and where they were well acquainted with the manners, habits, and feelings, of the People.

I do not suppose that Chief Justice Marshall would acquire any thing new, which would be material to him in sitting in Bank, by trying a few jury causes on his Circuit—and the same remark may be made as to the other gentlemen of the Supreme Bench. At any rate, each would be left as much a stranger as ever, except in his own Circuit. How are the Judges to become acquainted with what is called the local laws? If it is contained in a statute, it must be read to him; if it depends upon the principles of the common law, properly so called, he will be acquainted with it from his general legal acquirements; if it is a peculiar usage, and not contained in a book, it must be related to him by the lawyers, and not by the people of the neighborhood; and, when the law is read or related to him, I should suppose it would not be of much consequence when or where.

The Judges will always come from the different sections of the country, and bring with them all that is necessary in relation to the feelings of the People, and the local laws and the practical effect of their decisions. But I do not understand this part of the argument. Is it expected that the Judges will change their opinions, if exceptions should be taken to them by the parties or their friends? On this subject, the Judges will always be sufficiently informed, and, if they are good Judges, they will not trouble themselves much about it. If the law is bad, it is the province of the Legislature to change it. The Judges are only to declare what the law is, and are

urther responsible. Chief Justice Marshall, I presume, could give as much information as would be necessary rom his part of the country, and Judge Story from his, nd so as to the other Judges. But, after all, each Judge n Bank must become acquainted with the law himself, nd not take it from the Judge from any particular part f the country; and, upon the whole, there is little, and, erhaps, nothing in the argument.

There is not such a great difference in the laws and sages of the different parts of the country, as that a man f legal acquirements could not readily understand t. Besides, if the other feature of the bill proposed, hould be adopted, I mean that of holding terms in bank n different places, the plan will bring the Judges more airly before the eyes of the People than by trying jury auses; they will then be seen in their character as a Court in the most important sections of the Union.

This plan will be of great convenience to the country. t is too far and too expensive to come from the extreme arts of the Union to Washington. It cannot be endured nuch longer. The Judges will then have an opportunity f seeing more of the profession, and it will excite the alents of the professional gentlemen, who will be ambitious o be engaged in cases in the first Court in the country. t will also give an opportunity to the gentlemen of the ar, who attend the Court below, to attend in the Supreme Court, and it will save an immense expense to the litigant arties. This plan, also, like the Circuit system, can exand to suit the growing population of the country; and cannot be accomplished, if the Judges are to perform Circuit duties.

It is said that the Judges will have too much leisure; ut it would be surprising to me, if the great appellate udicial concerns of the country, together with that porion of original jurisdiction which is consigned to them by he Constitution, would not amply employ their time; it s impossible for them to keep the business in Bank down, hile they have to perform Circuit duties, and the business ill rapidly accumulate; the State Courts are now often referred, to prevent the danger and expense of being bliged to come to Washington on a writ of error; and beides, the Judges are not idle when they are not seated n the bench—cases are sometimes reserved, and they must pursue a course of general reading; they must be prepared to meet their high responsibilty; they must read t home, and that not a little; they have to read all the British and American decisions, on the various subjects hat may come before them, consisting of the Laws of Equity, the Statute Law, the Common and Civil Law, and he Maritime Law, and cases of Piracy, and many parts of he Penal Law—to all which, is to be added the National Law. On all these interesting subjects the judicial reputation of the country requires some leisure, and not all fatigue.

It has been stated by the honorable member from Virginia, (Mr. POWELL,) that the Constitution did not design he Supreme Judges to perform Circuit duties; and I have uthority for saying, that some of the most eminent men in he country entertained that opinion; it is said to have been at first a mere economical arrangement. I have not he Constitution before me; the line, however, at first iew, appears to be well marked between the original and ppellate jurisdiction of the Supreme Court; but I have never examined this point with sufficient care to be able o give an opinion upon it. On this question it seems lear and certain, that there is no indication that the framers of the Constitution intended that the Judges of the Supreme Court should perform Circuit duties, unless where original jurisdiction is given to them. And, in looking forward to the rise and prosperity of the country, they must have foreseen that, in the end, it would be impracticable. For the performance of bank duties, the Court is now large enough for a population of one hundred millions.

These high stations for life should only consist of small bodies; the example will not have a good appearance; they will be nearly equal to half the original Senate. And you cannot stop at ten; whoever thought, that, at an early day, such a proposition would ever be made? and now it is even fearful that it will be carried. After passing the true boundary, it will be easy to proceed; already I can form no sensible distinction between the number ten and fifteen. If the Circuit duties should require the latter number, the Court will be too large for the advantageous transaction of business.

The honorable member from Massachusetts has been pleased to say, that, if the Supreme Judges did no Circuit duties, there would be danger of their becoming odious; but I differ from him in opinion. There is nothing belonging to the Supreme Court which is calculated to excite jealousies. The Treasury is not within their control; they have no command of armies or fleets—no patronage in making appointments—they are unconnected with the Executive Department—they are few in number, and have nothing to depend upon but their virtue and the independent exercise of their legal intelligence. If the stream of justice will not flow pure from this fountain, where is there a spot on the globe where such a thing can be expected?

No, Mr. Speaker, while the Judges behave well, which they have every inducement to do, the American People will not cast unmerited odium upon them. But, if you pass the true boundary, then laxity begins, responsibility slackens, the Court becomes too populous a body to transact legal concerns, and complaints will exist. To make the case more striking, I will appeal to the House whether, in their opinion, a court of 25, 20, or 15, could retain the confidence of the People for three years.

The increased number of Judges is acknowledged to be imperfect, and too large for the investigation of facts, and not required for the exposition of the common, civil, and statute law; and why should we adopt a system which we know to be imperfect, and change a court which we say is competent to the great judicial concerns of the country when sitting in bank? We should rather implore the aid of angels to assist us in preserving it. It is acknowledged to be a system that must be abandoned. Some say we cannot get any thing better than the Bill reported; and why can we not? Do we try? The object of the motion to recommit has this end in view.

Mr. Speaker, I cannot reconcile my mind to this Court of ten Judges. All the world, almost, has been searched over for an example, but in vain. Ingenuity has been exhausted—three Courts in England have been put together to form a sample for us; but it is known that, when the twelve Judges are giving advice to the House of Peers, they compose no Court, and that their opinions are not binding. When they are performing the real functions of their office, they act in small business bodies. The House of Lords is not, properly speaking, a business Court, nor the Senate of New York. The Governor of Pennsylvania has asked the opinion of the Judges; but even if they had complied, with form and ceremony, in a collected body, it would have been no Court. The honorable member from Illinois (Mr. COOK) seems to think that he has found it under the Articles of Confederation; but either he or I am egregiously mistaken on this subject. In the first place, it was not a Court, strictly so called—it tried no jury causes, nor had it appellate jurisdiction from any Court that did. It was similar to the Board of Commissioners on the Spanish Claims, or the Board of Commissioners to settle the boundary between England and this country. Indeed, in the language of the Articles of the Confederation itself, they are called Commissioners or Judges. No, Mr. Speaker, from all the civilized parts of the world, from whence we have derived our knowledge of jurisprudence, and the blessings of an independent judiciary, we know not

of one, which I would call a business Court, that has been composed of ten men.

I disclaim, as much as any one can do, the idea of a strict judicial representation; but still, when talents are equal, there should be a judicious selection of the Judges from the different parts of the Union; public opinion requires it, and it has been the practice. But see the effects of the bill reported by the Judiciary Committee: there will be four Judges in the West—one in Maryland, two in Virginia, and one further South—and the States of Delaware, New Jersey, New York, and New England, with all their population, wealth, and enterprise, in agriculture, manufactures, and commerce, and from whence so large a portion of the revenue of the country is derived, are only to be accommodated with two Judges of the Supreme Court.

Mr. Speaker, the day may come, and the question which cannot now be anticipated, may come, but I cannot foretell either the day or the question—but the question may come and be settled in the Supreme Court, in which this large portion of the Union will take an interest, and how can satisfaction be expected, when such a large majority of the Judges are over the Maryland line? Time may change this inequality a little, but not much.

Four Judges in the Western country! where the whole representation is but a little more than the representation from the Western District of New York, Pennsylvania, and Virginia; which sections of country, as important as they are, have received no countenance by the reported bill! These extreme inequalities, so unfavorable to the places I have just mentioned, and to the whole Northern and Eastern States, will not be gratifying to the People of those sections of country, or I am very much mistaken.

I have said, in the beginning, that this subject had been treated by many as entirely a Western question—but how is it a Western question? Is not the adoption of a permanent Judicial System for the country, as interesting to Maine as to Missouri? The bravery of the West is not involved in this question, nor would I give them in legislation, any peculiar advantage for it. The American will fight every where. But they have given us a new country, with which the old States can trade with more advantage than with foreign countries, and I think it is the true policy of the Government to aid them in their great leading communications among themselves and with the rest of the Union, and to give them but a reasonable share of the Judges of the Supreme Court.

Mr. Speaker, on a subject which has been so much exhausted, I have reason to thank the House for their attention, and I will here conclude.

Mr. MARKELL then rose and said, he supposed that the question to be determined was as to the merits of the bill as it had been reported to the House, and his only apology for addressing the House, was the importance of the subject. For he deemed it the duty of every member who was opposed to the bill, to raise his voice, however feeble it might be, against its passage. It became necessary for them to determine, not whether this was the only provision that could be made to satisfy the wants of this country, but whether it was the best which could be made; and here, Mr. M. said, he might be permitted to remark, that the arguments of the gentlemen who had advocated this bill had generally been, not whether this was the best provision, but whether it was the only one that could be made to remedy the evils which were the subject of complaint from the Western States. That evils existed under the present system, in the Western country, he did not pretend to deny. He admitted that such was the fact; but when they came to an examination of the remedies which ought to be provided for these evils, the question would arise, what was the best remedy? And he must say, the Chairman of the Judiciary Committee had fairly stated the question. That gentleman had not argued the question, as if the present provision was the *only* one which can be made to remedy the existing evil; but most of the gentlemen from the West, had so argued it.

Mr. M. said, in his view, the question was, whether this was the *best* remedy that could be provided? And, on that question, he was sorry to be obliged to differ from the respectable Judiciary Committee. He humbly conceived that another and a better remedy could be provided for the evils that existed—one which, whilst it removed all the evils which were the subject of complaint in the Western country, would, at the same time, preserve the respectabilty and responsibility of the Supreme Court of the United States. And his principal objection to the passage of this bill, was, that the respectability and responsibility of that Court would be thereby jeopardized. To satisfy himself and the House of the truth of this assertion, he would barely avert to some principles which he conceived to be well established, not only from the page of all history, but from the passing events of the present day. In all free Governments, the Legislative, the Judicial, and the Executive Departments, ought to be vested in different hands, and be independent of each other. Mr. M. asked what would the precedent about to be established by this bill, lead to? It would lead to the dangerous consequences, that the Judicial Department of this Government might become dependent on the Legislative Department; and it would require but a few words to explain in what manner this would happen. If the principle of this bill were established, the Judges might be multiplied to an indefinite number; and, wherever it should happen, that any decision made by the Supreme Court should be obnoxious to the Congress of the nation, all that Congress would have to do would be to say we do not agree with the Supreme Court in their decision; we are desirous that it should be reversed, and we will multiply the number of Judges, who will overrule the decision which has been made. Suppose, Mr. M. said, the Judiciary Department of this Government should make a decision, that a law passed by Congress was unconstitutional, and that this law involved deeply the feelings of Congress, and they were determined to carry the law into execution, what would they do? They would appoint five or ten new Judges, in order to overrule this decision. Congress might also determine where these Judges should be located; they might locate them in Kentucky, Tennesee, or New York, or where they please. And, Mr. M. said, it was placing it in the power of Congress to decide a constitutional principle, which ought to be determined by the Judiciary of this country only.

But to ascertain how this question ought to be determined, it would be necessary to examine the arguments that had been urged in favor of the bill as it had been reported, or in favor of the system which was proposed by the resolution.

What were the arguments, Mr. M. asked, that had been adduced in favor of the system that had been reported by the Judiciary Committee? The principal one was, that making the Judges perform Circuit duties was well calculated to make them good Judges. This, Mr. M. considered to be the most important argument in favor of the bill, but, fraught as he conceived the bill to be with evil consequences, another system could, he said, be provided which, whilst it remedied the evils which were at present the subject of complaint, would avoid other evils, and would answer all the purposes of the system proposed by the present bill. Must they be told, Mr. M. said, that to make a good Judge, it was necessary that he should perform Circuit duties? Who, that had been a circuit lawyer until he had reached the age of fifty, required the exercise of circuit duties to make him a good Judge? A lawyer, who had paid attention to the duties of the Circuit Courts, who had made it his profession, the business of his life—it surely would not be necessary to continue him

the business of Circuit Court duties, to make him acquainted with that which he must already know.

It had been said to be an uniform system. But, Mr. M. said, it had already been sufficiently shown to the House that it would not be so. The districts, which had been referred to, showed that it was not calculated to make an uniform system, which Mr. M. expressed himself in favor of.

It had been urged, that this system was the least expensive, and would give the least patronage to the Executive of this country. But, was it so? He had always thought that patronage depended not so much on the number of officers to be created, as on the amount of pay which would be received by them. Whether they adopted the District system, or the system of separating the district from the term duties, there would be found to be but little difference in point of expense. Mr. M. said, he would not stay to examine as to dollars and cents, which was the most or the least expensive of these systems: for here were considerations far more important to be attended to in decisions of this kind.

But they were told it was necessary to adopt the present bill as it had been reported by the committee, because it would distribute justice equally throughout the United States. Equal justice! said Mr. M. Would the bill distribute justice equally? He conceived that the system which was calculated to dispose of the business in the Courts of this country was best calculated to do justice to the country—the system separating the duties of the Term and Circuit Judges, he thought was the one which tended to prosecute business with the greatest despatch, and it was such a system that was needed by the Western People.

But they had been told that experience had proved that the system of separating the duties of the Term Judge from those of the Circuit Judge, was an impolitic one, and the State of New York had been referred to, to shew the correctness of the inference. Mr. M. said he was sorry that the gentleman who made this reference should have proceeded to draw his inference without being acquainted with all the facts, or he would have drawn a very different inference. The experience of the State of New York had taught them that the wisest policy was to separate the duties of the Judges in Term from the duties of the Judges of Circuits.

This system had enabled the present Court of the State of New York to dispose of a long calendar of causes, which had been entailed upon it by the old system. It would be found, by a reference to facts, that, under the old Circuit system, the calendar had been constantly accumulating, and four or five hundred causes were undisposed of at every term, and that number were turned over to the new system under the new constitution of that State—and what was the result? Instead of having their calendar accumulating from term to term, every cause that was ready for argument had been despatched. This had been the result of the two last terms, and this was brought about by the system now existing in that State; the same system that was proposed by the present resolution. Gentlemen might be assured that the present system in New York gave full satisfaction; it was the only one which was calculated to dispose, and which had disposed of the long list of causes turned over to it by the old Circuit system.

But, Mr. M. said, there was another argument which had been urged in favor of the bill as it had been reported by the Judiciary Committee. That, from the present situation of commercial affairs, the Western country must be indebted to the Atlantic coast in the sum of five or six millions of dollars, and that the East would be aided in collecting their debts. This argument would have come with a better grace from the merchants of the East—a class of citizens as lynx-eyed as any other in watching over their own interests; but, coming as it did, from gentlemen of the legal profession of the West, he would ask if it were entitled to the consideration it would have received, had it emanated from those who were most deeply interested in it?

Mr. M. said he had stated his principal objection to the bill as reported by the committee, which was, that the system created a want of responsibility. Were they to be told, in this enlightened age, that numbers increased responsibility instead of diminishing it? That the contrary was true, was well established by all history, and it was only necessary to appeal to the good sense of every member of the House to corroborate it. What! an increase of responsibility created by an increase of numbers! This was a doctrine entirely new to him, and one which could not be supported by experience, on any rational principle. This want of responsibilty, Mr. M. said, arose from the grade of talents which was called into action. Was it by multiplying numbers that the talents which were called into action were increased? No. By multiplying the numbers of any body, whether in the Legislative, or Executive, or Judicial Department, the motives which induced men of talents to embark in that Department, would be diminished; and here, Mr. M. said, he could not avoid an argument which had been stated by the Chairman of the Judiciary Committee, connected with the present bill. It was, that, if wrong decisions should be made, they might at all times be rectified. This, Mr. M. said, was a new doctrine to him. He did not intend to enter the lists with the Chairman of the Committee on points of law, but he might ask him to refer to any writer on law, who had ever sanctioned such a doctrine. Could a principle, which had been decided by a Court, ever be decided in a different manner by the same Court, before that principle had been overruled by a superior tribunal?

This was a doctrine, he repeated, which was at variance with all the principles laid down by those writers from whom they had derived most of their notions on law. It was also at variance with the opinions expressed in the adjudications of the greatest Judges in the Country. Could a court one day decide a question one way, and the next day decide the same question another way, under the same circumstances, and the same state of facts? He had always supposed that a decision of a Supreme Court must be received as the law of the land, until that decison was overruled by some superior tribunal, if there were any; or until some statutory provision was made, where the Legislature had the power to produce an alteration.

Mr. M. said, if the bill passed in its present state, it was all important that this argument should not accompany it, without being protested against: for it would give the new Court all the power it could desire. What tribunal is there in this Country that is superior to the Supreme Court? Is there any? Or shall it be said that we will erect one in the Legislative Department of this Government? Mr. M. said, he conceived it would not be contended by any member of the Judiciary Committee, that such a principle would be adopted.

They had been told by different members from the Western States, that they claimed this passage of this bill on notions of pride. On notions of pride! He would put this question home to every member of the House. They were told they laid claims to a representation on the Judicial Bench on their notions of pride. What would the argument lead to? Why to this: If the Western country claimed to be represented on notions of pride, then they ought to be willing to extend the same notion to every other part of the country. But in the Western Districts of Virginia and Pennsylvania, and in the Northern District of New York, they had not this Judge who enjoyed this privilege. What should they say—when the gentleman from Lousiana had claimed it from notions of pride, as had been said also by the Representatives from Ohio and Illinois—what should they say from the Northern District of New York, where they had nothing but what those gentlemen would call a little District Judge, or a mere land commissioner, as he had been termed? And he adverted to this, not because they were dissatisfied with their present Judge in that District—he

is a man of talent and integrity, and the District felt proud of him—but in answer to the argument which had been urged on this floor, in favor of the present bill, on notions of pride. If gentlemen would legislate on such notions, what were they to say in the Northern District of New York? Or shall we be told, said Mr. M. that they graduate their notions of pride by one State, and ours by another? But let me tell gentlemen, we claim as much laudable pride in New York as we are willing to allow to them. Sir, shall we legislate on this all-important subject, on our notions of pride? It is a novel and a dangerous doctrine, and one which I had hoped never to have heard announced on this floor. But, Sir, if the bill pass in the shape in which it is reported by the Committee on the Judiciary, I can assure the gentlemen of the West, that they will hear the still small voice of the Northern District of New York, represented as is by some twenty Representatives, which will not call in vain at their doors. Notions of pride, Sir, introduced into one of the most important Departments of our Government! It has been boldly asserted, they mean to legislate from their notions of pride! I would ask, Sir, if such notions were ever uttered in this House before? They are, sir, utterly untenable. There are other and various reasons, which would operate against this system; but as they have been sufficiently adverted to by other gentlemen who have addressed the Committee, I do not design to detain the House at this time, by offering any further remarks.

Mr. BURGES then rose to address the House; but expressing a sense of indisposition and fatigue, on motion of Mr. PEARCE,

The House adjourned.

MONDAY, JANUARY 23, 1826.

Mr. POLK presented the memorial of the Legislature of the State of Tennessee, praying of Congress a relinquishment of the title of the United States to certain vacant lands within the terrritory of that State; to be appropriated by the Legislature thereof, to the purposes of education.

Mr. POLK moved that the memorial, together with one of a similar character, and upon the same subject, presented at the first session of the Eighteenth Congress, now on the files of the House, and which had not been finally acted on, might be referred to a select committee.

Mr. M'COY said, he did not see the necessity of referring the memorials alluded to to a select committee. It occurred to him that the Committee on the Public Lands was the one to which they should be referred. He therefore moved their reference to that committee.

Mr. POLK said, that he apprehended the gentleman from Virginia, in moving the reference of the memorials to the standing Committee on the Public Lands, did not anticipate the great labor which would devolve upon the committee to whom this subject was referred, in examining the numerous and complex land laws as well of the State of North Carolina as of the State of Tennessee, necessarily connected with the subject-matter of the memorials, and the examination of which it was important to make, in order to enable Congress correctly to understand and decide upon the application made by the State which he had the honor in part to represent. He would, for the information of the House, briefly state the history of those laws, and the nature of the present application to Congress, contained in the memorials. In 1789, the State of North Carolina, as well as some of the other States in the Union, ceded to the Government of the United States a portion of their unsettled territory, with a view to aid the General Government, then embarrassed in its financial concerns, to pay off a portion of the debt contracted in the war of the Revolution. But North Carolina, in her act of cession, reserved to herself the right to issue military warrants, and to satisfy the claims of her Revolutionary soldiers, out of territory thus ceded. In 1796, Tennessee, including within her limits the territory thus ceded by North Carolina, was admitted into the Union as a free and sovereign State, and was placed upon an equal footing with her sister States. In 1804, a compact was entered into between the States of North Carolina and Tennessee, which was subsequently ratified by Congress, whereby Tennessee was authorized and undertook to issue grants and perfect titles, on all the bona fide claims of North Carolina, chargeable upon the territory within her limits by virtue of the cession act of 1789. The Government of the United States being well satisfied of the importance of education among the great body of the People in a Government like this, and that the security and durability of all our Republican institutions must rest upon an intelligent and virtuous yeomanry, had, previous to that time, adopted the policy of making liberal donations to the several States, for the promotion of learning and the diffusion of science. The same policy has been since pursued; and the same liberality was intended to have been extended to Tennessee, that has been to her sister States; and, for this purpose, by an act of Congress, passed in the year 1806, six hundred and forty acres of land were directed to be laid off within every six miles square, in a given territory, within the limits of Tennessee, designated in the act to be appropriated to the use of schools, for the instruction of children, forever. This benevolent donation of Congress, owing to the great number of North Carolina claims chargeable upon the territory within which the school lands were directed to be laid off, and from other causes, had been but partially realized. But few of the school tracts have been laid off, and thus a great deficiency exists in the amount of school lands, intended to be given by the act of Congress of 1806 to the State of Tennessee, for the purposes of education. It was to supply that deficiency that the State of Tennessee, by the memorial of her Legislature, presented at the first session of the Eighteenth Congress, and by the memorial which had just been presented, adopted at a recent session of her Legislature, asked of the Congress of the United States a relinquishment of title to the remaining vacant and unappropriated lands within her limits, provision having been made, as she believed, for the satisfaction of all the bona fide claims of North Carolina. The remaining lands that were vacant, were generally very poor, lay in detached parcels, and would be no object to the United States; but, if put at the disposition of the State of Tennessee, would in part supply the deficiency which existed in the school fund. At the first session of the Eighteenth Congress, when this subject was first presented to Congress, Mr. P. said, he understood some difficulty had existed in consequence of certain claims not having been satisfied, which were issued to the University of North Carolina, predicated upon services rendered to soldiers of the North Carolina line, who were said to be dead, and whose blood was extinct, they having died, as was alleged, without leaving any heirs within the United States. These claims the State of Tennessee had refused to satisfy; believing, as she did, that they were not properly chargeable upon the territory within her limits, by the terms, and the true intent and meaning of the act of cession of 1789. This difficulty, however, he understood had been removed, by a recent act of the Legislature of Tennessee, by which an understanding was likely to take place, between the University of North Carolina and the State of Tennessee. From this brief and imperfect outline of the object of the memorial, and the history of the land titles of the two States, (North Carolina and Tennessee,) as connected with it, he hoped the gentleman from Virginia would see the great labor which would be imposed upon the Committee to whom the subject should be referred, and hoped he would not further press the mo-

ence of the memorial to the Committee on the Public Lands. That Committee had already much business before it for consideration, and, he feared, if the memorial was referred to that Committee, it could not be examined and reported on, consistently with their other duties during the present session. It was a subject of considerable interest to the People of Tennessee, and could not injure either the General Government, or any of the other States of the Union; but, on the contrary, granting the prayer of the memorial, would be promoting the policy pursued ever since the foundation of the Government, of diffusing knowledge, and promoting education in the several States. But it was unnecessary to consider the general question upon a mere motion of reference; that would be more properly the subject of consideration hereafter. A select committee, to whom he proposed to refer the memorial and who would have no other business before them, could consider it at an early day; and after fully investigating the subject, could report the result of their deliberations, so as to have the subject finally acted on during the present session. He hoped, therefore, that the motion he had made to refer the subject to a select committee, would prevail.

Mr. COCKE hoped that his friend from Virginia would withdraw his motion. He had hitherto co-operated with that gentleman in resisting references to Select Committees, when he judged that the subjects could as well be attended to by the Standing Committees of the House; but he was persuaded if that gentleman was acquainted with the real state of facts, in this case, he would not oppose the motion of his colleague (Mr. POLK.) Mr. C. then corroborated the statements which had been made by Mr. P. After the titles under the grants of North Carolina, had been perfected, little would be left but a few barren hills, so that the United States would have little or no interest for the Committee on Public Lands to concern itself about. Such was the complexity and multiplication of the land laws in Tennessee, that he could assure the gentleman, that neither the Committee on the Public Lands, nor the Committee on Private Land Claims, could possibly have time to attend to this subject; and even if a Select Committee should be raised, he doubted whether, with their utmost diligence, they could get through the investigation of it under a month.

Mr. M'COY said a few words in reply, when Mr. WILLIAMS moved that, for the present, the resolution lie on the table—but withdrew the motion at the request of

Mr. SAUNDERS, who said he wished his colleague could withdraw his motion to lay on the table. [Mr. W. then withdrew the motion.] Mr. S. then said, that, so far as concerned the University of North Carolina, if he was correctly informed as to the act of the Legislature of Tennessee, the University was no longer interested in the question now proposed to be examined into. He was willing, therefore, for the gentlemen to take that course which best suited themselves. He wished, too, that the gentleman from Virginia would withdraw his motion to refer the memorial to the Committee of Public Lands, as a member of that Committee had already informed the House that they were overcharged with business.

When, the question being taken, the memorial was referred to a Select Committee, and the following gentlemen appointed to compose the same: Messrs. POLK, BAYLY, ROSS, ALLEN, of Tenn. HOLMES, PETER, DAVIS.

MILITARY ACADEMY.

The following resolution, offered by Mr. DORSEY, was taken up:

Resolved, That the Secretary of War be instructed to report if the Corps of Cadets at the Military Academy at West Point, can be increased without incurring the expense of employing an additional number of Professors, and, if so, to what number the same may be increased; and the number of applicants for admission, and their names, and the States in which they respectively reside.

Mr. COCKE thought that, if the House asked for the information proposed, it would be no more than fair to look at both sides of the account, and see whether the number of Cadets might not be *decreased*. He, for one, thought we had a very good corps already—but, if gentlemen pressed any measure which looked to its increase, he should be disposed to move that the Committee on Military Affairs be instructed to introduce a bill to reduce the present number to one-half, and also wished to know what disposition had been made of the Cadets we have already—and he therefore proposed the following as an amendment to the resolution:

"And that he, also, be directed to report a plan by which the number of Cadets now authorized may be reduced to one hundred and twenty-five; and whether each State and Territory have received a due proportion of Cadets according to its representation in Congress."

Mr. DORSEY said, he did not rise for the purpose of opposing any inquiry respecting the reduction of the number of Cadets, if any gentleman thought such an inquiry would be useful—but he was of opinion that a resolution for that purpose should form a distinct proposition. He certainly could not consent to it in the form of an amendment to his own resolution. He presumed he need hardly state the motives which had induced him to introduce the resolution. His main inducement was a wish to guard against the clamor which had been raised, in some parts of the country, in relation to this establishment—particularly with respect to a partial enjoyment of its advantages by different parts of the Union. He believed it was a fact that some districts had not ever had in that School a single Cadet. His object was an enlargement of the number of the corps by adding only ten at the utmost, perhaps only five, to the present number allowed by law. He understood there was a difference in the construction of the act creating the Seminary, as to the number of Cadets allowed to be attached to it. He was in favor of so adding to that number, as that one Cadet would be allowed to each Congressional District, and one to each Territory. This was his object; and he hoped the gentleman from Tennessee would not encumber the resolution by adding the amendment.

Mr. COCKE declared that he had no disposition to encumber the gentleman's resolution—but he thought, when the House did call for information in relation to the school, it ought to call for facts on both sides. When these should be presented by the Department, the House could judge whether the corps ought to be enlarged or diminished.

Mr. COOK thought that the first branch of the amendment was improper in principle: it was not surely the place of a head of the Department to say whether Congress shall increase or diminish an Institution which it had created, and over which it possessed entire control. The mere opinion of a Secretary of War on this subject would, he presumed, have very little effect in directing the measures of the House—and he desired to be understood as having, in this remark, no personal allusion to the gentleman now in office. He objected equally to the second branch of the amendment, because it implied that there was some rule of law by which the Cadets were to be distributed. Now the law laid down no such rule at all; but left the Secretary at entire liberty on his own responsibility to take cadets from wheresoever he thought proper: the language of the resolution went to infer that the Secretary was chargeable with some impropriety in the exercise of his official powers in relation to this school; but, if the law left him entirely free, he had a right to act freely, and could not be called to account where he had violated no rule. The resolution seemed to him quite unnecessary—he could not perceive what useful end would be answered by obtaining the names of the cadets.

Mr. McLANE, of Delaware, expressed his dissent both to the resolution and to the amendment. He was not prepared to say that the House should establish any general rule as to the apportionment of the Cadets among different parts of the Union. He did not say this because he happened to come from a small State, but he thought so on general principles. He apprehended, if a rule should be laid down by Congress, declaring that a certain quota should be allowed to each State, that Congress might then defeat the value of the Institution, and defeat its primary object. That object, he held to be, to give, in the first place, a complete military education to such young men as choose the military profession for their future life, and looked to the army as their field of enterprise; and then, beside these, to give a similar education to others, who, though not actually entering the army, might receive, and might disseminate through the country generally, a general notion of military science—who should diffuse a military spirit in society, and be prepared, in case of exigency, to supply the materials for active and useful officers. Such being the object of this valuable school, he thought that whenever a youth possessed the proper natural qualifications, and was desirous to enter it, no regard should be had to the particular section of country from which he happened to come. The great evil charged on the administration of the Seminary by its opponents, was, that young gentlemen of fortune and of powerful family connections, who had no military talent, and no thought of a military life, had been admitted, to the exclusion of young men of narrower circumstances, but greater fitness. He did not, himself, object to young men of property being admitted—this must be left to the discretion and responsibility of those who control the matter of admission; but he thought, if the principle of apportionment should be adopted, it might happen that a youth who was unfit, might be admitted from a particular State, because that State did not happen to have its quota then at the Seminary, while one much more fit was excluded, because the State from which he came had its full number. This, he thought, would be the natural and inevitable consequence of such a principle. He was willing to entrust the responsibility of admitting applicants where the law has now placed it; the power ought doubtless to be exercised with impartiality, and with a view solely to the relative qualifications of those who applied for admission.

At present, Mr. M'L. said, he confined himself to the expression of general opinions only. Should the subject be brought immediately before the attention of the House, he should go much further into it. He would, however, now say that he was prepared to extend rather than contract the number of Cadets; he viewed that school as an ornament to this nation, and as contributing largely to its prosperity and its glory—as essential, absolutely essential, to its interest and safety. He believed it was, taken as a whole, one of the best institutions under this Government.

Mr. DORSEY said it appeared to him extraordinary, that a mere call for information should be viewed as implying any censure on the officers of the Government. He certainly had no such object in view, when presenting this resolution. If, indeed, it demanded of the Secretary how the number of Cadets was divided among the children of powerful and influential citizens, some such implication might be charged upon it; but, asking for the names of the Cadets, can never be fairly so interpreted. Many of the applicants were lads from the country; unknown themselves, and of parents equally unknown. At a proper time, however, he was prepared to argue the question, whether the various portions of the Republic were not alike entitled to a proportional quota in the number of pupils in this national school. Was there any restriction in the head of the War Department, which compelled him to receive an applicant who is unfit, because he happens to come from a particular part of the country? If the institution is to be maintained, the principle of proportional admission would sooner or later have to be adopted. The reputation of the institution was very high, and there was not a parent whose son looked to a military life, that did not wish to send him there. The gentleman from Delaware had expressly said, that there has been an abuse of the power of admission, by receiving the sons of distinguished families.

Mr. McLANE explained—he had not said that this power was abused; but that, if any abuse existed, it would probably grow out of the principle of apportionment. Nothing was further from his intention, than to charge any abuse upon the management of this institution. Its flourishing state was the best answer to any such charge.

Mr. DORSEY said he had no objection to the two last parts of the amendment of the gentleman from Tennessee, but it was certainly proper that a resolution which went to destroy the school, should be presented in a form entirely distinct from one which had for its object its increase and improvement.

Mr. COCKE briefly replied to a part of the observations of Mr. DORSEY, and vindicated his motion. It had been stated, he said, that the principle adopted by the War Department, for some time back, was, to apportion the Cadets according to the representation of the States on the floor of this House. If that rule had been established, Mr. C. said, he wished to see how far it had been followed in practice. Were this institution confined in its operation, to the education of those who were unable to obtain it by their own means, he should have less objection to it than he now felt. But, said he, take up the list, and, so far as my information extends, there are very few indeed, of that description, to be found upon it. He did not impute blame to the appointing officer for this, for it was impossible that he should know whether the parents of the applicants were persons of fortune or not, but the fact was as he had stated it.

There had been a report required from the War Department, at this session, shewing the number and names of Cadets admitted, and the number that had graduated, been dismissed, or resigned. Mr. C. said, he should like to have that document before the House when this subject was considered. So desirable was it to refer to it, that Mr. C. expressed a wish that the gentleman from Maryland would himself move to lay his resolution on the table, until this document should be before the House.

Mr. DORSEY said, if his proposition was to do away act respecting the Military Academy, he should have no objection to the resolution's lying on the table; but, being a mere call for information, he did not see any sufficient reason for this course.

Mr. HAMILTON did not rise to discuss the subject of the Military Academy at this time, being not aware that, in the course of the session, an occasion might arise when it might be discussed with more propriety, and with the probability of the discussion terminating in a result more definite in its character than the adoption or rejection of the motion now pending. He rose only to state the fact, that, in point of practice, the rule which had been urged upon the House as a novel one by the gentleman from Maryland, had been carried into effect, by (Mr. H. believed) as impartial an administration of the institution as could well have taken place. It would be only necessary for gentlemen to refer to the Army Register, from time to time, to satisfy themselves of the fact. He was also convinced, for himself, that there had not existed, in regard to the Military Academy, a sort of abuse, in selecting for the objects of instruction, persons who, by reason of their opulence, were unworthy of the bounty of the Government. He did not himself pretend to know what are the circumstances

of the parents of so many individuals as compose the corps of Cadets; but he had reason to believe that, in cases where (all other things being equal) the claims of applicants were nicely balanced, and the Department was left to exercise its feelings in the selection, the boy who was friendless, who was destitute, who was an orphan, had been taken in preference to him who was less dependent, and had other means of support. Where there has ever been a violation of that principle, said Mr. H. it will be found, probably, on examination, that it has been at the pressing solicitation of ourselves—of the members of this House. And, I will add, if there have been any abuse in the selection of Cadets, it is mainly attributable to the members of this House and of the other Body—nine out of ten of the appointments being made under their influence, or under the influence and authority of recommendations which they bring to bear on the Department. Before we impute abuses to others, let us take the mote from our own eye. Let us say, these appointments shall not be made at the recommendation of members of this House, &c.—though, in making such recommendations, hitherto, Mr. H. had no doubt that members had generally exercised a sound discretion. Mr. H. concluded by saying that his impressions, such as they were, of the correct administration of the Department in reference to the Military Academy, had been strengthened by a recent visit to that Institution.

Mr. COOK again expressed his opposition to that part of this amendment which has respect to a "just distribution" of the Cadets—the law prescribing no distribution as just, but leaving the whole subject to the discretion of the Secretary of War.

The question was then taken on Mr. COCKE'S motion, and decided in the negative.

Mr. LITTLE moved to strike out of the original resolution the words "and their names," which was carried.

Mr. DORSEY moved to strike out all that part of the resolution which relates to the number of applicants for admission into the Academy; this also was agreed to, and the resolution was adopted in the following form:

"*Resolved*, That the Secretary of War be instructed to report if the Corps of Cadets at the Military Academy at West Point, can be increased without incurring the expense of employing an additional number of Professors; and, if so, to what number the same may be increased."

JUDICIARY SYSTEM.

The House then passed to the unfinished business of yesterday, which was the consideration of the resolution offered by Mr. MERCER, to recommit the bill to extend the Judicial System of the United States, with instructions, &c.

Mr. BURGES, in rising to address the Chair, said he most cordially thanked the House for the courtesy of the last adjournment. If, (said he,) surmounting my embarrassment, I can sustain myself under the effort, I will now call, briefly, I hope, on their time and their patience. Unused to occasions like the present, and without any practice other than forensic, I find myself, unadvisedly, engaged in deliberative debate, where nothing is worthy of attention, unless most valuable in material, and in detail most finished. If I could now fairly retreat, it would be impossible for me to proceed. Abandoning myself, therefore, to your candor, sir, and that of the House, I will look to the question for that support which a great question never fails to afford.

This great question is the entire Judiciary of the United States. It was placed before Congress by the President; has been by this House referred to the appropriate committee; and they have detailed to us the great judicial diseases of the country, and proposed, by this bill, a remedy for them. It therefore concerns the administration of national justice, and our attention is moreover loudly called to it by a great and respectable portion of the American People.

The resolution moved by the honorable gentleman from Virginia (Mr. MERCER) proposes a recommitment of the whole subject; to the intent that, the Judiciary, built at several times, and in distinct parcels, may be re-edified into one great whole, and accommodated to the present and future wants of the nation. The system of the bill is a Supreme Court, holding one term only, each year, sitting at Washington only, and beginning that term on the first Monday of February, as now is done; a Circuit Court, according to the present Circuits, and four new ones to be formed from the Circuit and the Districts comprehending the nine States in the valley of the Mississippi. These ten Circuits are to embrace all the Districts in the United States, excepting those of West New York, West Pennsylvania, and West Virginia, alone. In every District but these three, District Judges alone shall be compelled to sustain District jurisdiction only, hold District rank, and receive District salary; in these three, with the same pay, and same rank, they shall be obliged to perform Circuit duties, and sustain Circuit jurisdiction. In each of the other Districts, formed into ten Circuits, justice shall be administered by a Circuit Judge, sustaining the jurisdiction, holding the rank, and receiving the salary, of a Circuit Judge and a Supreme Judge, at the same time; and these, united together, shall form a Supreme Court of ten Judges. These, sir, are the peculiar provisions of the bill.

The resolution is intended to embrace another system. Each District shall remain as now. All the Districts of the United States shall be formed into ten Circuits. The whole United States shall be arranged into three great Supreme Court Departments; an Eastern, a Central, and a Western. In each District, as now, shall be a District Court, holden as at present, by the same Judge, with the same jurisdiction, rank, and salary. In each Circuit shall be a Circuit Court, holden at the same times and places as at present, and a Circuit Judge shall be appointed for each Circuit, with only Circuit Court salary, rank, and jurisdiction. In each of the Supreme Court Departments, shall be holden a term of the Supreme Court once in each year. At Washington, Philadelphia, or Richmond, on the first Monday of January; at Columbus, Lexington, or a city in Tennessee, once in each year, on the first Monday in June; and at New York or Boston once in each year, and on the first Monday of September. This Court, so soon as Constitutional causes shall have reduced it to that number, shall consist of six Judges, sustaining all the Constitutional jurisdiction of the Supreme Court of the United States, and bearing the same rank, and receiving the same salary, as Judges of the Supreme Judicial Court of the United States now bear and receive. These, sir, are the provisions intended to be secured by the resolution. You therefore perceive, sir, that the subject of debate is a choice between the provisions of the bill and the proposals of the resolution. To me, it seems proper, first to speak concerning the bill, and then to say a few things concerning the resolution.

Perhaps it may be needful, before debating the question, to remove some general and specific objections. It has been said, that this is an improper time to amend the Judiciary. Because, 1st. One of the States is agitated, and embroiled with the General Government; 2d. Another is deeply dissatisfied with the result of the Presidential election; 3d. Resolutions are poured in from every quarter for altering the Constitution; 4th. The President is not yet quietly seated on his throne. To all these it may be replied, that the agitations of that State sound more in words than in substantial damages. Men whom we daily see here with us from that State, are too wise and too patriotic to suffer that or their country to receive any serious injury from these discords. One emi-

nent citizen lately returned to her bosom, has exchanged too many and too high pledges with the nation, ever to give the aid of his influence to any unreasonable sectional demands; and without that aid, no such demands can be dangerous to this Union. After all, none of us can fairly say, that this question, growing as it does out of a Treaty, either fairly or fraudulently made, threatening as it is represented to be, is of Legislative, and not rather of Judicial jurisdiction. It would be indeed surprising if a suit either at law or in equity, between parties of the highest rank, should ever agitate or endanger the Government of this country. The other dissatisfied State has deposited a stake in the Union, too dear to her ambition to do or consent to a single deed, perilous to that depository. Her illustrious citizen is a candidate for the next Presidency. Will she abate the title, and sink the fee simple of the whole estate, before she can place her tenant in possession of his term?

The numerous resolutions for altering the form of our Government, will follow the numerous generations of the same race, which have gone before them. We shall discourse and vote concerning them; bind, letter, and deposite them in the Legislative archives; and the million copies of them printed, and spread over the country, will survive as long, and subserve the same purpose, as does the fugitive fabric "in which they live, and move, and have their being." The People will (thanks be to Him who has blessed them with the right) if they please, and when they please, amend their Constitution; all our profound reasonings, and patriotic recommendations, to the contrary notwithstanding.

The President does not, and I trust in God no Chief Magistrate of the United States ever will, set on a throne. There now lives, and delightful is the hope that for many coming centuries there will live, in this first, and perhaps last, region of genuine Republican Governments, many a Junius ready to raise the hand, brandish the crimson steel, and swear by the Guardian Power of Nations, that in our Rome, while he lives, no king shall ever reign. The distinguished gentleman, now directing the Executive affairs of the United States, was placed in his seat, in the same Constitutional manner, as was one other great citizen of our nation, heretofore placed there; and I trust he will hold his place as securely, and as prosperously, as did that illustrious individual. Whether he will have another term, is another question. The solution of it depends on the nation and on himself. If that be not oblivious of its own interest; and if he continue to be the same profound scholar, the same enlightened statesman the same ardent patriot, the same exemplary Christian, prophecy need not be invoked to tell us, that the nation will, for the usual period, continue to benefit of his labors, and to participate his fame.

Throughout the whole debate, the opposers of the system of the resolution misconceive, for they continually misstate, the objections made by the opposers of the system of the bill. They call them, 1st. A denial of justice. 2d. They pronounce them to be the same oppressive measures which originated the war of Independence. 3d. They denounce against them the lex talionis. 4th. They warn them that their Supreme Court will become odious to the People.

Does the present system deny justice to any man? Extra judicial causes may obstruct the course of it; but is that a denial of the right to justice itself? As well may they say, that, because the snags and sawyers of their rivers obstruct the passage of their vessels upon them, Government, unless she remove those obstructions, denies the right of these people to navigate those waters. The opposers of this bill are not answerable for the inconvenient structure and slow movements of the old judiciary machine, or the diminished quantity of work produced by its operations. Neither do they propose to repair it by some two or three additional wheels, or any quantity of supplemental gearing. They do not believe it worth repairing; or that any amount of costs will put it in condition to do the judicial work of the nation even "pretty well," for any thing like "twenty years." They propose to rebuild it on the true Constitutional model; and accommodate its structure, speed, and production, to the movements and wants of the present, and probable future, condition of the nation. Adopt the system of the resolution, and you will have no obstruction, no delay, no denial of justice.

What is there, in the opposition to this bill, resembling the unfeeling and oppressive causes of the Revolutionary war? Are the opposers kings? Are the advocates of it their colonists? Do these men, at their own pleasure, appoint, pay, and displace, the Judges of those courts? Do they deprive them of the trial by Jury: or do they, for trial, transport them out of the vicinage, and beyond sea? These were among the causes which produced the war of the Revolution; and separated these States from the parent nation. What in this procedure resembles those causes? Yet this parallel has been drawn in this House; and the sketch, such as it is, published, sent over our country, and will be spread over Europe. "On eagles' wings, immortal, scandals fly." The next importation of Reviews will bring us a profound discourse on the probable disunion of these States; so, and so grossly, do we abuse "Heaven's first, best gift to man," language—the rich medium, by which alone any portion of the treasured capital of intellectual opulence can be circulated in the world. We debase it to the very offices of the miser's woollen purse, which, elastic in its texture, adheres closely to his thumb and finger, cautiously introduced to extract a four-pence-half-penny; or stretches to the extended hand of his heir, thrust in up to his elbow, to clutch, and draw out a fist full of eagles. Well might the lad swear "his sister should have no name; because a name was a word, and a word might be abused: and as his sister's good name might come to be abused by every clown."

Why are the opposers of this bill from the "Old Thirteen" threatened with retaliation, by its advocates, from the New States? Whom, and what, do they menace? Their brethren, and the home of their fathers. "They went out from us," not "because they were not of us." They are still children of the great household, though settled upon, and cultivating, different allotments of the common inheritance. Their paternal sepulchres are with us; and will they leave *us alone* to defend them? The Scythian, though he might not fight for his pasture, his flocks, or his tent, yet, when retreat had brought him back to the grave of his father, would he there, by that consecrated mound, and in defence of it, make the deadly stand, and mortal battle. When, in our sober Autumn, they visit us, as they often do, they see the frail memorial yet standing on the green hill side; and may there read many a holy legend "that teach the rustic moralist to die."

"The time will come," they exclaim, "when the Government shall be agitated to the very centre: and we may want some boon, like that now demanded by them." The perilious day may indeed arrive, when our common country, debased by luxury, agitated by faction, hardened by ambition, arrogant by power, shall not, by piling all the massy and mountainous weight of our laws and institutions, upon this gigantic and bloody brotherhood of crime and slaughter, be able to hold them down subdued. In this tremendous day of national agitation and jeopardy, will these men, or the sons of these men, be found wanting? They will not. We are all embarked in one great national vessel, bound on one great, and, we hope, long and prosperous national voyage. Will they, in the night of storm, throw overboard our share of the cargo, with the vain hope of preserving their own? We know they

will not. Will they, on some lee shore, scuttle the ship, to terminate the voyage? Will they, in the hour of assailment or battle, pull down the colors and give up the ship? In God's name, we say, we know they will not. Why, then, these unavailing threats? Brave men should never use them to brave men. Leave them for the accommodation of those who "die many times before their death."

Will the time then come, when our Supreme Court shall he odious, unless the Judges of it continue to perform their own, and the additional duties of Circuit Court Judges? This doctrine is unknown to the Constitution. That projects a Supreme Judicial Court; separate, and supervising all Courts of inferior jurisdiction. Will it become odious because it is supreme? Because neither the Executive or Legislative arm can demolish or diminish its power, or move a finger within the pale of its jurisdiction? Or will it become odious, because it was established to protect, and will probably forever protect, the People from the usurpations of their own national servants? Should it become odious because stationary, and jealousy may lead the nation to suspect that it is influenced by "the powers that be" and that act in this place? Make it then, sir, moveable, as the resolution proposes. Place it before the nation, in the great departments of our country, that the People may see, and we know they will then reverence, this hallowed ark of our national covenant.

This apprehended odiousness is but an apprehension. Such a Court cannot be suspected; it cannot be odious, so long as it is filled by the Marshalls and the Storys of our country. I do not name these gentlemen, in derogation of other Judges of that tribunal, but because I have the honor and pleasure of acquaintance with one of them, and because, not to know the character of the other, would argue myself more unknown, than, humble as I am, I can willingly acknowledge myself to be.

One thing further: Some opposers of the bill object, 1st, The augmented number of judges; 2d, These judges will be selected from the West, and bring into the Court sectional prejudications; 3d, A majority law is to ride in upon the back of this bill, making the unanimous vote of six, seven, eight, or perhaps nine Judges necessary to a decision.

If adding three, and making the number of Judges ten, were the only objection, I would have given the House no trouble on the present occasion. Ten Judges may deliberate nearly as well as six. It belongs to the advocates of this bill to prove, that the greater number can deliberate better than the lesser number can. If they cannot prove this, why should the judiciary-field be incumbered with supernumerary laborers, or the national means consumed in creating or paying sinecure salaries?

The second objection is, I agree, answered, by the consideration that the President cannot, by law, be restricted to any District of the Union, in selecting Judges of the Supreme Court. When he does nominate, I will not believe he will nominate, or the Senate approve, any but men superior to all sectional, legal, or moral objections.

Congress cannot control the decisions of the Supreme Court. They, as a separate, co-ordinate, and independent power, received, like the Legislature, their authority from the People by the Constitution. Such a law might incumber, but could not circumscribe, their adjudication; and would subserve no other purpose than that of shewing to the nation and the world, that we neither regard the political rights of others, nor understand the limits of our own.

The able argument of my colleague, (Mr. PEARCE,) delivered to this House against this bill, in committee of the whole, has drawn from our honorable friend from Ohio, (Mr. WRIGHT,) something like a reproach, if a gentleman of so much genuine courtesy, could utter a reproach, on Rhode Island. "She did not join the Union till the eleventh hour, and though so late herself, at the wedding feast, would now hinder others, at this late hour, from receiving their full share of it." Let the gentleman take the entire benefit of his sarcasm. Rhode Island did come late to the wedding. She was always late when National bounties were to be divided; but always early, when National dangers were to be encountered. She was indeed, for herself, "last at the feast;" but she was, for her country, first at the fight.

What then, sir, are the judicial evils pressed on the attention of this House, by the movers of this bill? They are: 1st, an accumulation of causes in the Supreme Judicial Court; and, 2d, an accumulation of causes in the Circuit Courts of the West. For the purposes of this argument, I agree with these gentlemen in the several items of these evils; and in the sum total, according to their stated account of them. One hundred and eighty causes lie over, yearly, on the docket of the Supreme Court. These remain there, continued from term to term, for from three to five years. The amount of expenses to each party, at each term, on an average of all the causes, cannot be, for fees, attendance, and agency, much less than six hundred dollars; so that, probably, all the plaintiffs pay yearly, one hundred and eight thousand dollars; and all the defendants a like annual amount. This accumulation, it must be confessed, will be greatly augmented, when you shall, as proposed by the bill, have removed the obstructions now literally choaking the channels of justice in the Western States. All the great causes accumulated there in consequence of the entire deficiency of judicial labor in that vast region, fertile as it is represented to be, by the friends of the bill, in legal question and controversy, will, by the three new Judges and four new Circuits, be speedily tried, adjudged, and appealed; or at least a great number of the most heavy in amount, and intricate in principle, will be appealed to the Supreme Court. In the West, this accumulation is still more appalling: in some districts three hundred, some four hundred, some five hundred, and seven hundred causes; in all, from seventeen hundred to two thousand, lie over, untried, at each term; and the number is increasing to an alarming amount of accumulation.

These evils are to be remedied by this bill. The nine States of the Mississippi Valley are arranged into four Circuits; and three new Judges are to be appointed as Judges of those Circuits, and of the Supreme Court. The reasons for this measure are widely spread, and of various character. They may, however, sir, all be comprehended in three: 1st, it will equalize judicial administration: 2d, it will equalize judicial representation: 3d, it will equalize judicial knowledge of State laws.

Judicial administration is said to be unequal, because District Judges, in the Western Districts, hold Circuit Courts, and decide great causes on life and property; while such causes are, in other Circuits, decided by Judges of the Supreme Court. These District Judges are of inferior rank; inferior salary; and, of course, say the gentlemen, of inferior talents. This inequality was the basis of the able argument, made in favor of this bill, by the gentleman of the Judiciary Committee from South Carolina. Does this bill remedy this inequality? It does not even propose to do it. In West New York, West Pennsylvania, and West Virginia, at least one million of People are left to endure this inequality. Away then with all pretensions to equality, when you exclude one tenth part of the People from all benefit of your new system.

The gentleman from Louisiana, aware of this difficulty, claims this system for each State. "It is enough that our pride demands it; enough that it will gratify our pride." "If it will feed nothing else it will feed" our pride. Be it so then; but let the indulgence be equal. Let every State have her Judge; for every State has her something whereof to be proud. If Judges are to be al-

lotted by this ratio we shall all give the first rank to Virginia; and the same reference to Revolutionary glory will give the second to Rhode Island. If, in the last war, Tennessee were justly proud of her Wellington of the West, might not the Sea Green Island of New England, with equal pride, as fairly boast her Nelson of the Lakes? This question of pride, I am willing to own, has little connection with the appointment of Judges. States are not recognized in the judicial system of the nation. By the Constitution they are amalgamated; and by the law of 1789, they were divided into Districts and Circuits; and their several boundaries are no otherwise regarded than as the limits of these Judicial Territories. These were established, not to create offices and salaries for individual benefit, but to dispense that justice which, by the Constitution of the United States, the Government promised to provide for the People.

What instance, sir, of injustice has been detailed in all this debate? No error of intention, no error of neglect, no error of ignorance has been set down to the account of these meritorious and much abused District Judges. The smallest and the greatest causes have been examined and adjudged, with the most scrupulous regard to justice. Not one judicial injury has been done by these men throughout those whole nine States. It is not for lack of justice that they cry out; but for lack of rank and salary. They are satisfied with the service of the altar, but not with the grade of the priest. They do not say the victim is not well selected for sacrifice and for food; but they are utterly dissatisfied with the richness of the garland. The viands of justice are abundant and wholesome. They only complain that they are served up and distributed to them on plain porcelain, and not on massy and glittering plate. Our country, sir, our country is yearly doing miracles for the millions of her children; and yet how justly might she address to them the mild and merciful rebuke of the Prophet of Nazareth: "Ye follow me not for the miracles which I wrought, but because ye ate of the loaves and were filled."

The second great argument for this bill, sir, is, that it will equalize judicial representation. We are told by the honorable gentleman from Ohio, (Mr. WRIGHT,) of the Judiciary Committee, that our Goverment is representative, and the Judiciary, because it is a part of it, is therefore representative. The honorable gentleman from Massachusetts, (Mr. WEBSTER,) Chairman of that Committee, has told us, that the extent of the number of Judges of the Supreme Court must be limited only by the line of practical inconvenience. This is, indeed, heterodoxy in politics. No such doctrine can be found in the Constitution. What does it mean, this judicial representation? Is it a representation of the talents, science, and legal learning of the several States? If so, why did not the Constitution provide that a Judge or Judges should be selected from a particular State, or number of States? No such provision is found in the Constitution, as made by the People; nor can Congress, in the plenitude of their power, now add such a provision to that great political charter. The President and Senate have, therefore, the whole range of the United States for nomination and approval; and talent, learning, and integrity, are excluded from the Bench by no sectional disqualification. A representation of these exalted qualities, then, can form no part of that judicial representation, intended to be secured by the provisions of this bill.

It must, therefore, sir, be, that political representation is to be secured by this system. A Judge must bring a knowledge of the statistics of his Circuit into the Supreme Court. He must lay before the learned Bench, the extent of its territory, amount of its population, capital, labor, skill, production, commerce, consumption, and all the various detail of "the nature and causes of the wealth of States." Not to know these things, would disgrace the character of any man of science and knowledge in the nation; and, therefore, instituting a system of judicial law, with any view of bringing the learned Bench of our Supreme Court acquainted with these things, would not only be utterly useless, but highly derogatory to that distinguished body. What have they to do with questions of this kind, as Judges? Is not the smallest, equally with the largest; the poorest, equally with the most opulent and flourishing State, entitled to justice before the Supreme Judicial Court of the Nation?

Still, the advocates of the bill demand political representation in this tribunal. Although they have not committed themselves to the restraint of definition, yet, if their representation be not of talent, if it be not of statistics, then, sir, it must be a representation of the political parties of a State. It must comprehend all the great doctrine of electioneering; the whole learning of public address, either from the press or the stump; and the entire array of interests, sections, families, patronage, *proper to* be brought into service, to push a man, either into office, or out of it. Can any man, not lost to reason, desire a plan for carrying this kind of representation into the Supreme Judicial Court of our country? The naked possibility that such an event may ever happen, fills the mind with horror. Well might the honorable gentleman from North Carolina exclaim, in the fulness of patriotic indignation, "that it would, indeed, be abominable." From whatever point of view, therefore, sir, you look at this political representation, in our august tribunal of national justice, you see it at war with the Constitution, and abhorrent to the principles of reason, and the feelings of patriotism.

The third great reason, sir, offered in support of the provisions of this bill, is, that they will equalize a knowledge of State laws. This argument is unsound. Because, 1st. No such inequality exists; and, 2d. If it did, the method here proposed, would not afford a remedy for it. Consider, if you please, sir, what, by his oath, a Judge of the Supreme Court is fairly presumed to know; the extent and variety of his law learning. Either by original jurisdiction, or appeal, come before him, 1st. All cases of Ambassadors, other Public Ministers, and Consuls. Here may he, and is, required, extensive knowledge of the laws of nations. 2d. All cases in law or equity. The requirements of these, will spread before him all the principles of the common, and all the principles of the civil law. These two great codes, dividing the empire of almost the whole civilized world, not by perpetual war, like the German and Roman, who originated them, but with a peaceable common, and, in many countries, a concurrent, dominion—remain to nations as a kind of imperishable memorial of the conquests of mind, when those of arms have long since ceased to have place on the earth. They remain to these United States, and to each of them. They were brought to this country by our ancestors; who shared them with their countrymen, as an inalienable portion of their political heritage. They are the great elements of all the laws of all the States. Wherever a drop of Saxon blood circulates in American veins, there, the folks' law, the People's law, the common law is the citizen's birthright. There, too, the civil law, the controlling and ameliorating principles of equity and good conscience, are found and enjoyed. These mark out, and designate, all the rights of persons, and rights of things, to be cherished and protected; and all the wrongs of persons, and wrongs of things, to be eschewed and punished: and, moreover, cover them all with a great and healing system of protection and remedy. No man can be elevated to the Supreme Judicial tribunal of our country, without comprehensive, minute, and extensive knowledge of these laws. 3d. These cases are to arise under the Constitution. This Judge must, then, make himself acquainted with every various construction of that instrument, and be, in all respects, a great constitutional lawyer. 4th

Or they are to rise under the laws of the United States: for adjudicating such causes, therefore, he must be equally and profoundly read in the laws and Constitution of our country. 5th. All cases of admiralty and maritime jurisdiction come before him. The principles governing these cases, comprehend the laws of ships, freight, wages, insurance, prize, ransom, salvage; and all the laws of the sea, now extant, originating since the Phœnecian mariner first spread his purple pennon to the light breeze of the Levant; or, more adventurous, drove, with oar and sail, his foaming prow out between the pillars of Hercules. 6th. The Constitution, laws, and treaties, of the United States, are the Supreme Law of the land, notwithstanding the Constitution and laws of any or all the several States, may conflict with them. Such a Judge must, therefore, have studied the laws of every State, so far as they are to be compared with the laws, or treaties, or Constitution, of the United States. 7th. Cases where a State is a party, come before the Supreme Court originally; but States may be made parties where citizens of the same State litigate land titles derived from different States; a Judge of the Supreme Court is, therefore, bound to know all the land laws of such cases, as well in these Western States, as all others in the Union. 8th. Questions between States are of original jurisdiction in the Supreme Court. A Judge of that Court must, therefore, know all that relates to original charter, or boundary law of each State, as well as all confirming or conflicting State law, or adjudication, on all such questions as may come before him, on trial between such high contending parties. How, sir, shall he make himself master of all these various, and almost innumerable laws? Why, sir, truly, not so much from the practice of courts, or conversation with men, as from books; from his twenty years' conversation with these great, and, though silent, yet communicative masters of the treasured erudition of past ages. Can he not, then, sir, learn what it may further befit him to know, of other laws, in the same manner, and by the same diligence? Can he not learn this, also, from books? What is it? Why, sir, the statute alteration of the common law in each State, and their court adjudications upon such statutes. These are all contained in their books, or in the records of such decisions. These nine States have no lex non scripta; no local common law: for the oldest of them is not forty, and the youngest not five years of age; and no sage can have grown up among them into the strength and vigor of common law, in any time less than that, "whereof the memory of man runneth not to the contrary."

Can a Judge, sir, not learn these by reading and study? Can he not thus make himself master of all the almost infinite variety and extent of all other laws? and must he depend for a knowledge of these few items of State law, on the testimony of local Judges? Tell it not, sir, in hearing of those nations who, by their Ambassadors, are near our Government, in this City of Washington. Tell it not, in hearing of that gifted citizen, who first, in honorable field, lifted targe and lance against the learned chivalry of Europe, and in defence of the talent and science of our own country. Leave us, sir, leave us to the literary tomahawk and scalping knife of the Giffords and Buffons of the old world.

Judges, we are told, sir, are to learn by travel. Whither, how, and addressing themselves to whom? Not to visit law schools, or colleges of civilians; not as the Solons or Platos of antiquity travelled to consult the initiati of Isis, the Sanhedrim of Palestine, or the disciples of the Persian Zoroaster. They must, however, have the benefit of travel; and if so, in the common method, in coaches, wagons, solos, gigs, carryalls; in steam-boats, packet-boats, and ferry-boats; receiving the full benefit, in eating houses, taverns, boarding houses, and bar rooms, of the conversation of learned tapsters, stewards, and stage coach drivers. No man, I must own, who travels in the ordinary method—and Judges can hardly afford to travel in different style—will lose any portion of these several sorts of accommodation and instruction. Judges will, in serious truth it is said, by travel, mingle with the People, and often come in contact with them. Will they mingle with the poor, the ordinary? With mechanical men; with middling interest men; with the great community of toil, and sinew, and production? No, sir; they can do no such thing. Let them have the humility of Lazarus, and the versatile affability of Alcibiades, and they can do no such thing. There is to such men, as it was once said of a learned Judge—than whom no man ever bore his honors more meekly—there is, I say, to the feelings of such men, around a Judge, a kind of repulsive atmosphere. They stand aloof, and give him large room. They bow, not, indeed, with servility, but with profound respect; and look towards him with a kind of hallowed reverence, as one set apart, and consecrated to the service, and surrounded by the ritual of justice. With all these men, the Judge can hold no tangible communion. The assurance of wealth, the confidence of rank, office, power, will press through this medium, and come hand to hand with him. Do the gentlemen, sir, mean to say, that for such purposes, Judges should mingle with the People?

Sir, Judges of the Circuits, as we are told, are to communicate to the Supreme Court their various local knowledge. How? Yes, sir, how? By books or by parol? The facts, in the appealed causes, are placed on the record; the law on which they have been decided is, like the ballad of the Ancient bard, committed to memory; and is to be said or sung, in open court. In this manner, each of the ten Judges of the Supreme Court is to learn all his knowledge of the legis loci, governing appealed causes. He may possibly know, and, indeed, by the reasonings on this bill, he is supposed to know, one-tenth part of his legal alphabet of twenty-four States; that is to say, two letters and four-tenth parts of a letter. This may comprehend all the great doctrine of locatives and entries, as the same was learnedly expounded to us, early in this debate. The Court, sir, who try the appealed cause, must, according to the arguments of the friends of the bill, learn the facts, the law, and the decision, from the Judge who tried the cause in the Court below; and who, in sustaining his own decision, is interested by the pride of opinion, the pride of character, and the avarice of fame; and who, if he do not produce the books from which he drew his law, ought to place over his oral tradition of it, the Scotch bard's apology—

> I cannot say how the truth may be;
> I tell you the tale as 'twas told to me.

Will this mode of procedure, sir, secure to appellants the benefit of a second trial? Of the facts, there can be, there needs no second trial; they are ascertained and placed on the record. They are to measure the facts by the law, and observe if that measure result in the former decision. Who places this measure in their hand? The Judge who measured the article and placed the amount on the record. If the Judge honestly give the law, as he understood, and still understands it to be, the Supreme Court must understand it as he understood it, and the cause must be decided as he decided it. You weigh the same article at the same scale beam, with the same weights. Its weight must be the same. The beam may be out of balance; the weights too light or too heavy. These men, "measuring themselves by themselves, are not wise." If you measure the same thing by the same thing, ten thousand times, you cannot detect a single error. Would you, sir, avoid this repetition of error? Give your Supreme Court a check on the Circuit Judge. What shall it be? A knowledge of the laws. If, therefore, sir, your Supreme Judges are qualified for Supreme Judges, and all the nation know

that they are, there exists no inequality in their knowledge of local law; but if that inequality do exist, the provisions of this bill cannot remove it.

Sir, this bill proposes to add three Judges to the Supreme Judicial Court, and to make the number ten. This, if a remedy for the evils at the West, is none for those at the very vitals of the Judiciary—the accumulated mass of causes, which have laid in the Supreme Court till, like an ossification in the heart of the animal body, they paralyze pulsation, and obstruct the wholesome circulation of justice, to the very extremities of the body politic. The bill proposes for this evil no other remedy than three additional Judges. Can ten men do more judicial labor than seven can perform? Moral, like mechanic or mathematical truth, is discovered by induction—a kind of process at which but one mind can labor. We do not learn, that either Archimedes, or Euclid, or Sir William Jones, was joined with any co-thinker adminicular to either of them, in his sublime speculations or discoveries. In money there may be co-partnership; there can be none in mind. Here each one, unless a plagiarist, must trade on his own capital. Make your Judges, sir, if you please, seventy-two, and, like the Ptolemy, you will call on each one for a complete version.

These gentlemen will tell us that, although this bill gives no relief to the Supreme Court, yet there is on the stick a little bill, No. 15, giving a perfect remedy. Yes, sir, sheets of legislation for the Western States; ten lines only for the whole nation. It adds a month to the term of the Supreme Court; a month, did I say? No, not so much; "not a little month;" three weeks, eighteen working days. One long maritime cause from the East, or one broad land cause from the West, will consume two days; and thus, the next year, nine more causes will be tried than will have been this year; and so the number, standing over on the docket, will truly be one hundred and seventy one, and not one hundred and eighty.

This bill proposes to increase the Supreme Court, originally six, but now seven, by adding three new Judges, and making the whole number ten. Can this, sir, be constitutionally done? All Supreme Judicial power is now lodged in the Supreme Court. What Judicial power have you, then, sir, to confer on your three new Judges? Circuit Court power you certainly have: for all Inferior Courts are within your control; but all the Supreme Judicial power is already vested, and no part of it can be taken away. The Supreme Court is a whole, in all its parts, its properties, its extension, its relations. Have you the power to alter it? How, then, can you add to it? Or is it that wonderful entity which addition to it does not increase, or which, multiplied, any number of times by itself, would continue to be the same? We shall all acknowledge, sir, that Congress cannot require, by law, the President to select a Judge of the Supreme Court from any particular district or part of the United States; but Congress can create a Court inferior to the Supreme Court, and, among the legal qualifications of the Judge, insert an inhabitancy or residence within his territorial jurisdiction. This may be the Circuit Court. If, sir, you then annex the office of such a Circuit Judge to that of a Judge of the Supreme Court, you require, by law, the President to select a Judge of the Supreme Court from a limited and designated district of the United States; that is to say, from the territorial jurisdiction of such Circuit Judge. The constitutional power of the Supreme Court is vested in the majority of that Court; whatever shall change this relative proportion to the whole number of the number creating that majority, must change the vested power of that Court, and must, for that reason, be unconstitutional; but four, the majority of six, is two-thirds of that Court; whereas, six, the majority of ten, is less than two-thirds of that Court. Making the number of Judges ten, is, therefore, altering the power of the Court, vested in two-thirds thereof, and giving it to a lesser proportionate number.

It may, sir, be set down as a political axiom, that, whe you shall have added so many Judges to the original number of the Supreme Court, as will make a majority of a Constitutional quorum of that Court, the judicial article of the Constitution will have been expunged. Add your three new Judges, it makes ten. This is four more than the original number; six is a Constitutional quorum of ten; but four is a majority of that quorum, and may reverse all the decisions of the original Court.

All decisions of the Supreme Court, on the Constitution, on treaties, and on laws, not enacted by Congress are beyond the control of the National Legislature; but if we can send into the Supreme Court an overruling majority, whenever the united ambition of Congress and the Executive may choose to do it, we place the Constitution, and all treaties, and all Constitutions and laws of all the States, in the power of two branches of the Government, and thus erect ourselves into a complete tyranny; and that, too, as the advocates of the bill must contend, upon perfectly Constitutional principles. Does the Constitution, sir, thus place the Judiciary at the good will and pleasure of the other two branches of the Government? No, sir; the Patriots who built, and the People who consecrated that glorious fabric, did not intend to devote their temple to the polluted oblations of Legislative ambition, or the unhallowed rites of Executive subserviency.

The wisdom of legislation, sir, should look to the durability of her works. How long, sir, will the Judiciary as amended by the provisions of the bill, continue to subserve and satisfy the wants of the country? Some of its advocates say twenty, some fifty, and some one hundred years. Yes, sir, those gentlemen, who have, with all the force of fact, and all the resistless conclusion of reason, pressed on this House the unparalleled growth of Western wealth and Western population, do say that new States will not, in less than one hundred years have been added to this Union in such a number as require even one additional Judicial Circuit. How they duly considered the various expansive principles of production and population in this country? A prescient policy should look to the future under the light of the past. In twice that period, a few scattered families of emigrants have augmented to more than twenty millions of People, covering eight hundred and forty-one thousand one hundred and eighteen square miles of territory, arranged into twenty-four United States and requiring ten Judicial Circuits. Through this whole course the People and the country seem to have multiplied and extended in nearly a geometrical ratio. Twenty millions of People not quite five years ago; five millions of couples for heads of families; and, at this moment, not less than two millions five hundred thousand of the whole number probably placed in that relation. Ordinary calculation may, under ordinary prosperity, expect to find in each family eight children. This will, in less than twenty years, give to our population twenty additional millions of People. Will not new States arise? Already, sir, you have three new territories. Florida spreading her population down to the very margin of her waters, and enriching her cultivation from "the cane-bearing isles of the West." Arkansaw is looking up the channel of her long rivers, towards the mountains of Mexico, and will soon become rich, populous and highly cultivated. The tide of migration is setting up the grand canal towards Michigan; and that Peninsula will, in a short period, be located and peopled from Lake to Lake. These three, sir, in less than five years with due courtesy and fair cause for admission, will knock at your door, and propose to sit down in the family circle of political Union. This is not all, sir. Pe

lation is travelling up the latitude, across your North-western territory, towards the great Caspian of our continent; and when they shall have heard of your ships on the waters of the Oregon, and of your colonies along the rich valley of that river—as, from the able report of the gentleman from Massachusetts, whose mind is capacious of such things, we may predict, they will very soon hear—these People will then, sir, with the rapidity of a deep sea-lead, thrown from the chains of a seventy-four, plunge down the longitude to meet and to mingle with their countrymen on the waters of the Pacific.

Twenty years, sir! Are we told that the system of the bill will accommodate and satisfy the judicial wants of this country for twenty years? In twenty years you will have ten new States, and thirty millions of People! Why, sir, in such a country—such a sun-bright region of hill and vale, mountain and moor, river, plain, lake, and all of boundless fertility; where population are busy on land, and on ocean; where, from the plough, the loom, and the soil, they continually draw the materials of food, clothing, habitation; where the human arteries swell and pulsate with teeming existence; where the human bosom heaves and palpitates with the fostering current of incipient life—what calculation will you make? What calculation can you make, approximating in any reasonable degree towards reality?

What then, sir, the advocates of the system of the bill may ask—What shall be done? The opposers of it are prepared for the interrogatory: Adopt the system recommended by the resolution. Restore the Constitution. Trace out, and fill up, the great judiciary map of 1789; revise, and correct, and establish, the Constitutional lines of the law of 1801. We are told, sir, by the gentleman from Illinois, that the experience of a single year overthrew that system. Was, then, the system of 1801 overthrown by experience? As well might the honorable gentleman tell us that brick, and granite, and marble, are improper materials for houses, and palaces, and temples; because experience has taught us, that, at some times, and in some places, earthquakes have overthrown and demolished such buildings. "It was," says the honorable gentleman from Massachusetts, Chairman of the Judiciary Committee, "repealed in one year in toto." Was it because that, or the law on which it was founded, was "enacted in the hurried session of the Summer of 1789?" Because it was built on false analogies, or contained awkward provisions? That session, sir, was begun on the 4th of March, and ended on the 24th of September. In this session, of somewhat more than six months, those illustrious men enacted twenty-seven laws, and passed three resolutions. Was this hurried legislation? Why, sir, many a Congress, since that period, putting no extraordinary vigor or hasty effort to the work, have, in less time, sent into the world a legislative progeny of from two to three hundred laws, great and little. What have we now, sir, valuable, or of probable durability, and which was not produced by that Congress, at that session? The Fiscal, the Foreign, the War, the Naval, and the Judicial Department, were then, and by those men, founded, erected, and finished. These great national edifices have stood, and I trust will continue to stand: for, when the vandalism of faction shall demolish them, we shall cease to be a nation. Later times, it is true, have added, now and then, a piece of tiling, or patch of paint; and the nation has put itself to costs upon the interior garniture of them, the drapery, and other various ornament and accommodation: but, otherwise, these valuable edifices are nearly as old, as unaltered, and quite as venerable, as the Constitution itself.

Awkard provisions and false analogies," do we call any part of the Judiciary act of that session? It was, sir, indicted by the Ellsworths and Hamiltons of those times—men, whose political little finger was larger than the loins of politicians in these degenerate days. Why, sir, do not men who know, tell us boldly for what cause the Judiciary law of 1801 was repealed? Men of candor—and I trust, sir, such men are in great numbers here—will all agree that party overthrew that system. Why disguise it? Those unhappy days are past, and we are indeed now all "brothers of the same principle." What was *not* demolished in those inconsiderate times? The National Bank, the Army, the Navy, Fortifications—almost all that told the understanding, or the eye, that we are one—tumbled into ruins, in the shock of that tremendous political earthquake. Coming years brought better feelings and sounder reasonings; and men have profitted of their experience, and re-edified all that was most valuable: The Bank, the Army, the Navy, the system of Fortifications; and we are again a nation. Our fortresses on the ocean and on the land, look out from many a hundred iron eye, ready with indignation to blaze annoyance and destruction against hostile approach. Why, sir, do you not follow this enlightened experience in your Judiciary? The very Turk or Tartar, though he demolish the palace and temple of classical antiquity, yet will he draw from the ruins materials for his stable and his seraglio. He who does not profit by that of others, stands in the next rank of fatuity to him who is a fool in spite of his own experience.

Let us not be told, sir, that the system of the resolution will augment the Judiciary expenses. What will be expended in one way, will be saved in another. A saving to the citizens is a saving to the nation. These Courts will perform, and finish the Judiciary labor in every district, circuit, and department. It will bring justice home, "and that right early," to those who are now compelled to travel for it; to wait for it; and to lavish their substance on the means of acquiring it. It may diminish a productive employment for us who come here to legislate for our constituents, and to litigate for our clients; but, I trust we are sufficiently patriotic not to feel any attachment to a system, because it may augment our emoluments, when we know it must diminish the productive capital of our country. Sir, the People now expend less on the Judiciary than on foreign relations. You give more, by some scores of thousands of dollars, for courtesy to other nations, than you pay for justice to your own citizens. It would be dishonorable to the Republic to be wanting to its own dignity abroad: but, can it be honest to be wanting in justice to its own citizens at home?

The system of the bill, sir, cannot, it is agreed that it cannot, endure: for Circuits will become too numerous to add a new Judge to the Supreme Judicial Court for each new Circuit. We are told in reply, that we should not legislate for posterity: "let posterity take care of itself." In what country, in what house, are we, sir, told this? Did the Pilgrims, the Bradfords, the Williamses, the Penns, the Smiths, migrate to this country for themselves, and not for posterity? Look out upon our American world: not a government was instituted; not a forest felled; not a city founded; not a house built; not a tree planted; and not for posterity. Where, and what should we have been, but for those who cared for posterity? This house, sir, the great model of art and taste, the pride and ornament of our country, and of the republican world; the magnificient forum of legislation; the hallowed temple of justice—this house, sir, was it built for us, and for the present generation only? No, sir, it was founded by that man whose name spreads the light of glory over our nation, and whose whole life was but one act for his country—for the world, and for posterity. "Let posterity take care of itself!" To a gentleman who could feel and utter such a sentiment, I would address the words of the bereaved McDuff: "he hath no children."

The system of the resolution carries in itself the principle of durability. When new States shall be added to this Union, and form new Districts, their Judges will distribute justice, until enough for a new Circuit shall have been formed, and then this Circuit shall receive a new Judge. This may be repeated as often as a new Circuit may be formed; until Circuit after Circuit shall be extended to the utmost limits of our national domain. The Supreme Court will sit a supervising tribunal—regulating and correcting every inferior jurisdiction. When the multiplied calls for justice shall require, then it may be separated, like the highest English Courts, into a fiscal, a criminal, and a civil tribunal. Two Judges in each Department, as they must of necessity be unanimous, will, almost of necessity, secure correct decision.

Thus, sir, you may legislate, not for twenty years only, but, by Divine aid, for twenty centuries. Your judicial edifice will be extended, with your extending country; and will subserve the wants, and satisfy the requirements of these increasing States, and the multiplying millions of this great nation, until the American Eagle shall, with one wing, winnow the breezes of the Atlantic, and with the other, hover over the quiet waters of the Pacific; until the colossal power of the Republic, standing on the lofty mountains of this continent, shall, with one hand, extend the olive branch to the peaceful nations of the earth, and with the other, wave the sword of justice over the satisfied and tranquil citizens of these widely extended regions.

I have thus, sir, according to the limited measures of my ability, made an effort to sustain the resolution, moved by the honorable gentleman from Virginia; and I should be in some sort satisfied with that effort, could I have brought to his aid any portion of that efficiency, which, on a great and former occasion, was brought to the aid of an illustrious citizen of that State, by a son of Rhode Island.

Mr. KERR, expressing a desire to address the House on the amendment, moved an adjournment.

Mr. WEBSTER hoped he would withdraw the motion, as the discussion had already been so much protracted. But Mr. K. not complying, the question was put and carried, Ayes 83, Noes 81.

So the House adjourned.

TUESDAY, JANUARY 24, 1826.

The House proceeded to the unfinished business of yesterday, which was, the resolution offered by Mr. MERCER to recommit the bill "further to amend the Judicial system of the United States," with instructions to report it with certain amendments thereto, as heretofore stated.

The question being taken, without debate, on this motion, it was decided in the negative.

Mr. BARTLETT moved to recommit the bill with certain instructions. Wishing, however, to accomodate the gentleman who, by the usage of the House, was entitled to the floor, (Mr. KERR, who yesterday moved the adjournment,) Mr. B. afterwards withdrew the motion for amendment.

Mr. WEBSTER then moved that the bill be ordered to be engrossed for a third reading.

Mr. KERR now entered the House; (having been previously accidentally detained from it,) and addressed the Chair as follows:

He said, that he felt admonished by the vote on the question of adjournment, yesterday, after their latest hour of business had passed away, that he must, with all brief and plain conveniency, express the opinions which he held in relation to the important subject of debate. It had struck him that, if it were important at all, that the discussion should be continued, it was rather an unfavorable opportunity for the delivery of an argument in his plain way, after the delighted attention of the House had been so long enchained by the eloquent illustrations of the gentleman from Rhode Island. He said he had now no other apology to offer for presenting himself before the House, but of that kind which was adopted by the gentleman from Pennsylvania, on Saturday; that, on all subjects of general interest, one desires to express his sentiments in his own way, however little he may hope to better the arguments which may have been before used.

Could he flatter himself that he should succeed as well, in giving efficient support to the advocates of the bill, who had preceded him, as that gentleman was believed by many to have done to its opponents, he should proceed with great alacrity. While the bill was discussed in the Committee of the Whole, he felt disposed to listen to others, and more particularly to the proofs and arguments of the members from the West; but, since the resolution last offered by the gentleman from Virginia, for a re-commitment of the bill, with the instructions proposed, had been before the House, he had viewed the question which it involved as one of the highest interest to every portion of the country; as a most hazardous experiment to prostrate the whole fabric of the Judiciary, and to build it up in a new form, and of new materials. On these grounds, though with great diffidence, he was induced to offer himself before the House. He approved wholly, of the bill upon the table, and would advocate it in all its parts, not only as affording the best remedy for existing evils, but as calculated to confirm and fix what he considered the fit and proper Judicial System for these United States, an establishment which had been raised up by some of the first founders of the Government, and which ought, in his opinion, to be still preserved. He approved the bill as a remedy for existing evils, and as preserving, as he conceived, the vital principles of our Judicial establishment. He would endeavor to maintain the doctrines, by discussing and refuting, as far as he was able, some of the objections which had been offered against the bill.

With regard to the existing evils which had been so forcibly described by different gentlemen, as oppressing those States which lie to the West and to the South, he thought the remedy provided by the present bill, the best that could be devised. He wondered, indeed, when he looked back upon the debate, how the question could have been sustained on this point, after the Honorable Chairman of the Judiciary Committee had, in his cool, deliberate, and statesman-like manner, given a description of these evils, and of their operation on the interests of that section of the country, and after the various statements which had been made from their own personal knowledge and observation by gentlemen from the West. All the arguments which had succeeded, or intended to confirm his early conviction, that we are bound to give an extension of the system to those States, in which the evils complained of were alleged to exist, is no question of a boon or a privilege to be granted; that large and populous portion of the Union, composed of States long since admitted to an equal footing with the rest, asks not favors at our hands, but demands constitutional rights. It was not necessary for him to go back and reiterate the various statements and arguments of the gentlemen of the West, and to advert to the petitions and memorials which had been so often mentioned, to prove that we are bound to extend the benefits of jurisdicature to those particular States. He considered the statements and arguments of the members from the West so conclusive, as to have settled that point. He would go still further—and that was the principal object for which he rose; he regarded those States as entitled to be placed, in every point of view, on an equality with ourselves. The States in the West have arrived at maturity, and ought no longer to be shut out from the enjoyment of those rights, which belong equally to every member of the Union. They have a right to a full par-

icipation in all benefits conferred by the Constitution and he law framed under it: not merely to a temporary and partial extension of the system, but to a full and permanent enjoyment of a judicature which will secure the ives, reputation, and property, of their citizens. They have now a full participation in the political powers of he Government; their *political* liberty is safe in their own hands, or under the protection of their Representatives in this House—but they require at your hands equal privileges under the operation of that other great co-ordinate branch—the Judiciary. They look now for a full enjoyment of rights, equally or more dear—of that *civil* liberty which comes to our homes and to our fire sides—which throws a rampart round our property, and a shield before our persons. The pure, wise, and equal administration of the laws is, (he said) he first end and blessing of social union. If you do not provide efficient means for such an adminstration, both those laws and the rights of the People, which they are designed to secure, are but he delusive dreams of bondmen. We have no right o withhold the exercise of powers given to us by the Constitution, to constitute Courts for the benefit and convenience of the whole People of the United States, or o *dole* out to the West those benefits which their equals of the East are enjoying in plenitude. He must, however, consider the question of extending relief to the West, as settled by the vote given in committee; but the important point recurs, what shall be the system of relief?

On the decision of this question, said he, hangs the destiny of that great co-ordinate branch of Government, he Judiciary of the United States. Whatever apprehensions may be felt or affected, in relation to the *tendencies* which this bill may give to it, in the future exercise of its high functions, if you substitute for it the scheme proposed by the gentleman from Virginia, I venture to assert that you will endanger the Constitution and the Judicial System, in the very manner which has been imputed to the operation of this bill. The question is not now between this House and the People of the West, claiming an extension of Judicial means to *clear* their accumulated dockets; but it is, What shall be, hereafter, our permanent system of judicature, in form and character? We cannot, at this time of day, fulfil the injunctions of the Constitution, or the solemn declaration, by the People of the United States, with which it is prefaced, that one of its primary objects was "*to establish justice,*" without extending the system in the manner prescribed by this bill. The question is, therefore, no longer, Whether the interests of the Western States require the passage of the bill—whether they shall have a greater or less share in the benefits of the system given to them? But whether it be not now necessary, and the bounden duty of the Legislature, while calm and composed, and having a view to the immense growth of the country, to *fix* and establish a permanent system, with a view to the respective rights and interests of all the States, and of every class and denomination of suitors, falling within its jurisdiction? It was with a view to such inquiries he was induced to offer the present remarks.

In the first place, he would inquire if the present system can be so extended as to ensure the objects in view? He had reference now to a particular extension, with a view to meet present exigencies.

In the last short view, taken by the Chairman of the Judiciary Committee, his statement was, that, as the States West and South, beyond the mountains, could not be reconciled but by having the Circuit Judges extended to them, the Committee had proposed such an entire plan as they thought would suit the convenience of all. Less than ten Judges, the Hon. Chairman of the Committee had said, would not answer the purpose; but by classing the States for Circuits, as they had done in the bill, the system would be perfected, and might remain adequate for twenty or even fifty years. With great deference, Mr. K. expressed his conviction that, if the bill should pass now, so as to satisfy the present wants of the country, it would not only answer all purposes for the period supposed; but, by a similar extension, and an addition at some future time—say of two more Judges—in any, the most expanded views of our increasing population and legal business, the system would continue to be adequate to its ends for one hundred years. He, therefore, accorded fully with the views of the committee, and considered the plan of extension the true one; because it gives permanency to the system, and recognizes and fixes the vital principle of a *union* of the Courts.

The motion which had been made to recommit, with instructions, had been founded on two objections, which go against the whole system of the bill: it was objected in the first place, that the Supreme Court would be too numerous; and secondly, that it was inconvenient and dangerous to keep it united with the Circuit Courts, and to require the Judges to sit in both. In relation to the first objection, he was aware of the theory, in which it was generally maintained, that the number of Judges who were to decide, in any judicial forum, should not be too numerous, because the tumult inseparable from large assemblies, is inconsistent with the patience and attention requisite to judicial investigation; and that when Judges were numerous, they divide the shame of an unjust decision, and take shelter from responsibility under the example of each other, and that, therefore, they ought to be so few at most, as that the conduct of each may be conspicuous to public observation. He knew that these were the theoretic grounds of writers on this subject, but he said, if we would apply those theoretic rules to our system, and the provisions of the bill, it would be found that none of them would be contravened. A body of ten or twelve Judges, secluded from the world, with all the means of legal light before them, study a subject and form their opinions deliberately, each for himself. They meet and consult together, and compare those opinions, and then deliver their judgments in open Court. There is no excitement to passion—no cause of tumult—no agitating contests by open argument with one another, as in larger bodies, differently constituted. When a Judge takes up a subject, if it be a sheer point of law, there can be no excitement of passion from it. When the case involves evidence and proof, he attends coolly to that evidence; and he decides, in the one case or in the other, according to the law and the fact. In the exercise of the duties of such a tribunal, there cannot be any greater danger of tumultuary movements, or of intemperance of passion, when the body consists of ten or twelve Judges, than when it is is reduced to five or six. On a bench of ten or twelve Judges, each is as conspicuous in the public eye, and as obnoxious to public scrutiny, as if there were only five or six. If you wish to pin them down to responsibility, you have only to make each Judge deliver his opinion; he is then fairly before the public, and will be held responsible for the decision in which he concurs.

There was, he said, no magic number, in which only, wisdom and discretion reside. The only objection is, that a tumultuary body is not favorable to calm investigation, and that passion or party feeling would be likely to enter into a Court composed of ten individuals. Try this question by the test of reason, and by the touchstone of common sense, and you will find that each member may as deliberately give his opinion and be as well made responsible for it, on a bench of ten or twelve, as in one of any less number of Judges. There was really, he said, no danger in the increase. Conjure with the numbers three, five, seven or twelve, and you will find the largest equally favorable with the rest to cool discussion and deliberate judgment.

On the other hand, we shall derive evident advantages from an increase of Judges. We have occasion to concentrate as much learning and talent upon the Bench as possible. As reason forbids the apprehension of tumultuary feeling in a body of ten or twelve Judges, let experience teach us where we may be obliged to stop, and let us not, from imaginary fears or notions, forego the advantages of the increase of number contemplated and secured by the bill, which is calculated to establish a permanent system. He said the experience of other countries came in aid. In England, the twelve Judges adjourn into the Exchequer Chamber, discuss and decide important points, or such as have created a division in either of the Superior Courts; they deliberate and discuss those points, but no inconvenience results from their number; no danger of passion was ever apprehended, and their Judicial establishment has stood on the firmest foundation. On writs of error to the House of Lords, when summoned there, on important questions, they give their opinions *seriatim*, and *settle the law*: for the Lords abide by their decision, and affirm or reverse accordingly. The twelve Judges thus decide with as much expedition and convenience as five or six would do. He had understood, too, that the Judicial System of Scotland was entitled to high consideration. It was said they had a celebrated Bench of Judges, and that the system was an object of admiration; and yet, on the Scotch Bench, there were fifteen Judges. When we are asked, then, where we are to stop? He would answer, at the point where danger commences. The vast power conferred by the Constitution on the Supreme Court, of deciding on the constitutionality of the laws of Congress, and of the States, was, he thought, a fair reason for making them more numerous, than for the mere purposes of decisions in Bank in the other cases within their jurisdiction.

Another objection to the extension of the number, was offered by a gentleman from Virginia; that, by increasing the number of Judges to be appointed, you lessen the caution of the appointing power. This, he said, was a begging of the question: for it supposes a total abandonment of duty. It is the solemn duty of the Executive to weigh well the qualifications of each individual to be selected; and to suppose that this will not be done, is to impute a total disregard of the public interests. Remember that you are not always to have the same Judges, learned and able as they are, who now occupy your Bench, and it will be of great importance to bring forth all the judicial talents of the country to succeed them. It is not, therefore, likely that increasing the number will tend to make the Executive less cautious in the selection. The truth is, there will be chances of ability on the Bench, exactly in proportion to its number, if the appointing power be faithful to its trust.

If, then, in theory, ten or twelve Judges are not too many, nor inconsistent with sound deliberation, and since that number will be necessary and sufficient to carry into effect all the purposes of judicature, you ought not to regard the suggestions of imaginary dangers, when such great objects are to be secured. In relation to our judicial establishment, he considered the itinerary character of the Judges the life-blood of the system, as it gives them opportunities of intercourse with the People, the Judges, and the Bar, in different States. Their connection with the inferior tribunals, affords them the most effective means of improvement and experience, and, at the same time, will best preserve them pure and upright. It qualifies them with a more enlightened understanding of many important objects of their jurisdiction. By their Circuit duties they are enabled to understand the local laws, and their mental faculties are kept in continual exercise. The practical construction of local laws is difficult to acquire; it is necessary, to that end, to acquire a knowledge of French and Spanish laws, and of the civil law, to enable him, who presumes to take a seat in the Supreme Court, to acquit himself to the public satisfaction. How is this kind of knowledge to be acquired? Not merely in the closet, but by attending the Circuits, and deciding causes in different sections of the Union. Without the performance of these practical duties, it is scarcely possible for a Judge to acquire the information that is necessary.

There is, however, another advantage, and that of no little moment. In a Government founded on opinion, it is necessary that the People should be satisfied with judicial decisions. In the course of performance of their Circuit duties, in different States, Judges mingle in the society, and get a knowledge of the People, and become alike known to them. Coming from different parts of the Union, the Judges bring together a fund of local knowledge, which enables them to decide with confidence, and to the public satisfaction. *It is necessary* that they should stand pure and upright before the People, if they would have their decisions received with respect. On the Circuit, a Judge of the Supreme Court stands conspicuous in the public eye, and is personally responsible for his own judgments; he knows that if he makes odious or corrupt decisions, they will be carried to the Supreme tribunal, where he must answer, not only to his brethren on the Bench, but to the whole nation, for his errors. If, on the contrary, he is seen to decide according to just and correct principles, purely and intelligently, he acquires high personal consideration, and the estimation in which his character is held by the People, gives weight to his decisions. It is this kind of intercourse of Judges of the Superior courts in England, with the Bar and the People, on the circuits, which has preserved to them a high reputation for practical learning and prompt decision, and rendered so famous the judicial system of that country. Mr. K. said he had no particular knowledge of the judiciary establishments of other States, though he might have access to them, and see their outlines in the several constitutions; but the changes which they underwent from time to time, rendered them but doubtful authorities. He knew, however, that in Maryland, twenty years ago, the Courts were separate and distinct, and there was no union between the appellate and the inferior jurisdiction. They had three distinct judicial tribunals—a Country Court, a General Court, and a Court of Appeals, with a small number of Judges in each, and without the principle of uniting the Judges of the Supreme Court by Circuit duties within the County Courts, in the trial of causes. But the subject was much discussed in the Legislature, and it was determined to be important that the Judges should have opportunities of intercourse with one another; that the Chief Judges of the County Courts, where all causes, civil and criminal, were to be tried, should form the Appellate Court, and thus, by a constant exercise of their faculties in the trial of causes on Circuits, as well as by imparting to one another all the lights of their knowledge and experience, when they should sit together in the Supreme Court, the whole community would derive an equal benefit from the judicial establishment, and uniformity of decision would prevail. This system has borne the test of twenty years' experience, and is still most approved.

Our Judges, when they have decided causes below, have opportunities, when they meet in the Supreme Court, of explaining to one another the grounds of their decisions; though any one Judge is forbidden to *sit* on the appeal from his own decision below. It has been remarked by a gentleman from Pennsylvania, that there was a better chance of justice when the Judge who tried the cause did not sit on the appeal. It is, at least, an advantage that he be permitted to explain, in some way, the grounds of his decision. It has been the practice in Eng-

land for the same Judges, from whom the case is adjourned, to re-argue it in the Exchequer Chamber, and give their opinions again *seriatim*. So, on a writ of error from the Court of King's Bench to the House of Lords, the Judges of the Court from which the case is brought, give their opinions as well as the rest. This now, I learn, has become the practice of the Supreme Court of the United States, and a Judge is not there excused from sitting on an appeal from his own decision below.

A Constitutional objection had been raised to the union of the Judges of the Supreme Court with the Circuits. It is said not to have been in the view of the Constitution that the Supreme Judges should perform Circuit duties—nay, it is alleged to be contrary to the Constitution. He held clearly the opposite opinion: for the Congress of 1789, who framed the Judiciary Act, were contemporary with the Constitution, and their interpretation of it, maintained ever since by practice and acquiescence under it, is too strong to be shaken. He would refer to a decision in the Supreme Court in which the question was held to be thus settled and at rest. It is the case of Stuart against Laird, in 1st Cranch's Reports.

He had no doubt that it was the express view of the men who first carried the Constitution into effect, that the system of a connection of the Courts should prevail. They took the hint of the itinerary character of the Supreme Judges from the English system, although the gentleman from Massachusetts supposes they mistook the *analogy*. It is true, as he has stated the difference, the English Judges at *Nisi Prius* had only to try causes, by the aid of a jury, on pleadings and issues settled in the Court from whence the record came; whereas, our Circuit Judges take the suit by their original jurisdiction, through all stages, and to final judgment. If it was necessary and advantageous in England, that their Judges should exercise Circuit duties, it was still more important in this country. The same reason for it, operates here as in England, but with greater force. It is important to keep them employed. The maxim has been well expressed by a gentleman in the debate: "A Judge should be altogether a Judge."

The People who have business in the inferior Courts, do not desire *appeals*: nothing but gross injustice, or immense interests, can induce them to go up to the Supreme Court, to incur great costs and expenses. It is, therefore, most important that the Supreme Judges should go to the Circuits, and impart the light of their learning and experience, to settle important cases, and by a constant exercise of their faculties, be kept the more ready to decide the great causes in the Supreme Tribunal. He concurred, entirely, in the opinion, that, if those Judges were relieved from the circuit duties, and confined to Washington, in the exercise of their functions, where they would never be seen but by lawyers and idle spectators, they would, in a few years, become indolent, and lose their dignity and influence in the eys of the nation. They will fall into a natural indulgence in the ordinary literary pursuits, or other occupations. Remember, you cannot always enjoy the services of the present Judges of your Supreme Court. A succession of younger men must be placed upon the Bench, practised, indeed, in the inferior Courts, but having much to learn before they will be fully competent to the arduous duties and responsibility of Supreme Judges—before they will be able to command, for their decisions, the public confidence and satisfaction. It is here, also, that, when the Judges shall have sunk in indolence, they will become objects of suspicion. While they go abroad amongst the People, in the vigorous exercise of their functions, they are objects of constant admiration and esteem. Under the operation of this system, he believed the present Bench had become so illustrious in reputation.

Another objection which has been urged against the increase of the number of Judges in the Supreme Court, is, that it will become dangerous as a political Court. Dangerous to the People to create two or three Judges to meet the exigences of the country! The idea is wholly fallacious. How is this danger to accrue? Judges, as soon as they obtain their commissions, become independent of the Executive—independent of the Legislature—and even independent of the People. If they entertain peculiar opinions, resulting from local interests, they cannot make them operative on the bench: for, if they bring them there, they are met by other feelings and opinions of an opposite character, in the Judges of other sections; and thus these conflicting feelings only neutralize each other.

An idea of *judicial representation* had been thrown out. It was wholly incompatible with the existence of any Court, and he repudiated it altogether; it was a solecism. If such a representation could be formed, he would unite with the gentleman from North Carolina in pronouncing it abominable. A Judge on the Bench can only represent the majesty of the law: he decides by the lights of his own mind, and according to his best judgment. He founds his decision on the words of the Constitution, and on the laws, with the aid of proper rules of construction. If it be a question of fact, he derives his views, and forms his judgment, from the proof before him. He keeps a single eye to the lights of law and evidence. If a Judge were to go on the Supreme Bench and say—"I represent here the feelings and interests of the People in that section of country from whence I come," his conduct would be abhorrent to the sentiments of this whole People, as it would be a perversion of all idea of judicature. He admitted, that sometimes the mind of a Judge may receive a bias in spite of himself, if he has come from a section of country under a strong excitement on some particular subject; but the bane and antidote soon meet in the conflicting feelings of different Judges, coming from various parts of the country. But, let gentlemen once come to the Supreme Court, beside those able and eminent men who now adorn the bench, and they will feel at once elevated above the infected atmosphere of local prejudice; they will throw aside their sectional notions and opinions, and give up to nobler and loftier views. Such, he believed, was the admiration and respect which pervaded the Profession, both for that high tribunal and the law, that new Judges would soon feel the dignity of their office, and vie for reputation only in the correctness of their decisions.

It is said, that these Judges will form a Governmental Court. How? Are they not independent? Do they not go forth, freed of all shackles from the power by which they are appointed? They will feel that their only chance for happiness and fame is in the preservation of their characters. If a Judge will take bribes, there is end of argument on theory: but there are no honors so great as he may obtain by a faithful discharge of his high duties. He can derive no benefit from the power which has appointed him. The moment he receives his patent, and is created a Judge, he becomes as great as his creator; and, therefore, needs not to turn, as one gentleman has poetically said, in this debate, like the sunflower to its god.

It has been alleged, by a gentleman from New York, that, by the exercise of this power of increasing the number of Judges, we may render them dependent on the Legislature: for, whenever a decision is made, that is obnoxious to this House, we have only to create more Judges, and thereby subvert the decision. The gentleman forgot that the appointing power was not in this body, but with the other branch of Government. To say, then, that these Judges will be influenced by local or sectional views, or feelings, and so get up a faction in the Supreme Court; and, at the same time, to express alarm, lest Ex-

ecutive influence should blast the wholesome character of the Court, and lead it into plans of Federal aggrandizement and consorted power, involved an inconsistency, which he could not unravel or understand. To show that the Judiciary Department itself, independently of the influences of different kinds, which had been imputed, would not be likely to attempt encroachments on the Legislative power or the State Sovereignties, he read a paper from the "Federalist," a work, he said, written by men who had a chief hand in raising up this Government; and which, with a prophetic spirit, had foretold the operations of the Constitution. This extension of the Judicial System would neither endanger the other co-ordinate branches of Government, nor incur any danger from them. The Judiciary itself, he said, had nothing but a strong moral power to support itself in the exercise of its legitimate functions. Yet it was this part of the system, which would secure and save the rest. He likened its place in the Constitution, to the steerage of a ship. The helm is secured by rudder-bands, admirably contrived. It was only requisite to keep up a succession of skilful and experienced pilots, and there would be no danger from the dashing of the wild-popular wave; and their steady watchfulness would detect and ward off any secret approaches of the decoying fingers of Executive corruption.

It had been said, that the *administration* and its friends, had rallied round this Bill: for what purpose, or with what views, had not been clearly stated or defined. For his part, Mr. K. thought, the exercise of the little patronage, of making three distinguished men of the law, at once, *independent for life*, could not surely make this Bill an object of Executive favor; and he thought, if there was any criterion to judge of the propriety of the intimation, it was refuted by the chequered complexion, of both the friends and opponents of the Bill; which, like that administration itself, (he meant no offence by the allusion,) reminded one of the description, once given by a celebrated Parliamentary orator of England, of an existing administration in that country,—it was a cabinet, curiously inlaid—a tessellated pavement—a piece of diversified Mosaic. He would not pursue the quotation further, he said, or attempt to say it was *without cement*. On the contrary, standing there in the capacity of a Representative of the People, and wholly regardless of any other consideration, than that of their interest and happiness, he would humbly offer the expression of his hope—nay, of his sincere and ardent wish, that, in the further development of its views and measures, that administration would prove itself *both sound to touch, and safe to stand upon*.

Mr. K. professed not to be, at this time, enlightened enough to know how far, since the period of their meeting there, gentlemen had permitted themselves to be classed as the partizans or opponents of this administration. Old parties, (he thanked God!) were done away, and the caution, which had been attributed by the gentleman from North Carolina, to the gentleman from Massachusetts—if, indeed, the coiled adder lay in the ashes of the act of 1801—had been prudently observed by him. This case had been fairly and properly discussed. He expressed his hope that the bitter feeling of former conflicts would be allowed to repose forever; and he should be equally happy, in seeing that the turbulence of new party feelings should be long repressed. It surely would not comport with the dignity of the House—because the ancient feuds of the Montagues, and the Capulets had subsided—that they should manifest an impatience to place themselves in the humble attitude of the retainers, or *sworn* enemies of the *New Prince upon the throne*, (as gentlemen have been pleased to express it.)

The honorable gentleman from Pennsylvania, one of the champions of the old Federal faith, in his calm and dignified manner, had given out to them the proper view of their duty, in this new political crisis, as it was called, and of the fair ground of mutual conciliation; and that simply was, when the measures of Government conform to the true interests of the nation, we should give it a cordial and steadfast support.

Mr. K. did not see the occasion for the direful forebodings thrown out the other day in debate, that this nation must, ere long, be shaken to its centre! He thought that no nation had ever arrived at a period of so high and well-founded anticipations of glorious prosperity and permanent happiness, as the present generation have before them. They had every thing to hope, and, if they were true to themselves, but little to fear. To the Judiciary Mr. K. looked, for restraining every branch of this Government, as well as the State sovereignties, within those orbits which, by the common agreement and mutual concessions of the whole People, had been assigned to them. He prayed that it might be permitted to remain on that solid foundation on which the noble fabric had so long rested. By the provisions of the Bill upon the table, no demolition of it was intended. It would be preserved entire, in its general plan and elevation, and a new arrangement only, of some of its apartments, was designed, to suit the increase of the great family. Its symmetry, and the solidity of its foundations, would be neither defaced nor disturbed. He begged, then, that the House would reject the scheme of any fanciful architect, who would raze it to the ground and erect it anew. Mr. K. concluded, by thanking the House for their polite attention, being sensible that, from the embarrassment incidental to his novel situation, he must have delivered a very disjointed argument.

Mr. FORSYTH then rose, and said, that he had one or two amendments which he wished to present to the consideration of the House. The first went to change the whole system proposed by the Committee on the Judiciary; and he could not but express his regret, that the gentlemen who had addressed the House, had not confined the course of their remarks to that which was the real question before it. He believed there existed a perfect union of sentiment, as well among the opponents as the friends of the bill, that some alteration in the present judicial state of the country was greatly needed, and the only question, from the beginning, had been, as to the form now to be given to the Judicial System of the United States. The House had made in this question some progress; it had decided that it would *not* adopt the system of 1819. It had, thus, clearly indicated its determination not to appoint a new class of Judges, whose employment shall be confined to the performance of Circuit duties. It had advanced so far, and, in his judgment, correctly. It has declared, that it prefers even the present bill, to the system which was introduced in 1801, and again proposed in 1819.

The proposition, said Mr. F., which I have now to submit, is of a different character. It is obvious, that we have very abundant machinery for supplying the judicial wants of the People of these States. We have a Supreme Court; we have numerous District Courts. The union of the justices and judges of these two, forms a set of Courts of another description—the Circuit Courts. Now, sir, it appears to me, from an attention to the disease which is complained of, in various part of the country, that an *arrangement of the District Courts* already established, may be made to furnish an easy and effectual remedy; that it will establish a system for the administration of justice, that will meet all the wants of the nation, that will be uniform in its character; and, as far as is possible in the nature of things, will secure an equal enjoyment of judicial privileges throughout the Union. This system will unite several District Judges into one Court, for the performance of Circuit Court duties. The great

difficulty which such a proposition has to encounter in this House, is that which arises from the view entertained by some gentlemen, of the great importance of imposing Circuit Court duties on the Judges of the Supreme Court. Without admitting the necessity of this, I admit its importance, and I have distinctly seen, that it is not likely the House will agree to separate these Judges from those duties. My plan, therefore, provides for this; it requires the Justices of the Supreme Court to aid in the deliberations of the Circuit Courts I have just proposed, once in every year. This plan will be perfectly uniform in its operation; it will embrace every portion of the Confederacy. The three Southern States, the three States in the Northwestern angle of the Union, will not be excluded from it; the Northern District of New York, the Western districts of Pennsylvania and of Virginia, will all be included in it; it can be easily extended to the new States which are to be formed from the Territories. It extends alike to all.

The only objection I anticipate, is one, not indeed very complimentary to the judicial character of the country, viz: That the District Judges, now in commission, not having been selected and appointed with a view to the performance of such duties, will not be competent to a reputable and satisfactory discharge of them. Sir, this may be very true in fact, for aught I know; but, if it be true, the evil will be temporary and transient; every new appointment will afford a chance for lessening it, and the effects of time and practice and increased salaries, will improve the Judges. But, Mr. Speaker, are not the District Judges, by our present system, called on to perform these very duties, when the Judge of the Circuit Court is absent? And does not their duty, even in a District Court, require them to possess, in fact, all the learning which is requisite to Circuit Court duties? Does not their judicial authority embrace within its range, all the great interests of the People of these States? It appears, therefore, to me, that this objection ought not to deter us from adopting the system proposed. The union of a competent number of District Judges, though they may not, severally, be equal in knowledge to a Circuit Judge, yet, collectively, will compensate for the want of one; more especially as a Circuit Judge is proposed to be united with them once in every year. Without entering at present farther into the subject, I shall now move you the following amendment to the bill: Strike out all after the enacting clause, and insert, in lieu thereof, the following:

"That, for the better establishment of the Circuit Courts of the United States, the said States shall be, and hereby are, classed into seven circuits, in manner following, that is to say: the first circuit shall consist of the States of Maine, New Hampshire, Rhode Island, and Massachusetts; the second, of the States of New York, Vermont, and Connecticut; the third, of the States of Pennsylvania, New Jersey, and Delaware; the fourth, of the States of Maryland, Virginia, and North Carolina; the fifth, of the States of South Carolina, Georgia, Alabama, and Tennessee; the sixth, of the States of Indiana, Illinois, Missouri, and Ohio; the seventh, of the States of Kentucky, Louisiana, and Mississippi.

"Sec. 2. *And be it further enacted*, That the Circuit Courts in each of the said circuits, shall be composed of the Judges of the District Courts of the several States, included within the said circuits, respectively, aided, at least once in each year, by one of the Justices of the Supreme Court."

Mr. WEBSTER said, that the project now recommended by the member from Georgia, was not entirely new. Such a scheme had been contemplated, among others, at different times, and, he believed, that a bill, founded upon the principle of it, was reported to the Senate at the last session. The Judiciary Committee had considered it, and thought there were great objections to it. Without alluding to what had been said of the manner in which the District Courts were constituted, which, if it were an evil, was but a temporary one, there were other objections more difficult to be surmounted. The District Courts are Courts of the first instance, in all cases of Admiralty and of Revenue. In addition to their stated terms, they hold special sessions upon short notice. In effect, the District Courts are, and ought to be, in the commercial cities, always open. It was for this reason that the law required the Judges to reside in the Districts. In point of fact, they are occupied a great portion of the time in some of the commercial States. He had some time ago ascertained that the District Judge of Massachusetts had sat in court one hundred and fifty-eight days in the year, upon an average of eight years. The venerable Judge of the Eastern District of Pennsylvania actually is occupied in Court not much less than nine months in the year; and he supposed the duties of the Judge must be equally constant in New York, although he was not particularly informed. Now, this amount of business at home, and more especially this liableness at any day to be called upon at home, on official business, seem to render it impracticable to send the District Judges into Circuits in other States.

But the plan which the gentleman from Georgia recommends, proposes, that the Circuit Court, constituted by this union of the District Judges, shall be aided once a year by the presence and assistance of a Judge of the Supreme Court. For himself, he confessed frankly, he thought nothing much worse than this alteration from term to term, in the character and composition of the Court. They would be, in effect, two tribunals, each acting in the progress of the same cause. In every case not begun and ended at the same term, those would come in to decide at the end who had not heard the beginning. In equity causes, admiralty causes, and others which usually make progress by regular stages from term to term, with a constant succession of interlocutory orders and decrees, he thought it would be very difficult to go on with a Court constantly changing. Besides, one party might in all causes, prefer one Court and the other another, and there would be a perpetual scuffle to bring on or put off causes, from motives of preference for one or the other tribunal. He thought this would be worse even than the old system, before the law of 1793 was passed; and if any body wished to know how bad that was, he would refer him to the debates in 1802, and to the observations of a great man, now no more, a predecessor of the gentleman from Delaware. For his own part, Mr. W said, he was persuaded, that, however the Circuit Court was constituted, it ought to be composed, from term to term, of the same persons, like other Courts.

Mr. BARTLETT observed, that the proposition of the gentleman from Georgia embraced, in part, the principle of that which he had intended to have renewed. He reserved it, however, for some other day, as he did not wish, if the bill must pass, to create any unnecessary delay, and as it was not his purpose, at any time, to detain the House by a discussion of it, believing it would gain more by such reflections as time might allow for it. The proposition now before the Committee was not quite the same as his, and some of the arguments brought against this amendment, would not apply to his. He had listened with attention to the debate, hoping that some system might at length be elicited, which would extend to all parts of the United States a perfect uniformity in the administration of justice. He had not been much influenced by a consideration of the amount of business said to have accumulated in the Courts in one portion of the United States. He cared not, so far as this argument was concerned, whether there were one or one thousand of such cases; they presented nothing which he considered as very formidable: for he had himself seen 1200 causes swept off the docket at a single term. But with him it

was a sufficient reason for some change of the system, that the system itself is not uniform in its operation. He would not answer those who ask for more of the United States Courts, by saying to them, that, at the same moment, you offer to the House, in your other hand, memorials of State Legislatures praying our protection against the tyranny and usurpation of the few Judges we have sent you. If the Judges do wrong, let them be punished, and, if the citizens need and wish more of them, let them have them. The States which suffer from inequality have a right to demand that they should be placed upon the same footing with the rest of the Union—and he would grant them what they ask. In order to give this uniformity, the bill proposes to add three new Judges to the Supreme Court—and, if adding to the number of the Judges of that Court, is the only way to remedy the inequality now experienced, he should be willing to go for the whole of the number proposed. When the bill was first presented to the House, he thought better of it than he now did—and he would not say, even now, that if no better plan could be devised, he should not vote in favor of this, though it would not be without much reluctance. It seems to be admitted on all hands, that the proposed increase is not required for the better performance of the appellate duties of the Court. It must, too, be a temporary expedient, and was not, as a system, capable of expansion with the expanding interests and multiplying wants of the country. Other gentlemen preferred to the present proposal the Circuit system of 1801. But the advocates of this bill object against that system, that it creates a number of judges greater than is now wanted—and that it tends to injure the usefulness and prostrate the character of the Supreme Circuit Judges, by withdrawing them from the performance of their more active duties. The objections against the one and the other of these two systems had been ably argued—it was not his present purpose to recapitulate, or particularly to notice the arguments on either side. But he asked whether it followed, that, if we touch this subject at all, we must adopt the one or the other of these two systems? We have heard only of Circuit Judges, and of Judges of the Supreme Court: are there no others who may be employed to perform the duties required by the exigencies of the country? We have at present twenty-eight District Judges, scattered over the whole extent of the Union; they receive their appointment from the United States, and their presence in their several districts cannot be dispensed with; because a portion of their duties is of a local kind. Where will be the difficulty of imposing on these District Judges the labor now *performed by the Judges of the Circuit Courts?* The objection that the District Court Judges cannot be removed from their district duties, does not apply to the plan he had proposed: for it does not require such removal. Why need they be associated in order to perform the duties of a District Court?

Are these Judges at present so burdened with occupation, that it will be inconvenient to impose on them any additional duties? Their burden of duty may be great in some particular districts, but in that part of the country where he resided the District Judges were all dying with *ennui* for want of something to do; they were rusting out; and, from the mere want of occupation, had already lost much of the powers of their mind: for the mental faculties are as much impaired by indolence as those of the body; and he believed it might be safely received as a proposition generally true, that our District Judges are not at present overburdened with official labors.

It is not an answer to this proposal to say, that the men who now hold this office are not competent to the discharge of Circuit Court duties. Let Congress prescribe the duties, and either the present Judges will be excited to their performance, or they will have to surrender their places to others—the requirement of active and difficult duties either makes men competent, or drives them from their stations. If more compensation is required, let it be given. He did not hold that there was any economy in a cheap administration of justice. The plan must not be rejected under the pretext that we have not men competent to fill the stations it contemplates. They are selected now from the whole range of the United States, in the same manner exactly as the Judges of the Supreme Court itself. The only difference between them is in their compensation and the extent of the duties confided to them; but mere compensation will neither create talent nor always ensure it. As to the field from which the District Judges are selected, the country has the same chance of obtaining great men as they have in the Judges of the Supreme Court. There is nothing in the mere title. He had heard enough, and more than enough—he would not say of adulation—but certainly of very high commendation, in relation to our Supreme Court Judges. For himself, he believed that he entertained as high a respect for those distinguished men as any other member on this floor; but he felt assured we need not flatter them for justice. He believed there was no magic to create intellect, in the wax or parchment which took the impression of "Supreme," rather than "District." But if the District Judges are insufficient to have Circuit duties confided to them without reserve, where is the difficulty of having their decisions revised once a year by a Judge of the Supreme Court? There was no necessity of his being associated with the District Judge, and made to constitute a component part of the same Court. Let there be a separate and independent tribunal. The associating of a Supreme Court Justice with the District Judge, in order to constitute a Circuit Court, was an anomaly in jurisprudence which he could not approve. But admitting, for argument sake, that these Circuit Courts, with their duties performed during a great part of the year by a District Judge, should prove to be not the most perfect that could be desired, where is there any compulsion on suitors to carry their causes to the United States' Courts? In very few cases. How have these causes, of which so much has been said, come to accumulate in Kentucky and Ohio? Entirely through the election of the parties concerned. there has been no compulsion upon them to go to the Federal Courts; other tribunals were open, and they could have had their causes determined there. If a muster roll should be formed of our judicial army, he was persuaded there was no gentleman but would be surprised at the amount of their numbers. Of Judges of the Supreme Court of the several States, there are at present ninety-nine in commission. The Judges of Courts of Common Pleas amount to nine hundred and eighty-six; to which, if we add the local magistrates of one hundred cities and boroughs, we shall have an aggregate of eleven hundred and eighty-five. To this may be added thirty thousand magistrates, having, in most of the States, jurisdiction in civil and criminal cases to a certain extent, concurrent with the other Courts. This is exclusive of the Judges of the Federal Courts, which amount to thirty-four. It would seem, then, that there cannot be a necessity for increasing the number of our judicial officers, if their duties can be properly distributed.

There was one objection he had to the proposed increase of the number of our Supreme Judges, which he would not attempt to urge, but which was not without its influence upon him. He was unwilling that, from any act of the House, the Justices of the Supreme Court should infer that their decisions, grasping for jurisdiction, found any sanction here. The Constitution allows citizens of different States to go into that Court under certain restrictions. And he had known the fictitious action of ejectment used to prostrate all restriction, and a Justice of that Court to hold, that the *nominal* lessee was a "citizen of a different State." To such decision it was his

duty to submit, but against such doctrine he could not but hold his own opinion. He was opposed to giving even the color of a warrant to any extension of their jurisdiction. The proposition he had submitted avoided many of the objections which had been urged against the bill. It goes to furnish the District Judges with fuller employment: it leaves to the Judges of the Supreme Court enough of circuit duty to keep their active habits unimpaired, and to bring them in occasional contact with the People and the Bar: it was a system capable of expansion with the increase of population; it rendered the administration of justice uniform throughout all the States of the Union.

Mr. FORSYTH rose, amidst loud cries for the question. He said he was sorry to perceive gentlemen so very impatient: he hoped, after so much time had been wasted in shewing, what nobody denied, the existence of the wants and sufferings of a portion of the United States, that, at least, some time would be allowed for considering how those wants could be best supplied. I am told by the gentleman from Massachusetts, that the plan I propose has already been considered by the Committee on the Judiciary; and he has submitted to us the reasons which induced them to reject it. I have attentively listened to these reasons, and with all respect for that Committee, I must think, that, in forming their judgment, they have come to a very erroneous conclusion. That the reasons the gentleman has given are not satisfactory, I shall endeavor to shew. The first objection is, that the District Judges are already completely occupied, and have no time for the performance of any additional duties. I deny the fact—it has not been, and, I believe, cannot be proved. I appeal to the statement of the honorable gentleman himself, to prove that such is not the case. He tells us that those Judges, in Massachusetts, are employed 158 days in the year. Well, sir, then the rest of the year they are unoccupied. Is there not time enough left for them to hold Circuits Courts? But, the gentleman says, they are bound by law to reside within their Districts. Well, sir, and if they hold Circuits Courts occasionally, will they not still be bound to reside in their own Districts? They go out of their Districts occasionally, as it is. I presume there is not a District Judge in the United States, who *never* leaves the bounds of his District. But it seems to have escaped the acuteness of the honorable gentleman, that this is an argument, not to the system, but only to some of its details. The time these Judges will have occasionally to leave their Districts will depend, of course, on the number of Circuit Courts that may be appointed; if four is thought too many, appoint three; if three is too many, appoint two.

But the gentleman asks what will become of a Court whose agents are to be continually changed? I cannot perceive any such alarming difficulty in this consideration. The Circuit Court of the United States, is, in this respect, now a sort of mule court. I mean no disrespect to District or Supreme Judges; and if this plan shall be adopted, the Circuit Courts will be mule courts only once a year. What formidable consequences are likely to ensue? The Circuit Court will decide all causes according to the rules of the Supreme Court of the United States. No great difficulty is likely to be found in the application of these rules; and if there should, an appeal will always lie to the Supreme Court. The party aggrieved, or who supposes himself so to be, can be secure of a fair and deliberate rehearing of his cause.

The gentleman has advanced another objection which, like the former, is an argument not to the system, but to its details. It is the re-hearing of admiralty causes. Sir, will there be any more difficulty in re-hearing these before three District Judges and a Circuit Judge? He says the difficulty will lie in the re-hearing of evidence. Does not the Circuit Judge now examine the evidence, in such causes always in writing?

But these matters of detail are not the question before us: the question is not, is the plan I propose the best, but it is a question of comparative merit. I shall, therefore, examine briefly the evils which are to be remedied, and shall then attempt to show that they are all remedied by the plan I have proposed, and that they will not be remedied by the plan in this bill.

In the first place, it will prevent the delay of justice, the arrears of business which are now said to occur in the Circuits Courts. The friends of the bill tell us, that the Judges of the Supreme Court have so great a mass of duties to perform on their Circuits, that they have not sufficient leisure to attend to their duties here. The system of the bill leaves this matter precisely where it was. It does not impose any of the duties, which now devolve on the seven Judges of the Supreme Court, upon the new Judges which are proposed to be added; the old Judges' tasks remain as they were; except Judge Todd, they experience no relief whatever. To afford this relief to all, a new division of the entire number of Circuits, both new and old, is necessary; or if we refuse to do this, the diminution of their Circuit duties. The bill does neither of these; the system I propose remedies the evil. By it one half of the Circuit duties of these Judges is taken away; this is a positive benefit; and is it purchased by incurring any disadvantage? No, Sir. The Judge of the Supreme Court still goes on Circuit; he still gets all the practical knowledge arising from Circuit duties; he still carries the knowledge of local laws, and whatever other light he may have collected on the Circuit, with him to the bench of the Supreme Court; he sheds over the States the light of his information, and carries to them the weight of his influence. The plan leaves these advantages untouched, while at the same time it relieves the Judges of half their Circuit burthens. It also remedies another of the evils complained of, and that which has been made prominent throughout this debate; it prevents the accumulation of causes which is now said to exist in Tennessee, Kentucky, and Ohio. We are told this accumulation has reached a vast amount, and that the business in the Circuit Courts cannot be done for want of—what? A Circuit Judge? They have one. Yes, but he is sick: well, Sir, this bill does not cure him. It is said that one person could perform all the duties in Tennessee—grant it, Sir; but still they have a sick Judge, who can perform no duty. On the plan I propose, there can be no accumulation. The illness of one Judge will not prevent the rest from doing their duty, nor interrupt at all the course of judicial decision.

There is another advantage attending it. It provides alike for the wants of the whole United States—it does not leave the whole Northern District of New York, the entire Western District of Pennsylvania, and the District of Western Virginia, to come hereafter with the same complaints as are now urged on our attention from Kentucky and Tennessee. But its chief advantage lies in this, that it supplies all which the Judges need, without increasing the number, and thereby setting a dangerous precedent, which, if followed, must convert the Supreme Court into a species of mob. Gentlemen tell us that seven is a sufficient number for the performance of the business of the Court; but that it is possible to get through its business with ten Judges. Where are our steps to be arrested? The answer is, at the point of practical inconvenience. Well, sir, we can all see such a point in perspective. Suppose ourselves arrived at it, with fifteen or twenty Judges on the bench. The Constitution, according to our reading, says, once Judges and always Judges; unless they subject themselves to impeachment, their power and their salaries must continue unimpaired; there is no remedy but death; nor is it so easy to overturn a long established system, which becomes more complicated as it grows older. The present is the proper time, the occasion favorable. The pro-

position is to make a radical change in our judicial system; let us not wait till the evils now existing, which must certainly grow, become intolerable. Every hour will produce additional difficulty; time consecrates all systems in the eyes of large portions of men; the present moment is propitious; let us use it to create a system capable of expansion, without violence, to the increasing wants of the People, which shall embrace every new State that may be admitted into the Union, as soon as her Political Constitution is formed.

Mr. WEBSTER said, he would take that opportunity of putting a different aspect, if he could, upon two or three ideas which had been thrown out in debate. It had been argued against the bill, that it did not accomplish that uniformity which it professed, inasmuch as it still left the Northern District of New York and the Western Districts of Pennsylvania and Virginia, with Circuit Courts of which a Supreme Judge did not form a part. He believed that nearly every gentleman who had spoken against the bill, had stated, or repeated this objection. In answer, he would observe, in the first place, that the bill did not promise an absolute uniformity. It was not therefore liable to the objection of not accomplishing what it professed. But if uniformity be so great an object as has been urged, and if something must be sacrificed to that end, what sacrifice shall we make? Shall it be of the greater interest, or the less? Shall we not rather re-unite these Districts, if we held uniformity to be indispensable, even at the risk of some inconvenience to them, rather than remain under the pressure of far greater inconveniences? But let us look more particularly to these instances. As to New York, some embarrassment grew up there several years ago, from temporary causes. At first the remedy was sought by the appointment of an additional District Judge. Afterwards, the State was divided into two Districts, and the District Judge of the Northern District was authorized to hold Circuit Courts. Probably, if the Districts were now reunited; and the District Judge were allowed a proper compensation instead of the present very inadequate salary, with authority to hold District Courts, occasionally, in the Western part of the State, for any revenue cases that might arise on the frontier, justice would be better, as well as more cheaply administered, than at present. If this be not so, and the separation of the Districts be necessary, it is not impossible for the Judge of that Circuit to hold Circuit Courts in the Northern District. He passed through it, Mr. W. believed, every year, in his way to Vermont. But suppose this were all otherwise, did it follow, that, because New York, having one regular Circuit Court, chooses to have a new District with a District Judge only, that therefore other States shall have no Circuit Court at all, unless New York can have two? As to the Western District of Virginia, the opposers of this bill have themselves shown that there is little or no business in that District. Its re-union, therefore, to the other District of Virginia would not be attended with great inconvenience; and although he did not propose such reunion, yet he wished to repeat, that, if one must make sacrifices for the sake of entire uniformity, this re-union would be one of the least, and ought, therefore, to be one of the earliest. There was more reason, he thought, for creating the Western District of Pennsylvania, than existed either in New York or Virginia. Its re-union with the Eastern District might not now be easy or convenient; but perhaps, hereafter, it might not be impracticable to give to that District a regular Circuit Court. At present, we hear of no complaints respecting the administration of justice in that quarter.

But it had been again objected to this bill, that, while it proposes to remedy existing evils, by extending the Circuit Courts, these very evils are admitted to exist with the greatest aggravation, in those States where Circuits Courts have been already established. It is said, and truly, that the greatest exigency for some further provision arises in Kentucky, Tennessee, and Ohio, and then it is said, there are, and for a long time have been, Circuits Courts in these three States. And this, it is supposed, shows that the remedy is not adequate to the evil. We have been asked, said Mr. W. whether it is expected that this bill will cure the infirmity of the Judge of the seventh Circuit? No, sir, but it relieves him of two-thirds of his labors. It assigns Tennessee, on the one hand, and Ohio on the other, to new Circuits, with new Judges, leaving to him only Kentucky and Missouri. It is in this way that the bill proposes to leave the Judge of the seventh Circuit. It should not be considered, in all fairness, that the three States now composing the seventh Circuit, have ever had a regular administration by Circuit Courts; the duties imposed upon the Judge could not be performed, and have not been performed.

Again it is said, that this bill makes no provision for the arrears of business in the Supreme Court itself. The answer is, that another bill accompanying this, does propose a remedy for that evil; and it is not yet shown that that remedy is not likely to be adequate. And here, sir, I must be allowed to express my astonishment at the exaggerated statements which have been made respecting delays of business in that Court. It has been suggested that causes do not come on to be heard there until the fifth year; and the honorable member from Rhode Island has gone on to calculate what sums are annually paid to counsel for term fees in this long arrear of causes. That honorable gentleman, I believe, is just about to commence practice in that Court. I would not willingly damp the ardor of his expectations; but he will allow me to say, that, notwithstanding what he has heard of term fees and retainers, he will not, most likely, on entering that Court, run into such a golden shower as he may anticipate.

In regard to the arrears of business in that Court, sir, it is to be remembered that, some years ago, from the absence and indisposition of the Judges, a whole term was lost. There was then a great mass of business growing out of the war; and yet, I believe it is not more than five or six years since causes came on to be heard there sometimes, at the term to which they were originally brought. There are now 140 causes on the calendar. The Court, I believe, usually reaches from the seventieth to the ninetieth number; not indeed hearing every cause in its course, because it often happens that parties are not ready for argument. I know no reason why the Court should not assemble earlier, and by so doing, I believe the business of the Court may be despatched without withdrawing the Judges from their Circuit duties.

Remarks have been made, sir, in the course of the debate, upon the great number of Judges existing in this country. It is very true, that the judicial establishments of the States, all taken together, shew a great number of Judges. But perhaps we should find the same result if we were to look at the aggregate of any other four-and twenty Governments that we may find in the world. Establishments of this kind cannot be in proportion to population merely; they depend on the number of independent sovereignties, extent of Territory, and other causes. But if we were to admit that State policy had too far extended the number of State Judges, it would not have a very close bearing upon the question now before us. Our inquiry is, whether our own system be competent to discharge the jurisdiction which the Constitution and laws confer upon it? And here it is said, that the United States have already fifty Judges. To make up this number, however, the Territorial Judges are counted, who do not belong to the Government proper of the United States, but who discharge in the Territories the same duties that State Judges perform in the States. We have

one District Judge in each State, and in three of the larger States, two. We have then the Judges of the Supreme Court. This is our whole Judicial corps. We have been referred to England and to the mass of business despatched by the twelve Judges of the Courts at Westminister. But the analogy is very remote, and the example is not fit to guide us. How is it, sir, that so much justice is administered by the Courts at Westminster? Simply because they are of general jurisdiction, and that every man in the kingdom may be brought, by original process, to their bar. If a citizen of York, or of Newcastle, be sued in the King's Courts, he must appear at Westminister; and if the cause of action be transitory, he may be put to try it before a Middlesex jury, unless indeed the plaintiff may have preferred to take the cause for trial to Devonshire or Cornwall. But such is not our system. The law here does not allow any man to be sued out of the District in which he lives, or is found. There must, therefore, be competent Courts in each District. Gentlemen who have brought against our Government the reproach of having too numerous a corps of Judges, would not, nevertheless, readily consent that their constituents should be liable to be sued in any part of the Union, and bound to go from Carolina to New York, or from New York to Washington, to answer to original process. Our system is accommodated to the convenience and wants of the community. It is connected in character with other parts of our political institutions, and questions respecting its organization ought to be treated as American questions merely.

Mr. MERCER, said, that he owed to the House an explanation. He had been charged with having misteken facts, and falling into numerous errors. He had made no misstatements, and there was but one mistake of the slightest consequence to his argument, into which he had fallen, and this he had only recently acquired the means of correcting. [Here Mr. M. made some explanations as to the number of causes which now appeared on the docket of the Supreme Court, as coming up annually on appeal; and showed the reason why the number recently reported by the Deputy Clerk did not present a just representation of the actual state of the business of the Court. Instead of sixteen causes which had come up since the last term, there would be, before the end of the ensuing, sixty.] He then attempted to shew, from the time of adjournment of the Supreme Court, that there would not be time enough, according to the arrangements in the bill, for the Supreme Judge who held the Louisiana Circuit Court, to reach Washingon by the ensuing term of that Court. He concluded that, if to avoid this, the Judge held his Circuits in the Autumn, his life would be endangered by the climate of New Orleans. And for what valuable purpose was he to travel fifteen hundred miles, from Louisiana to the Court at Washington? To instruct the Supreme Court in the civil law, or to inform them what was the peculiar law of New Orleans. When he arrived he would not, he ought not, to be allowed to decide again the causes which he had decided below, and in which alone the Civil law of Louisiana was concerned. To what end was this labor? Merely to procure local knowledge for the Supreme Court. In the course of three years we shall have another Circuit for another Judge in Florida, and whoever receives the appointment may be considered as condemned under sentence of death.

Mr. ALSTON had hoped, that the amendment offered by his friend from Georgia, (Mr. FORSYTH) would have reconciled all parts of the House, and have been acceded to, and regretted very much that in this he had been disappointed. Before we are called upon to make so important a change in the Judicial establishment of the United States, we ought, at least, to be told the benefits that would arise from the change. The gentleman from Massachusetts, (Mr. WEBSTER) had just delivered a very able and impressive speech, but he hoped the House were not to be carried away by it: for, if gentlemen would examine his arguments, it was clear, that the only evil the gentleman complained of, would not, in the smallest degree whatever, be remedied by the bill upon your table. The heavy docket in the Federal Court of Kentucky, so much complained of by the honorable gentleman from that State, (Mr. CLARKE) could be fully as well relieved under the present system, as by the bill upon your table. The heavy docket of the Court of Kentucky, was all the gentleman from Massachusetts seemed to wish to relieve. Now, sir, let the gentleman so arrange the Circuit Court of the West, that the Court of Kentucky shall be the last in the present circuit, and will not the evil be as completely removed as it will by the bill upon your table? The Judge can then hold his term until this heavy docket, so much talked about, is completely relieved from its burthen. Mr. A. insisted it would be the case: for there would be nothing to interfere. The Judge might hold the Court just as long as he pleased: nothing would be wanting but time sufficient; and, by such an arrangement, that would not most certainly be given.

How, Mr. Speaker, is the bill under consideration, to improve the Judicial system of the United States? Some gentlemen had contended that it was no change of the system, but merely an extension. He, Mr. A. thought very differently. What, place ten instead of seven Judges upon the bench of the Supreme Court of the United States, and call it an extension of the system only? Strange, indeed, sir. May not the ten completely reverse every important decision which had been made since the Judicial system had been in operation? Most certainly they might: and although gentlemen had disclaimed any such idea, and he felt himself bound to believe them sincere, yet he could not help believing, that a hope by some existed, that such would be the effect of the change: for he contended, that the ground so much insisted on by the gentleman from Massachusetts, (Mr. WEBSTER,) and others, of a despatch of business in the Western Circuit, could not be the only cause of a desire to make such an important change in the whole Judicial system. Once adopt the bill upon your table, pass the law, create ten Judges upon the Supreme bench, and the whole system of decisions, which has drawn forth so many high eulogiums, may be done away. The gentleman (Mr. WEBSTER) had contended, it was necessary to send the Supreme Judges into the several States, for the purpose of learning the local laws and decisions of the several States. He thought there was no weight in such an argument. In fact, he thought it made more against them than in their favor: for, if there was any ignorance on the bench, which was to be removed by sending a Judge to school, that, when that Judge returned to the Supreme Court, he might bring with him information to sustain him in his erroneous decisions below, even if it were corrupt, the rest would not be able to detect him. He really thought gentlemen might give up the idea of teaching the Judges of the Supreme Court wisdom, by sending them into the different States to learn it.

Mr. A. objected to placing ten Judges on the bench of the Supreme Court: it would certainly be too unwieldy for the ordinary transactions of the business of the court; they would not get along with business equal to a less number. For himself, he would rather have but one than ten: for the opinion seems to obtain, that once a Judge, always a Judge. They are but men; after all: they are liable to all the infirmities of man, and the more you increase their numbers, he thought, the worse it would be. Again, sir: if the system, and the arguments adduced in favor of this bill prevail, you ought not to stop at ten Judges: for it would take at least twenty to administer justice, upon the plan of the bill, over this wide extended

continent. Mr. A. then cautioned gentlemen friendly to the new order of things—gentlemen friendly to the new administration, just about to be set in motion, not to create an army of Judges on the Supreme Court. They ought to remember that, in a former administration, an army of Judges was created, expressly with a view to keep an ascendancy, in that department of the Government, of the then prevailing opinion. Yes, sir, I well know that such was the object of the then adopted Judicial system. An expiring administration wished to strengthen their party, in the Judicial Department of the Government, in every State in the Union. It was avowed at the time, by the then friends of said administration, to keep in check the Legislature; in fact, to over-awe the deliberations of Congress. That administration went out of power, and the army of Judges they created, soon followed them. The particular friends of the new administration had better take warning by those who had lost power, by creating an army of Circuit Judges, lest they should share their fate, by creating an army of Judges of the Supreme Court.

Mr. A. said, although the gentleman from Rhode Island, (Mr. BURGES) and himself, would vote alike upon this occasion, he could not agree with him respecting the golden times of that administration which passed the midnight Judiciary. That act was passed to bolster up a dying administration; and, if gentlemen were not cautious how they created an army of Judges on the bench of the Supreme Court, the new administration, now going into power, would, in less than four years from the present time, share the same fate.

Mr. A. then contended, that the bill upon the table was not calculated to answer the purpose for which its friends avowed: for it was evident to all, that ten Judges on the bench of the Supreme Court, were not as well calculated to facilitate the business of the Court as a less number, and he thought he had demonstrated that the bill was no better calculated to relieve the People of Kentucky of the great grievances under which they labored, than the present system was.

Mr. A. concluded by observing, that he did not rise for the purpose of going at large into the subject: his object was to ask the House to stay their hand—to pause before they acted: that ten Judges on the bench of the Supreme Court was more than was wanted for the correct transaction of the business of the Court: that, by waiting a few days, and looking at the amendment offered by his friend from Georgia, we might all agree upon a system. He, therefore, moved that the bill, together with the amendment, be laid upon the table; and that the proposed amendment be printed.

The motion of Mr. ALSTON was decided in the negative. And the question recurring on Mr. FORSYTH'S amendment—

Mr. LIVINGSTON said, that, as the honorable gentleman from Virginia appeared to feel some scruples of conscience on the ground of murdering the Louisiana Judge, he felt obliged to say a few words for his relief. He could assure that honorable gentleman, that the climate of Louisiana, until the end of June, was as healthy as any in the world. The first three circuits assigned him in the bill, would not occupy him more than six weeks or two months. There was, therefore, ample time to get through all the business of these three circuits before the month of June. In the Autumn, the Judge, beginning at the other end of the State, can come Northward on the remaining three circuits, and finish these in time to arrive here at the opening of the Supreme Court; and if, by chance, the yellow fever happens to prevail at Natchez, so as to interrupt the Circuit Court at that place, it would be only what might happen to any other part of the country, and had, in fact, often happened in other States.

Mr. FORSYTH said, that so much respect was paid, (and deservedly) to all the statements made by the honorable member from Massachusetts, that he thought it necessary the House should distinctly understand what would be the effect of this bill on the Northern part of New York, and the Western parts of Pennsylvania and Virginia. There was evidently a mistake on this subject among all the opponents of the measure, as well as others. These portions of the Union have indeed what is called Circuit Courts; but, if he rightly understood the matter, no Judge of the Supreme Court ever sits there: if he was wrong, he hoped to be corrected.

Mr. WEBSTER said the gentleman was entirely correct. They have District Courts with Circuit Court jurisdiction.

Mr. FORSYTH continued. If so, then he did not understand in what respect he had been in error in the argument. I said, (observed he) that the bill leaves those parts of the country in the same Judicial situation as at present—and so it certainly does. The gentleman says that he shall propose, by way of remedy, that these separate districts be abolished. Sir, that is another matter. All I wish is, that the House may be duly impressed with the recollection, that the bill leaves as large a portion of the United States without its benefits, as that to which it will extend them. The plan I propose embraces the whole Union, and every part of it.

The question was then taken on Mr. FORSYTH'S motion, and decided in the negative.

Mr. FORSYTH renewed the motion he had before made in Committee of the Whole, to add a proviso to the bill.

On this question, he demanded the yeas and nays: the call was sustained.

The question being on agreeing to Mr. FORSYTH'S proviso,

Mr. SLOANE demanded the *previous question*, the effect of which would have been to exclude all amendments.)

The House refused to sustain the demand, by the requisite number of a majority of those present. When the House adjourned.

WEDNESDAY, JANUARY 25, 1826.

CONGRESS OF PANAMA.

Mr. MINER said, he had two resolutions which he wished to offer to the consideration of the House, which he hoped there would be as great unanimity here, as he presumed to believe existed without these walls. They referred to a subject, in his opinion, of great importance; one in which the whole American People took a deep and lively interest. The subject he referred to was the relation to the new nations which had arisen, and were rising up, at the South, on this continent. But a few years ago, within the recollection of every member on this floor, even of the youngest, the whole of that vast country was enchained in the fetters of despotism. The hand of oppression pressed heavily upon them. Not a ray of light or hope broke in to cheer the gloom that enshrouded them. But what prospect, asked Mr. M. do they now present? It is one of the most delightful and animating that the friends of liberal principles and the rights of man could look upon. By a succession of the most glorious revolutions the world had ever witnessed, all that vast extent of country was now spotted with free, sovereign and independent nations. The People rose in their strength, dashed the fetters of their tyrants to the earth, proclaimed the glorious principle of the equal rights of man, and on this sacred foundation, established free, representative republican forms of government. The infinite praise, said Mr. M. which is due to the heroes and statesmen, the patriots and warriors, who have achieved these great

olutions, for their wisdom and valor; and, indeed, to the whole People, for their fortitude and constancy; no language could express—he had not language to express it. Now, sir, said Mr. M. it does appear to me, that, in respect to these young nations, we should cherish feelings of parental regard. In respect to these free nations, we ught to cherish sentiments of the utmost kindness and espect. In regard to these nations, on the same contient with us, neighbors to us, one of whose territories adoins ours—it would be politic for us to cultivate the most riendly relations. As it respected all those Republics, heir commerce, already considerable, and rapidly increasing, was an object of desire by the nations on the ther side of the Atlantic; and it appeared to him that we hould be wanting in duty to our country, if we did not dopt all proper measures to secure to ourselves a fair articipation in it. We ought, said he, to be fully informed of every thing that relates to their general and articular policy, and to leave no fair means unemployed o conciliate their good will and respect. These nations ave followed our glorious example: they still look to us or advice. They have thought fit to call a Congress, at hich all the Republics of the South are to be represented, t Panama; and they have invited us to meet them there. ught we not to do so? Should we send Ministers there, ould it not be received as a mark of respect, and would not be regarded with feelings of satisfaction? Should e refuse, would it not be regarded as disrespectful? Would it not give displeasure? and would not the agents f foreign nations, who would be present there, take the pportunity to sow the seeds of jealousy between us, and, erhaps, obtain commercial advantages in consequence of , which we should have occasion to regret? Mr. M. declared he was opposed to entangling alliances with any ations; he did not deem them necessary here, and he was ire they were not contemplated. One word more, said r. M. The Holy Alliance of the Old World have their ongresses, to put down, and to keep down, liberal principles; and he thought it right that the Republican nations the New World, whose Governments were based on a cognition of the equal rights of man, should meet, by eir Representatives, in Congress, to consult for the gene l good; and to see, at least, that their rights should not encroached upon. This was a subject in which the ole American People took a deep interest; and he beved the feeling was universal—almost as universal as the ve of liberty itself—that, with the Republican nations of e South, we should cherish the most respectful and most endly relations. With these remarks, Mr. M. would subt the resolutions, only adding, that he must look to the odness of the House rather to consider what he ought have said, than what, under the deep embarrassment experienced, he had said, in their support. Mr. M. en submitted the following resolutions:

"*Resolved*, That the People of the United States have wed, with deep and anxious solicitude, the exertions the People of the several States in the Southern part of s continent, to secure the inestimable privileges of independence and self government: that they have seen proofs exhibited of their fortitude, patriotism, and or, with admiration, and beheld the success with which acious Providence hath crowned their arms, with gratde and delight.

Resolved, That, as it accords alike with the generous spontaneous wishes of this People, and the soundest ims of policy, that the most perfect harmony of feeling intercourse should be cherished among all the Ameri nations, the principles of whose Governments are ded in an acknowledgment of the equal rights of man, appointment of Ministers to the proposed Congress of ma, is a measure dictated by wisdom and propriety; provision ought to be made, by law, to defray any exes that may result therefrom."

The resolutions having been read, Mr. MINER expressed his wish that they might be laid on the table.

Mr. FORSYTH hoped the gentleman would withdraw his motion for a moment, that he might make one or two remarks.

The motion was withdrawn.

Mr. F. then said, that the first resolution was perfectly in harmony with the feelings of the nation and of the House. The propriety of adopting the second depended upon the character of the information yet to be laid before the House by the President of the United States. When the President, in his message at the opening of the session, expressed his intention to send Ministers to the Congress of Panama, Mr. F. took it for granted, that the documents accompanying it would shew the invitation given to the United States, and the motives for accepting it—or, if not, that a subsequent communication would be made for that purpose. Resting satisfied with this general and natural impression, he had felt no curiosity for further information. A resolution offered by a gentleman from South Carolina, (Mr. HAMILTON) had made it his duty, standing in the relation he did to the House, to be more accurately informed. He had inquired, and ascertained, from the proper Department, that, as soon as the approbation of the Senate, of the proposed mission, was expressed, it was the intention of the Chief Magistrate to ask distinctly of the House for the necessary appropriation. He had intended to state this, when the resolution of the gentleman from South Carolina was to be considered, with the expectation that it would produce a suspension of the proposed call for information He did state it to that gentleman. Since the resolution had been presented, no change in the state of this matter had occurred. The question, deeply interesting and important at it was, was still *coram judice*. As soon as it is decided, if decided according to the wishes of the Chief Magistrate, the House will be called on to determine what should be done. The other branch of the National Legislature, acting as the advisers of the President, will sanction or reject the proposed measure. If it sanctions it, it will be for us to determine whether we shall give or withhold the means necessary to carry it into effect. To enter into the question before that time, would be altogether improper. Mr. F. hoped that the gentleman, in moving to lay his resolutions upon the table, intended to suffer them to remain there, until the intended call was made upon the House for the requisite appropriation, and the necessary information furnished, to enable the Representatives of the People to judge of the propriety of granting it.

The resolutions were then ordered to lie on the table.

Mr. TRIMBLE offered the following:

"*Resolved*, That the Committee of Foreign Affairs be instructed to inquire whether any, and, if any, what, provision ought to be made by law to authorize the arrest and surrender of deserters from foreign vessels in the ports and waters of the United States."

Mr. STEVENSON, of Penn., asked for the reasons inducing the mover to offer the resolution.

Mr. TRIMBLE then observed, that the inquiry on this resolution was, in its nature, general, extending to all desertions which may take place in the waters of the United States. The bill reported by the Committee on Foreign Relations, referred only to those from French ships, and had regard to the provisions of our treaty with that Power. Complaints are frequently made that this Government does not reciprocate the conduct of other Governments in this matter. Deserters from our vessels, in foreign ports, are always apprehended by those Governments, and delivered up. Ought not the same thing to take place here? The inquiry has relation to this general subject, and it would be a very desirable thing that some general arrangement should be entered into respecting it.

The resolution was agreed to.

DISCRIMINATING DUTIES, &c.

Mr. CAMBRELENG offered the following:

"*Resolved*, That the Committee on Commerce be instructed to inquire into the expediency of amending the act of 1st March, 1823, so as to authorize the President of the United States to remove the discriminating duties now imposed on British vessels and their cargoes, upon their entry from any British American possession, whenever he shall have been officially informed that American vessels and their cargoes are, in like manner, admitted into the British American colonial free ports."

Mr. CAMBRELENG stated, that the late acts of the British Parliament, emancipating their colonies from some of their ancient restrictions, afforded us an opportunity of passing a corresponding act, and of relieving our own commerce from tonnage and other duties now charged upon it in our intercourse with the colonies. It might be supposed that the general measure, proposed at this session, would embrace this branch of our foreign trade. He thought not, unless some modification should be made in the bill. It was important to both countries that the restrictions on this trade should be removed; and he had reason to believe the measure would be acceptable to our own Government.

Mr. NEWTON, Chairman of the Committee on Commerce, said, that he had not risen to oppose the resolution of the gentleman from New York; but he would state to the House, that, in consequence of the reference of so much of the President's Message, at the commencement of the session, as relates to the commerce of the country, the committee thought they had this whole subject before them. If the commerce between the United States and the West India Islands, was not on so liberal a footing as could be desired, it was not the fault of the United States. This Government had frequently offered to put it on a liberal footing; but Great Britain always refused.

Mr. CAMBRELENG said, he was aware that the subject of discriminating duties had been generally referred to the committee, and that there was a general measure proposed on that subject, which he hoped would be adopted. He would, however, remind the Chairman, (Mr. NEWTON) that the trade with the British colonies was regulated by a special act, to which the resolution particularly referred. That the act in question contained some provisions of a peculiar character, and unless some modification of that act should be adopted, he doubted whether, under any general act, the Government would feel itself at liberty to extend to this branch of our commerce the liberal regulations contemplated. He wished, however, to bring this act under the consideration of the committee, that both measures should be adopted together.

The resolution was then agreed to.

JUDICIARY SYSTEM.

The House then proceeded to the unfinished business of yesterday, which was the consideration of the bill "further to extend the Judicial system of the United States."

The question being on the *Proviso*, offered by Mr. FORSYTH, as an amendment to the bill, Mr. FORSYTH modified his amendment so as to read as follows:

"*Provided*, That no final judgment shall be pronounced by the Supreme Court, which shall not be approved by such a number of the Justices as shall constitute a majority of all the Justices of the said Court."

Mr. FORSYTH observed, that he had no disposition to arrest the progress of this bill, or to retard its passage. From the day of its introduction, he had no desire to take part in the discussion of it, further than to submit a proposition to get, if possible, a better system: but if this should not be practicable, to submit a proposition to render the system proposed by the Judiciary Committee as perfect as possible. The proposition he now submitted, was so plain, that he scarcely knew how to press it upon the Committee, its propriety was so obvious. The Constitution declares that a Supreme Court shall be organized. Congress, in pursuance of this provision, organized the Court, and prescribed the duties it had to perform. All persons who have causes included within the sphere of its jurisdiction, have, as of course, a right to its decision. This proposition was so obvious, as to admit of no dispute. What, then, is this Supreme Court? And of what does it consist? It is a Judicial tribunal, whose power is committed to a certain number of Justices. These Justices, therefore, constitute the Court, and all who are entitled to the judgment of the Court, are entitled to the judgment of these Justices. But when we come to look at the actual state of things, we find that, in practice, a judgment of the Supreme Court does not mean, in fact, a decision of the Justices of that Court, but a decision of a quorum of the Justices. Of that quorum three is a majority—four constituting a quorum of the Court. Now, I would ask, is there is not an obvious propriety in altering *this* state of things, so as to give to our citizens what they expect under the Constitution—the judgment of the whole Court? Of the abstract propriety of the change there can be no doubt. It is necessary both for the cause of justice and for the character of the Court. According to the present arrangement, a judgment pronounced to-day may be reversed to-morrow. Four constitute a quorum, and three have power to decide: but to-morrow a different four may constitute the quorum, and have the same power to decide as the first four. The decision of the Court will depend upon accident. The only remedy for this evil, is to require for each decision a majority of the whole Court. This position is so true and obvious, that it cannot be necessary to press it upon the committee. Various objections had been urged to the amendment when proposed in committee of the whole: to these I shall endeavor to make a satisfactory reply.

First, it has been said that this is not the proper place for introducing a provision of this kind; and that, if it is introduced at all, it ought to be made the subject of a distinct law. A single consideration will be sufficient to shew that this is the proper place to introduce it. Whence arises the power of three Judges of the Supreme Court to decide a cause? It is derived entirely from the act of Congress constituting the Court. From that part of the act by which Congress has been pleased to determine that five Judges should be a quorum of the Court, is derived by inference the power of a majority of the quorum to decide. The present bill proposes to change the number to constitute a quorum; hereafter that number is to be six: four being a majority of six, will have, by inference, the power to decide a cause. Should not this inference be prevented by express provision in the bill which effects the alteration in the number of Justices necessary to make a quorum of the Court? I think the amendment proposed could not be appropriately offered to any other bill.

But it has been urged by the Chairman of the Judiciary Committee, that it is not proper to alter an entire system on account of a single case. And that such a case will not occur again in forty years. Sir, I am happy to be informed by the gentleman from Massachusetts that this is so. But he will pardon me for remarking, that he has, in this case, assumed the fact upon which he argued. It is very true, that only one case has occurred sufficiently important to become notorious. That case was one in which the interests of an entire section of the country is involved. Owing to this circumstance, every movement of the Court with relation to it, was watched with the most anxious scrutiny. The precise number of Judges who agreed in the decision, was particularly inquired into, and immediately made known. But how many individuals may have suffered by decisions of this sort, whose cases have

never been presented to the public eye! To enable the House to judge how many had probably occurred, I will state one fact from the minutes of the Court. In February term of 1823, there were but five Judges attending, and, during a part of the time, but four Judges. How many causes, and how many principles must have been settled at that Court; and who can tell how many of these had the sanction of a majority of all the Justices of the Supreme Court? We are told by the gentleman from Massachusetts, (Mr. WEBSTER) that a single decision does not settle the *law* of the *land*, but *only* the *law* of the *case* in which it was rendered. That, when a principle is important, and the Court thin, it is customary to have a re-hearing in a full Court, and that the law is solemnly and definitively settled. Sir, I sincerely hope that no such practice prevails. It cannot but be deeply injurious. What becomes of the rights of the individual first concerned? In his case the law is settled, so far as it effects his cause: afterward, the law is to be altered by a solemn decision. If the law of the land, thus settled by solemn decision, differs from the law of the case, does the new decision reverse the judgment pronounced in the case? No—it does not. Who is to atone for the injury suffered by the citizen? He is to console himself with the reflection, that, in all future cases, the decisions of the Court would be just. But I cannot but believe that there is a mistake in this statement; when the law is doubtful, and the Court thin, the cause is suspended, and that question is reserved and decided afterwards at a fuller Court: a wholesome and useful practice, and a proof of the respect voluntarily paid by the Supreme Court to the principle that I wish to have, by amendment, incorporated in the bill.

We are informed by the gentleman from Massachusetts, (Mr. WEBSTER) that if we require a majority of the whole Court to give validity to every decision, it will produce great delays. That it will produce some delay, cannot be doubted. But what will be the extent of this delay? The law supposes that the Judges are always in Court: it says them under obligation to be there; and there they will be, unless their presence is prevented by accident or disease. Suppose an accident occurs, and one Judge is detained, there will then be nine Judges present. On the principle I wish to introduce, six out of these nine must concur in every decision pronounced. Can this occasion great and injurious delay? But it may be said, supposing only five concur, will you have their decision suspended? I answer, where the point to be decided is so nice, and the case so doubtful, that five Judges decide one way, and four the other, no decision ought to be had—the case should be suspended till it can be determined by all the Judges.

Sir, there is another view of this subject: It is advanced by the Chairman of the Judiciary Committee, as an irresistible argument, against separating the Judges of the Supreme Court from their circuit duties, that such a separation will render the Court odious, and that its decisions will be suspected of being prompted by the Government, under whose eye the Judges sit, and near which they will, probably, reside. But this objection applies with great, if not with equal force, to the system in the bill. Ten Judges are distributed by it over the whole United States, and of these, six are a quorum, and four a majority of six. Many of these Judges will be very distant from this City, and if any absences take place in the Court, they will, of course, be most likely to happen among those Judges at a distance. Those, on the contrary, whose homes are near the Seat of Government, will be always in attendance. So that, on the gentleman's own plan, the decisions will in fact be made only by the Judges who are nearest to Washington, and will be liable to all the imputations which he dreads in the other case.

It has been suggested, sir, to be very important, that this requisition of the majority of the Court should not be applied to common cases, but only to those where a State law is in question. Sir, I hold directly the reverse of this opinion. For what was your Judicial system erected? To protect weakness—to destroy the inequality produced by physical or moral power, and to put all petitioners for justice on the same level. Powerful communities, Independent States, with their Executives and Legislatures, are in no danger; they have power to redress their own wrongs; they can call the injurer to the bar of public opinion. They can act by their Senators and Representatives in Congress. If disappointed there, they can appeal to each other, and, by combining their forces, they can alter the Constitution itself. Not so a feeble individual. His name and his wrongs are buried together in obscurity. The judicial injustice which he suffers, is known only to himself, his family, and his counsel. In his case the evil, however great, is irredressable. The provision is important in all cases, but peculiarly necessary for the defence of individual suitors.

Mr. TRIMBLE observed, that he was satisfied the House was not at this time prepared to adopt the principle of the amendment; and, as some modification of it was wished by many, if the amendment should be pressed in its present form, the vote taken on it would not be any fair expression of the sentiments of the House on the principle. Besides, the amendment did not adhere well to the bill. The object of the bill is to render the Judicial system uniform throughout the United States. The object of the amendment is wholly different—it is to fix what proportion of the members shall be required to perform certain acts. The principle is new: it has not been reported on by the Judiciary Committee. If hereafter that Committee shall report to the House a bill embracing the principle, it can there be fully discussed, and the bill amended in such way as may be acceptable to the House. The subject, he believed, was at this time before that committee—and, if that committee should even report against the principle, the House, if it disagreed with the report, could order the subject to be re-committed, with instructions to introduce a bill in its favor. He, therefore, hoped that the friends of the bill, even though approving the principle of the amendment, would vote against it at this time.

Mr. POWELL said he should vote against the amendment. Its effect in practice would be, that the Supreme Court will be unable to judge any cause at all, unless six Judges happen to be present. We all know those Judges are far advanced in life, and that their residences are dispersed over different and distant parts of the Union—(and when their number shall be increased to ten this will be still more the case,) and all gentlemen who are in the habit of attending the Court, know, from past experience, that it often happens, that some of them are prevented from attending: even appeals are not unfrequently delayed from this cause; and it has even happened that the Court has been unable to sit at all for want of a quorum. He had been strengthened in his opposition to the amendment, from his acquaintance with a parallel case in his own State. The Supreme Court of Virginia consists of fifteen Judges, of whom the law requires eight to be present for business: the consequence of which is, that a term passes over with no Court, because the Judges are not able to reach the place of meeting: and if this is the case in Virginia, where the greatest distance any of the Judges have to travel is not more than three hundred and fifty miles, *a fortiori*, it might be expected to happen in the Supreme Court of the United States; and if it happens there, the consequence must be serious: causes of the greatest magnitude may thus lie over one, and, perhaps, two years.

Mr. MOORE, of Kentucky, then offered the following, as an amendment of the proviso of Mr. FORSYTH:

"*Provided*, That no final judgment shall be pronounced, in any case pending before the Supreme Court of the

United States, whereby a State law is pronounced to be invalid and unconstitutional, unless a majority of all the Justices of said Court, including the Chief Justice, shall concur in said judgment."

Mr. WEBSTER said, he had felt unwilling to enter into the discussion of this question in connexion with the present bill. If, however, the motion was persisted in, he would say what occurred to him in relation to it. The proposition of the gentleman from Georgia is a general one. It requires all judgments to be pronounced by a majority of the Judges. The amendment suggested by the gentleman from Kentucky is limited, and demands such a majority only in cases affecting the validity of State laws. The two propositions are founded in opposite reasons. The member from Georgia argues, that States are powerful bodies, and can take care of themselves and their own laws; but that individuals may suffer, and suffer without redress, by the errors of judicial tribunals. On the other hand, the amendment of the gentleman from Kentucky seems to take it for granted that, in ordinary private causes, no new guard is necessary; but that respect for State legislation requires a special provision in cases affecting State laws.

In the first place, he would ask, whether this provision be not wholly new; whether any State Court has tried it; or whether it has any where been found necessary? There would seem to be no reason for making this provision in the Courts of the United States, more than in other Courts, so far at least as mere private causes are concerned. It is true that these Courts deal with life, liberty, and property; but so do other Courts. Some inconvenience certainly would be incurred. It might happen that eight or nine Judges only would be present; ought not five, in such a case, to be able to despatch the business of the Court? It is necessary to guard against causes of delay. While we may not be able to know, with certainty, in any disputed case, that absolute justice is done by the decision, we yet know that absolute injury is done by delay. Promptitude is of the essence of good administration, and ought not to be hindered by unnecessary restrictions. It had generally been found safe in practice to leave the decision to a majority of the quorum, and he should be unwilling to alter it until some necessity were shewn. It was true, that it might possibly happen that a minority of the Court would decide a cause; so it might happen that a minority of each branch of Congress should declare war. But, if such cases were rare cases, and extreme cases, they ought not to furnish reason for a rule which might produce much inconvenience in its general application.

Then, as to the other cases. He agreed at once, that, if the amendment prevailed, it would be better to limit it according to the ideas of the gentleman from Kentucky. But there were difficulties, also, in that course, which perhaps had not been very fully considered. It could not be denied, that, under our forms of Government, Courts of law may occasionally be called upon to pronounce judgment upon the question, whether legislative bodies have or have not exceeded, in a given case, the constitutional limit of their power. This necessarily follows from the existence of written constitutions. If legislative power be limited, whatsoever is done beyond those limits is void. The People, as has been well said, speak in the Constitution. The Legislature speaks in the law. If these pronounce different results, the first must prevail. The Constitution is the supreme rule, and whatever is in opposition to it must yield. Judges, sworn to administer the law, are bound to consider the supreme rule as being supreme; and though they will, in all cases, take it for granted that there is no repugnance between the Constitution and the law, until it be clearly and manifestly shewn, yet, if it be thus clearly and manifestly shewn, they have no option, and must pronounce for the Constitution and against the law: and this question may arise in all Courts, whether high or low; whether of the United States' Government or the State Governments. All this was perfectly well understood at the adoption of the Constitution, and therefore the law of 1789, passed at the very first session of Congress, provides a mode by which, among other things, judgments of State tribunals, declaring acts of Congress void, may be revised in the Supreme Court. The State tribunals have entertained these questions in many instances, and in several cases they have declared acts of Congress unconstitutional and void. In other cases, the question has been between a law of a State, and a law of Congress: and, in others, again, and perhaps the most numerous class, between laws of the State and the Constitution of the United States. In all these cases, the State tribunals take jurisdiction of the question so often as it occurs, and render such judgment as they think proper. And, so far as I know, no State in the Union has made any special provision, that any particular number of Judges shall concur in such judgments. Whatever constitutes the Court for other causes, constitutes the Court for these also. If we were now to adopt the amendment of the gentleman from Georgia, what would be the result? One result would be this: that a State Court, by a mere majority of its quorum, might declare a law of Congress void; but the Supreme Court could not reverse that decision, except by the concurrence of the majority of all its members. A State Court, for example, consists of four Judges. Its quorum is three, and a majority of that quorum, two. Three being present, therefore, two are competent to render any judgment, and of course a judgment which should declare a law of Congress void. But, if a writ of error were brought on that judgment to the Supreme Court, six or seven Judges being present, the judgment could not be reversed, although five out of the six or seven should concur: and if the amendment of the gentleman from Kentucky were adopted, the same result would happen, if the original question turned upon a repugnancy between a law of Congress and a law of a State, and the inquiry were, which of the two were unconstitutional and void. I not only admit, but maintain, that great respect and deference should be shewn to State laws; that in the exercise of a high and delicate power, to pronounce them void. But I do not see my way clear, to impose restrictions on the Supreme Court, in their decisions upon State laws, which are not imposed on State tribunals in regard either to their own laws, or the laws of the United States. At the same time, it cannot be doubted, what course discretion will usually dictate to a Court in cases of this sort, of an interesting character, and in which opinions are divided; and, at present, I feel safer to refer the subject to that discretion, than to make it matter of legislative provision.

At the suggestion of Mr. WICKLIFFE, Mr. MOORE's amendment was modified to read as follows:

"Strike out all the amendment, after the word 'provided,' and insert—"That, in all cases brought before the Supreme Court, in which shall be drawn in question the validity of any act of Congress or Treaty of the United States, of any part of the Constitution of a State, or of an act passed by the Legislature of a State, that six Justices of the Supreme Court shall concur in pronouncing such act of Congress, treaty of the United States, part of a Constitution, or act of the Legislature of any State, to be invalid; and that, without the concurrence of that number of Justices, no act of Congress, Treaty of the United States, part of a Constitution, or any act of the Legislature of a State, (as the case may be,) so drawn in question, shall be deemed or holden invalid."

Mr. LETCHER, agreeing in opinion with Mr. TRIMBLE, that this was an improper time to press that measure, moved that the previous question be now taken, (which, being decided in the affirmative, precluded all debate and amendment.)

The motion was not sustained.

Mr. MITCHELL, of Tennessee, said that he had no hostility to the proposition of the member from Georgia, (Mr. FORSYTH,) but he could not vote for it at present; as he had long since determined not to vote in favor of any amendment to the bill, or any thing which might operate to retard or to prevent its passage. His only reason for voting against the amendment, was, that its effect would be to trammel the main question. There was, besides, such a thing as consistency, and gentlemen who should vote against his proposition as an amendment to this bill, might consider themselves as bound to vote against it hereafter, if presented in the form of a distinct proposition. He would therefore, much prefer, that the gentleman would, for the present, withdraw his amendment, and let the question be taken on the original bill.

The question was then put on the amendment of Mr. MOORE, and it was negatived by a large majority

The question now being on the proviso of Mr. FORSYTH, as originally moved, Mr. F. demanded the Yeas and Nays, but the House refused to take them—Ayes 31, Noes 139,—(less than *one-fifth*, which is required by a rule of the House, voting in favor of them.

Mr. FORSYTH then withdrew his motion to amend the bill by adding the proviso.

Mr. WEBSTER moved that the bill be ordered to a third reading—when

Mr. BARTLETT renewed the motion which he had yesterday made and withdrawn, to re-commit the bill to the Judiciary Committee, with the following instructions:

"So as to provide that the several District Courts of the United States shall be required to perform such part of the duties which are now devolved upon the Circuit Courts, as shall render but one Term of the Circuit Court necessary in each District annually, and that a Justice of the Supreme Court of the United States shall be required to hold one term of the Circuit Court in each District, in each year."

On this motion, he asked the Yeas and Nays, which were ordered.

Before the yeas and Nays were taken—

Mr. MERCER moved that the further consideration of the said bill be *postponed to the second Monday in December next.*

In support of his motion, Mr. M. said he was without any professional claims to the consideration of the House; and but too sensible that he had no other ground, on which to rest the hope of fixing its attention, in the present stage of this protracted debate. Convinced, however unfavorable the recent indications of the temper of the House might seem to be, that a decided majority of its members would prefer a different system, from that which the bill proposed, he could not see it advancing to its final consummation, without a farther effort to arrest its progress. In throwing myself, once more, said Mr. M. on the indulgence of the House, I do but obey the impulse of an irresistible moral necessity, to stay, if possible, a measure fraught, as I believe this to be, with public calamity.

Its main support is derived from a general belief, among the friends of some amendment of the present Judicial System, that the measure which the bill proposes is the only reform, which the present Congress could be induced to sanction; and yet, if experience be allowed to guide our faith, no sentiment can be more fallacious. Before I consult this experience, which involves, in truth, the opinions and acts, of the Executive as well as Legislative department of the Government in relation to our present Judicial System, for the last twenty years, allow me to premise some reflections on the extraordinary course of the recent debate, in the Committee as well as in the House. The true question which occasioned it has been often lost sight of entirely, or viewed through a medium of irritated feeling, but little calculated to enlighten the judgment. If I have, in any degree, contributed to excite this feeling, I regret it; but I feel assured that, if justice were but done to the argument which I had the honor of addressing to the committee, no part of this excitement would be chargeable on me. I approached this as a hallowed subject; with a mind awed into solemnity; deeply solicitous, indeed, to ward off, from my country, a threatening ill, but at peace with every portion of my fellow citizens. I made no injurious reflections on the People of the West: I declared, on the contrary, with a countenance and in a language which no man could misunderstand, the good will I have ever cherished towards that portion of this Union; and in which feeling I yield to very few, if any, of its native inhabitants. The principles of this measure, and the argument by which it was sustained, were open to criticism and to reply, and I characterized them as I thought they deserved to be, whether correctly, or not, it is for the House and the nation to determine. But I did hope, I had a right to expect, that, after the candid, and repeated explanations of my colleague, and of my honorable friend from North Carolina, as well as of myself, the opponents of this bill would not have been again charged with sentiments which they not only never did express, but did, most distinctly, disavow. So much, Sir, for the extraordinary feeling manifested on this subject.

I have been, also, charged with mistaking facts, and misconceiving the views of other gentlemen, in relation to the various questions presented by this bill. Sir, the misapprehensions of my own argument, perverted, as I am willing to believe it has been, by the false medium through which it has been viewed, is the fruitful source of all these allegations, the greater part of which need no other reply, than that which their authors furnish. If they have not already perceived this, as I am inclined to believe many of them have done, I ask of them no other retribution than an attentive perusal of the argument, imperfect as I admit it to have been, which I did employ, in opening this debate.

The chief mistake into which I fell, of all those which have been so rigorously noticed, was in supposing, as I had been informed, that the Court of East Tennessee was a District, not a Circuit Court; and for my argument against the judicial inequality of this bill, it was altogether immaterial, while all, or a single one, of the other anomalies, in the Northern Court of New York, and the Western Courts of Virginia and Pennsylvania, remained unnoticed and unprovided for.

I shall have, in the further progress of my present argument, another error to acknowledge, much more important to that argument, but hitherto undiscovered by any of my numerous adversaries. Before I reach it, let me pause for a moment, to comply with a request of the Chairman of the Judiciary Committee. The honorable member from Massachusetts apprises me that I erred in supposing the *change of opinion* to be of recent origin, which he acknowledged he had undergone, in relation to the inexpediency of discharging the Judges of the Supreme Court from circuit duties. He assures me, and, I need scarcely say that I confide in that assurance, that he has long held this opinion. The cause of the misapprehension into which I fell, and which I take pleasure in having corrected, the member from Massachusetts will perceive in the sequel of my argument.

Before I quit the history of this bill, allow me, Sir, to say, that I was greatly misapprehended, when it was averred that I attempted to deduce, from the docketed appeals of the Supreme Court, testimony contradictory of the positive declarations of the members of this House, with respect to the accumulation of business in the Federal Courts of their respective States. It cannot have escaped the recollection of the House, that the only oral testimony on this subject, furnished by the Chairman of

the Judiciary Committee, was detailed in his opening argument; and that it was confined to the Courts of the seventh Circuit. For the rest, he himself referred the Committee to the *Representatives* of the other six Western States. It must, also, be remembered, that the committee rose, after hearing the gentleman's argument, at the instance of a member from Tennessee, who, the next day, declined availing himself of the right which he had thus acquired, of addressing the committee, and that no other member from the West followed him. The memorials which are now said to furnish this information, were —where? Referred, without being read, to the same Judiciary Committee, and in the possession of the Chairman, who, for farther evidence, relied not on them, but on gentlemen who were themselves silent, though the extraordinary complaint was made in their behalf, by a gentleman from Kentucky, that their testimony was disregarded.

I could judge, Sir, from the facts I possessed; not from those I had neither seen, heard, nor even imagined. To these facts, I did devote the closest attention. The result of a thorough investigation of them, was the opinion, that the sudden augmentation of business in the Courts of the seventh Circuit, did not arise from the alleged defects of the present Judicial System of the United States, but from transient causes, either multiplying the claims of non-residents, of the Bank of the United States, and of merchants of the East; or from a course of legislation which induced the plaintiff to prefer the Federal to the State Courts.

In this investigation, I was driven, of necessity, to consider both the occupying claimant, and the relief laws of Kentucky, where the greatest accumulation of business existed: but where, also, the diligence of an able District Judge was already applying an effectual and speedy remedy, as the disposal of no less than two thousand causes, in the compass of three years, clearly demonstrated. I neither praised nor blamed the Legislature, nor the Courts of Kentucky. I spoke as an historian might write, of facts involved in the inquiry which I had begun. I maintained, as I still do, that the remedy which the present bill proposes for the distresses of the People of that Commonwealth, would be inoperative, unless it lead to a reversal of one of the judgments of the Supreme Court. As the great and sudden augmentation of the members of that Court threatened that result, it was fairly imputable to the bill itself; and the imputation was sustained by the argument urged in favor of this measure, that the Judges of this Court should mingle with the People, to learn to modify the "*general principles*" of the law by reference to the "*effect of their decisions.*" This *doctrine*, I further contended, would lead to the corruption of the Court itself, by opening an avenue to its bosom, for popular passion and prejudice to mingle in its decisions. In the discharge of this obvious duty, I have been assailed, with no little ardor, by several gentlemen of Kentucky, who have thus brought into this House what they have called a family quarrel, the introduction of which, upon this floor, they have thought proper to impute to my argument.

One of these gentlemen, throwing down his gauntlet, invokes me to enter upon a comparative estimate of the claims of our respective States, to the moral approbation of the world. Sir, I deem such a controvevsy alike unnecessary and unnatural. I decline the combat, and will not take up his gage. I am not the enemy of Kentucky. She is bone of our bone, flesh of our flesh; and did I possess the power, I have not the inclination, to deprive her of any portion of the moral esteem of mankind.

Quitting the present bill, for a moment, I beg leave to return to the history of those efforts to change our Federal Judiciary, which have preceded it, in the other departments o the Government, and I undertake to demonstrate that they do not entitle the proposed reform to the favorable regard of this House; much less, do they prove, that it embraces the only modification of the existing system, which could conciliate the support of a majority of Congress.

Without recurring again to the act of 1801, which was repealed, as has been truly said, not from an objection to its structure, but to the mode of its execution, we have, from 1816, down to the close of the last administration, concurrent Executive recommendations of the very system, which I have had the honor to propose to the House. A system which calls the Judges of the Supreme Court from their Circuit duties, to expedite the progress of justice where its obstruction would be of vital injury.

The last annual address of the late President was, on this subject, not less explicit, and even more earnest, than that of his immediate predecessor.

And what has the Legislature done? As late as 1819, a Bill passed the Senate, which provided for the gradual reduction of the number of the Judges of the Supreme Court to five; relieved them from itinerant duties; and established a separate Circuit Court system. How did the Senators of the West—as watchful guardians, I presume, of the interests, and as faithful organs of the feelings, of their respective States, as we are of the rights and wishes of our constituents—how, let me ask, did they regard that very system, which, when recommended by my friend from North Carolina and myself, is received on this floor with so much misapplied resentment?

Sir, I hold in my hand literal extracts from the Journal of the Senate, on that occasion, and I find that, of seven of the Western States, (Alabama and Missouri were not then in the Union,) five voted for the Senate's bill, one only against it, and one was divided. Yes, sir; Kentucky, Tennessee, Ohio, Mississippi, and Louisiana, voted for the bill; Indiana, only, voted against it, and the Senators from Illinois were divided on its passage.

I further discover, Sir, that, of the 42 Senators, of which that body then consisted, 36 voted on the final passage of the bill, of whom 22 were in its favor, and 14 against it. To this majority I have a right to add one member from each of the States of New York, Delaware, and Georgia, who happened to be absent at the passage of the bill, but had voted, with two of their colleagues, for its engrossment; and I have then twenty-five of the Senate in favor of this now deprecated system.

To the 14, who voted against its passage, I add the vote of an absent member, who had been against its engrossment, and thus I make its avowed opponents fifteen in number: but, from these, I take eleven; among them the Senator from Illinois, who had previously voted to abolish the Circuit Courts entirely, and to transfer their jurisdiction to the District Judges, or for the very system now proposed by the gentleman from Georgia, (Mr. FORSYTH) a system, which also concurred in discharging the Justices of the Supreme Court from their Circuit duties. I am, therefore, authorized to affirm, that but fifteen members of the Senate, of that day, concurred in the views now become so popular in this House. Even the Senators from Indiana were content with the appointment of "two additional *District* Judges for Kentucky and Tennessee, who should hold, with the District Judges in commission," the Circuit Courts of those States. A proposition to appoint *one* or *more* additional Justices of the *Supreme Court*, and to alter the present division of the United States into circuits, "so as to provide for the more speedy administration of justice," in the States of the West, was sustained by the votes of but 11 Senators; and, among their recorded names, there does not appear that of a single Western Senator. What miraculous change may have since occurred in a body, designed by the Constitution, to secure consistency to our leg-

tion, and stability to our policy and laws, I cannot determine! Of the proceedings of the last Senate, I have, however, a right to speak; and, recurring to its Journal, I perceive, that, when a bill, resembling in all respects, that which we now have before us, was depending there, a motion prevailed, by a majority of 27 to 17 members, to reduce the number of the additional Judges, from *three* to *two*; and shortly after this motion, the bill was quietly put to rest, by another motion to lay it on the table.

Returning from a visit to the other wing of the Capitol, not altogether unprofitable, I hope, the only bill I perceive to have been reported to this House, with the sanction of its Judiciary Committee, for a series of years past, bears date the 28th of February, 1824, and embraces a system precisely analogous, in all respects, to that which my colleague and friend, on my right, (Mr. POWELL,) recently supported. It kept the Judges, indeed, upon their *present circuits*; but it did not augment their number; and it provided, for the West, four Circuit Judges, who were not to be allowed to sit on the Supreme Court bench. How this reform has been recently received, by those for whose benefit it was especially designed, I need not, again, remind the House. But, yet, Sir, it is that very system, which the Judiciary Committee, with its present Chairman, (Mr. WEBSTER,) recommended to our adoption less than two years ago. What must be the feelings of my colleague, on finding himself assailed, while treading in the steps of the gentleman from Massachusetts, (Mr. WEBSTER,) with such bitter reproaches, while the gentleman, so late his guide, is overwhelmed with applause from the very same quarter? Sir, I do not desire to rob the honorable member from Massachusetts, (Mr. WEBSTER,) of any part of the newborn favor which he has acquired, nor do I mean to cast any injurious imputations upon his present conduct or motives; but my friends from Virginia and North Carolina, as well as myself, have a right to complain of the treatment we experience, while we lay claim, for our objections, to the increase of the number of the Judges on the bench of the Supreme Court, to the authority, so recently afforded us, by a former, and the honorable Chairman of the present, Judiciary Committee of this House.

I appeal, then, sir, to this House, I solemnly invoke its sound discretion, to allow us a few months for further reflection—to permit us to deliberate a little longer, before we adopt the bill on your table. If too much excitement has mingled in this debate, give it time to subside. We are about to remodel one of the three co-ordinate departments of this Government. Shall we not, at a later period of the present Congress, be better prepared to perform this important duty? It is a wise maxim, that "to innovate, is not always to reform."

Our adversaries have told us, indeed, that *theirs* is the old system, and that *we* are the advocates of untried experiment. Is it so? These gentlemen set out in their argument with a *petitio principii*; as if the *number* of Judges, who shall constitute the Supreme Court, was not a part of its very constitution and structure; a part most essential to its stability, its dignity, and power. The Judicial Circuits, which were originally three in number, were speedily enlarged to six, and, in 1808, to seven. States have been subdivided into districts; District Courts, with, and without Circuit Court powers, have been created; some with immediate, and others with an indirect, appeal to the Supreme Court. Supreme Judges, in the performance of their Circuit duties, have been required to traverse, alternately, different circuits, or have been permanently assigned to specific circuits: but *the number of the Court* was, in 1806, what it was in 1789, and no change has been hitherto effected, or even proposed, by any bill originating in either House, anterior to the last session of Congress, which either reduced or augmented this *number* beyond a *single Judge*. As late as February, 1824, any augmentation *of the present number* was repudiated by the standing Committee of this House, with the concurrence of its present Chairman.

A member from Louisiana has, indeed, challenged us to show why the number of *five* or *seven*, is better than the number *ten*. While he regards this number as the best feature of the bill, and our objection to it, "as the most prominent," he tells us, somewhat reproachfully, "that the objection has been urged, as if the mere statement of the fact were sufficient to enforce it," and, with sarcastic brevity, he adds, "that the objection would be more convincing, if some reason had been assigned for it." Now, sir, it so happened that this objection came first, from the Chairman of the Judiciary Committee, of which the gentleman from Louisiana is, himself, a distinguished member, and it was deemed unnecessary, on our part, to prove what seemed, at least, to be admitted. But, if proof be really demanded, although I had rather receive it from the Chairman of the Committee, who took the "*fact*" for granted; yet, I will not shrink from the task now imposed on me. Even in physics, let it be remarked, sir, that the movement of many artificial bodies, in regular accordance, is liable to greater derangement, and subject to greater delay, than attaches to those which are less in number. In the progress of animated beings, as the march of troops, small bodies confessedly travel with less danger of disorder, and greater celerity, than larger. Unless the infirm and the feeble be thrown into a separate corps, the motion of the whole must be retarded, to enable the weak to keep pace with the strong—the dilatory with the diligent. It is more true of the progress of intellect. An entire collegiate class may be kept back, by the slow progress of part of its members. There are various grades of genius, as well as of dulness, and where you are governed by the combined intellect of many, you must await the march of the slowest intelligence. Why are the Committees of this House composed but of seven, sometimes of but five members, if not for the greater despatch of business? What is experienced in Legislation, with all its attendant facilities, in this Hall, is alike true of a Judicial Court. *Seven* Judges, and more especially *five*, will perform the duties of an Appellate Court, in much shorter time than *ten*. If this may be affirmed, in relation to the exercise of their whole jurisdiction, Common Law, Equity, and Admiralty, it may be, eminently so, of the two last branches of it. I need not tell the learned member from Lousiana, that, in all Equity and Maritime cases, the whole testimony makes a part of the record, and often swells that record to a volume. That this volume is in manuscript; that, to supply it, constitutes a large item of the expense of justice; and to multiply copies of it, would most injuriously augment that expense. That the Judges of the Supreme Court have, severally, and, if there be but one copy, *seriatim*, to examine this record, in order to determine the truth of the facts, of which it contains the evidence, as well as to ascertain and define the legal principles which arise out of those facts; both of which operations of the mind, however laborious, are essential prerequitites to the formation of a correct judgment. And, after they are performed, consultations of the Judges, in conclave, are necessary to settle and determine the opinion of a majority of the Court, whether that opinion be afterwards pronounced, collectively, by one of the Judges, in behalf of the Bench, or by them all, seriatim, as some gentlemen desire. In all, as in each of these operations, the time consumed by the Court must bear some proportion to the number of the Judges who compose it, without any reference to those differences of capacity, as well as industry, discoverable in every body of men; and which will be found to increase in magnitude as you multiply their number.

Having, I trust, furnished the proof required of me, I

perceive myself brought, a second time, to another point, respecting which, I have the misfortune to differ from the gentleman of Louisiana, as well as from the Chairman of the Judiciary Committee.

As it is one of very great importance, allow me to prepare for its correct decision, by explaining, more fully, an error, I have already partly acknowledged, into which I was inadvertently led, in the commencement of the present debate. By the docket of our Inferior Courts, we understand, in our several States—at least we do in Virginia—the list of causes depending in the Court the commencement of a term. Hence, I inferred, when I received, the moment before I rose from my seat to address the Committee, a transcript from the record of the Supreme Court of the U. S. presenting 142 causes, as the number on the docket, upon the 10th of January, 1826, that this would be the extent of the docket of the next February term; and, as the total number had been 180 at the last term, I inferred that the business of the Court was decreasing, and that the remedy proposed by the Judiciary Committee, for the delay of justice, by the addition of thirty days to the term of the Court, would amply suffice. I now understand that, of the 142 causes upon the docket of this Court when the transcript, which I used, in debate, was sent me, but 16 have come up since the end of the last term. That the docket of a term of the Court is the docket at the *end* of that term; and, reasoning from reference to past years, that between forty and fifty additional causes, now *in transitu*, or about to be sent up to the Court, will make a part of the docket of the next February term. The business of the Court is not, therefore declining. But, what is more important, the remedy of the long existing delay of justice, at the heart of the body politic, will be found to be both incompetent in itself, and utterly inconsistent with the extension of the Circuit Court system, contained in the bill which I have proposed to postpone.

If the present delay be not, in all cases, as protracted as was intimated by the member from Rhode Island, who last addressed the Committee, (Mr. BURGES)—to whose argument I listened with so much pleasure, of whose proffered aid, any man might well be proud, and by whose closing allusion I feel myself highly honored—yet this delay cannot be computed, upon a fair average, at less than three years; and the able colleague of the same member (Mr. PEARCE,) furnished a mournful illustration of its consequences, in the enormous cost to which it exposed the delayed claimants of justice.

Allow me, sir, to add one other case to those already cited. A gentleman from New York, having a suit in the Supreme Court, on the issue of which, the recovery of a very heavy amount depended, finding but two days remaining of the last of several terms which he had awaited, actually paid the debt of fifteen hundred dollars, claimed by another suitor, to be allowed his place upon the docket; and, although he ultimately lost the whole of this sum, he was amply requited, in his own estimate, by a prompter judgment than he could otherwise have had in his own case. Sir, the delay of justice, for a single year, or a single month, if not unavoidable, is a public injury inflicted by the Government upon its own citizens; and how, let me inquire, will the remedy of the present bill redress this wrong?

This leads me, sir, of necessity, still farther into detail. I thank the House for its attention, and pray its continued indulgence, while I finish the arduous task imposed on me by the course of this debate. I will be as brief as practicable.

An attentive examination of the proceedings of the Supreme Court, for a series of years, authorizes me to state, that the Spring circuits of the Judges of the Court, do not allow them to remain longer in Washington than the middle, or, at most, the 20th of March. The latest adjournment of the Court, was, at the end of the last term, upon the 21st of March. And this, the honorable member from Louisiana, (Mr. LIVINGSTON,) says, will allow the Judge of the proposed Southwestern circuit, two months to hold his Courts in Louisiana and Mississippi, after his return home; and before the commencement of the heat, and consequent diseases of his climate.

Counting back, from the 20th of March, the number of juridical days which the Supreme Court will be able to sit, as far as to the first Monday of January, and allowing for the *nondies curiæ* and for a very few accidents, sixty-five days will be found to be the largest number remaining for the actual trial of causes, or a single day for each cause, computing the number which annually come up, as experience warrants, without making any of the allowances required for the probable, and, as all the gentlemen from the West contend, for the certain augmentation of business in the Federal Courts of that country.

Now, sir, is one day presumed to be sufficient for the trial of each of the weighty controversies that burthen the docket of a Court, to which the right of appeal is limited in actions of debt, to sums exceeding, in amount, two thousand dollars? Whose records, in cases of admiralty and maritime jurisdiction, and in equity, often constitute volumes? Who have very solemn Constitutional questions to decide, involving the rights of the People and of the States, in their multifarious jurisdictions—questions of which a single argument, that of a single cause, has been known to consume three entire days, and the cause itself an entire week? The three years' delay of justice, upon a docket of one hundred and eighty causes, must, therefore, continue, even should this bill pass; and continue, as of necessity it must, to produce a correspondent delay among the numerous cases on the Circuit Court dockets, which, involving the same principles of law, await the final judgment of that Court, which decides and pronounces in the last resort, what *is* the law.

Nor is this the only evil to be apprehended from reliance on this incompetent remedy. The gentleman from Louisiana, (Mr. LIVINGSTON,) to whom I have already referred, has told us, that the Spring term of the Court in the Southwestern Circuit—of which there are already two in the District of Louisiana, and one in Mississippi, which two are equally required, and there will be one or two more, in a very few years, in the new State of Arkansas—requires, at present, two months, and will bring down the labors of this Judge to the first day of June, in every year. If so, sir, and I do not question it, those labors are to be repeated in every Autumn; and, allowing a reasonable time for the Judge to reach this city, at the commencement of his duties here, you will carry his Autumnal labor as far back as the first of October of each year. Now, I, then, tell that gentleman, that this month, in the most healthy year, is not the season of business in his climate; and, in ordinary years, is, by far, the most fatal to human life of the whole calendar. He proposes, indeed, that the Judge shall begin his circuit above, and terminate it at New Orleans. Will his suitors, their witnesses, and counsel, venture into New Orleans as early as November, in a year of yellow fever? And what does he gain by beginning the circuit at Natchez, except, that the Judge may find his grave in Mississippi rather than in Louisiana? If he does not submit to the sentence of death, which we are about to pass upon him, he must hold his Circuit Court in the Winter months, and absent himself from his duties here, or he will perform his duty here, and abandon his circuit. He cannot perform the duties of both stations; and when his circuit shall embrace Arkansaw, as the gentleman from Massachusetts, (Mr. WEBSTER,) contemplates, his official obligations will be yet more impracticable.

The remarks which I have made on the inconsistencies, created by this system, would be alike enforced by the application of the same reasoning to the anticipa-

extension of the Southeastern Circuit to Florida, and the Courts of St. Augustine and Pensacola.

It is a system, admitted by almost every gentleman who has sought to sustain it, and by those, especially, who have sustained it with most ability, to be incapable of long continued duration; and, I verily believe, it is as little approved, by a majority of this House, whatever may be its fate, as by the learned member from Louisiana, (Mr. LIVINGSTON,) who has, in debate, distinctly admitted his preference of another. Why, then, shall we adopt it? Why shall not the Circuit Judges be, at once, confined to their Circuits? The Judges of the Supreme Court to their appellate duties? Is it to escape, as gentlemen more than insinuate, the atmosphere of Washington—of the ten miles square? The Judges need not reside here. But is this atmosphere inconsistent with judicial purity? Is it really infected? Sir, this city bears an illustrious name; it was planted by the Father of his Country; and, if not the sole monument, it is the most splendid which the gratitude of the American People has erected to his cherished memory. Under their auspices we have preserved, sought to protect, and nurtured its growth. Its atmosphere! Do we not breath it ourselves? and are we infected with the contagion? Our Chief Magistrate is compelled to inhale it, and, with him, his Cabinet, the greater portion of every year; are we afraid to trust the Supreme Court within an influence which we ourselves encounter, it seems, without apprehension, for a longer period of every Congress, than the Judges themselves would be required to do? Is it of their encroachments upon our rights, that we are afraid? They sit at the other end of this Capitol, with open doors, guarded by a solitary officer; and we, the sentinels of the People, are here to watch them, with the power of impeaching and removing them from office. Do we apprehend that they will pronounce our acts unconstitutional? We have but to step a few hundred feet, to hear their reasons for so doing; to explore their motives if we please; and as *amici curiæ*, to partake of the argument by which those acts are vindicated. If, indeed, we are afraid to trust ourselves, then the most virtuous among us have only to proclaim aloud to the States, and to the People—who are the last resort of endangered Liberty—that their rights are assailed, and leave the principles of responsibility and representation to purify our portion of this edifice, and to fit ourselves for the lustration of the residue.

Do the Representatives of a particular State apprehend the subversion of their local laws, from misapprehension, or corruption, in the Supreme Court? Let them go forth to the Hall of Justice, and enlighten, by their knowledge, the ignorance of the Bench; or detect, by their discernment, the evidences of its criminal intentions. Does a question of real difficulty arise under some foreign treaty, or some statute of the United States? The whole foreign corps diplomatic, with the President and his Cabinet, who negotiated the treaty, and the Senate who concurred its ratification, are also here; and the most eminent jurists of our own body, are the licensed counsel and attendants of this great tribunal.

But, after all, the Court is required, by this very bill, only to discharge, though more tardily, in consequence of augmented numbers, its whole appellate duties in this selected atmosphere. The most ingenious corrective of its influence which this bill provides, is to send its Judges, once a year, for their instruction and purification, separately, to Boston, to St. Louis, and New Orleans; and, conversely, to Pensacola, Little Rock, Detroit, and Michilimackinac.

Sir, allow us a little more time to reflect upon this subject—a few months of the existence of the present Congress, which will not expire before the 4th of March, 1827. For myself, I am uneasy, I acknowledge. I can not disguise or repress my alarm, at this great and sudden augmentation of the number of Judges on the bench of the Supreme Court. You change your Senate, by one-third only at a time, and but once in two years. It is the most ingenious feature of the structure of the Constitution of Virginia, that we can change but a fourth of our State Senators, in any one year. We thus seek, at least, to impart stability to our Federal and State Legislation, without violating the great safeguard of liberty, the representative principle, by a wise classification and elective distribution of the less popular branch of our Legislatures. We even class the Senators by lot, that no sudden change shall operate, exclusively or peculiarly, for the benefit, or to the injury, of any particular portion of the Union, or of the State. Is consistency less important in Judicial decisions, that we are about to add to seven Judges, the sole expositors of the law in the last resort, as many as three, at one moment, and to take them from one section of the country?

Sir, had this Government first arisen, and spread over the West; had this Court, consequently, derived its Judges, in its origin, from that quarter, though myself an inhabitant of the East; I would resist, with equal zeal, and for the reasons which now guide, and, I trust, enlighten that zeal, any attempt from the East, suddenly to add near a moiety of new Judges to the number already seated on that bench. It must shake every opinion of that body, now regarded as law, which has, at any time, been contested. This renovation of a Court, of the highest appellate jurisdiction, is, as I have said, unprecedented: as will be, if it prevail, the number of Judges who compose it.

Sir, I do not mean to revive a controversy with my friend from Pennsylvania, (Mr. BUCHANAN,) over which, so many days and nights have quietly passed. The feeling which his second day's remarks excited, has gone by. But I must tell him, that there is no Court in England, which enters up the judgment of twelve Judges. A consultation, for the benefit of a comparison of opinion, and the *power to decide*, are not identical. They are, on the contrary, separate and distinct functions, the latter of which presupposes the final exertion of the former. And, whatever my friend may think of the Nisi Prius Courts of England, which, as I contend, pronounce no final judgment whatever, and decide, in fact, nothing but what is necessary to prepare a cause for adjudication elsewhere, and by another authority, I retain, with increased confidence, the opinion which I expressed, when I treated the argument of the gentleman from Massachusetts, as I am always willing that he shall treat mine: It is, that the Nisi Prius system of England is preferable, in the particulars which I enumerated, to that Circuit Court system, which this bill inappropriately and clumsily extends to the whole territory of the United States.

The framers of our admirable Constitution, who gave us the judicial system of 1789, have left, in it, a record of their opinion of the *inexpediency*, if not the *injustice*, of allowing the same Judge who has originally tried, to sit a second time in judgment upon the same cause. Although they divided the United States into but three circuits, and consituted each Circuit Court of the district with two Circuit Judges, they solemnly enacted—I will read their words—that "*no District Judge shall give a vote in any case of appeal or error from his own decision;* but *may* assign the *reason* of his decision." Such, I am informed, Sir, is the voluntary practice of the Judges of our Supreme Court; and, in my humble opinion, it does equal honor to their sense of justice, and of delicacy. Shall he sit as a Judge, who has disqualified himself to be a juryman in a criminal case? How would an advocate feel, in addressing a Judge against an opinion, which that Judge had not only formed, but already solemnly pronounced, and published to the world? Although ridicule be not an infallible test of truth, there are many errors of opinion, to which it applies the readiest, and, sometimes,

(for reason and wit are natural allies) the most conclusive test. But with what seeming propriety would an advocate ridicule the opinion of a Judge whom he addressed; and with what enduring patience, and probable chance of conviction, would a Judge listen to such an advocate? Even the sagest votaries of mathematics have legitimatized the *argumentum ad absurdum*, as one of the means of arriving at truth, in a science which not only demands, but attains infallible certainty, in all its conclusions. And yet the dignity of a Judge would render him somewhat restless, if called upon before his associates, in presence of the assembled Bar and People, to hear his absurdities exposed. We are all, at last, sir, but men, infallible men; and taught by Divine Wisdom to pray, that we be delivered from temptation to evil.

If, pursuing this maxim, our Judges now respectively forbear to sit in cases of appeal, from their own decisions, of what avail will it be, that each circuit, State, or district, has its Judge upon the Bench of the Supreme Court? That appeals, from Louisiana, shall be followed up to Washington, by the Judge whose imputed error is sought to be corrected? An error, which can scarcely be in the form of the proceedings below: for, upon a different occasion, the learned member from Louisiana told us, and he is a civilian, that the *practice* of the civil law could be learnt at any time in three hours' conversation; and its *principles*, he has shewn us, can be comprised in a single volume. But, if its precedents and treatises comprised wagon loads of ponderous folios, as did the ancient law on which it is founded, the two months which a Judge would save by his relief from circuit duties, added to the two more which he must expend in unprofitable journeys, to the Courts here, would enable him to acquire more legal knowledge, than his duty of presiding on the trial of a few causes, would possible teach him; and, more especially, at that advanced period of life, when his legal reputation shall have called him to a seat on the Bench of the Supreme Court. If, indeed, his capacity for bearing the fatigue of travelling, annually, six thousand miles, shall become one of the tests of his qualifiation for the discharge of his public duty; and the design of this bill be to drive from the Bench every Judge who can no longer endure such hardships and severity; then I must acknowledge that the bill is entitled to a merit which I had not hitherto ascribed to it. I will still venture to say, as did the authors of the Federalist, in speaking of that provision of the Constitution of N. York, which is adduced in aid of the present circuit system, by my friend from Pennsylvania, "that limitations of this sort have little to recommend them"—saving, in fact, in the lapse of many years, a small part, only, of the sum, which this bill proposes to lavish on the sudden, as well as unnecessary addition of *three*, to the number of Judges at present upon the Bench of the Supreme Court. Had I, Sir, the remotest hope of success, I would endeavor to take from this measure, its only recommendation, by an amendment, in all respects the same with the provision which I have read from the judicial act of 1789: and which, if this bill shall pass, contrary to my most earnest hopes, would fortify, by the positive enactment of law, the high sense of delicacy, and the yet higher obligations of justice, which induce the Judges of the Supreme Court to give an unprejudiced and impartial trial, such as our Constitution designed to secure to every citizen whose cause may be submitted on appeal to their final and irrevocable judgment.

Before I resume my seat, I beg leave, Mr. Speaker, to ask, what I very seldom do, the yeas and nays upon the motion, which an imperious sense of duty has prompted me to submit to the House.

Mr. MARVIN observed, that he was in favor of the motion for postponement. Not, however, but he was as desirous as any other gentleman on that floor to remedy, and without delay, all the evils connected with the present Judiciary System, and to obviate which was the professed object of the bill. He felt as forcibly as any gentleman, the just complaints of the People of the West, and so anxious was he to administer to their relief, that, were he assured that no other measure, and more appropriate than the one now proposed, could be brought forward at a future day, with any prospect of success, he was not even prepared to say but he might vote for the present bill, as objectionable as he deemed it to be. He could the more readily assent to the measure now proposed, were it not for the dangerous consequences which he could not but anticipate as growing out of the principle established by the bill, regarding it as a precedent.

But he believed the House were not now prepared to adopt the measure of the bill, and by a single effort to add three to the present number of the Judges of the Supreme Court. Sir, said Mr. M., notwithstanding the length of time the bill has been under discussion in this body, its leading feature is new; but recently had it been presented to the consideration of Congress, in the form of a bill, and at no time had the attention of the People of this country been directed to it. At a former session of Congress, as had but just now been remarked, by a gentleman from Virginia, (Mr. MERCER, a bill was introduced, and underwent a very full discussion in the Senate, and finally passed that body, and almost with its unanimous assent, proposing a system of Circuit Courts, and abstracting the Judges of the Supreme Court from Circuit Court duties. During the last session of Congress, a bill had been reported to this House, by the Committee on the Judiciary, specially directed to the evils complained of in the West, and proposing the establishment of certain Circuit Courts, and the appointment of Judges whose duties should be confined to such Courts. As, then, this had been left to the present Congress to provide for the despatch of business properly pertaining to courts of inferior jurisdiction, by the increase, almost in a duplicate ratio, of the number of the Judges of our Supreme Court, he hoped gentlemen would at least pause. A measure from which you cannot retreat, should be adopted with caution. Pass this bill, and what shall have been done to-day cannot be revoked to-morrow. Let the measure, then, if sanction it you will, appear, what in truth it should be, the result of cool deliberation. It can be no disparagement to the good sense of this House to say, required distinct portions of *one* year, to project and mature a system, which, as contended by its friends, will answer our purposes for *fifty*. Since I am up, said Mr. M., I will ask the attention of the House, while I know it must be by this protracted discussion, to a few remarks on the principle of the bill itself. The Constitution contemplates the existence of a Supreme Court and certain inferior Courts. The Supreme Court, in reference to matters over which it has original jurisdiction, or to such as pertain to its appellate character, seems especially intended for determining and settling those constitutional questions growing out of our federative form of Government, whether those questions relate to the rights under the Constitution, of the General Government and the State Sovereignties, or of individuals. And, in legislating, sir, upon our Judiciary system, in relation to this Supreme Court, its important and peculiar duties should be kept constantly in view. The real question presenting itself, then, is, Will this Court, regard being had to the primary and paramount objects of its institution, be better qualified for the discharge of its appropriate duties, to make, to consist of ten, instead of its present number of seven Judges? Sir, I answer, no. In support of this position it is unnecessary to repeat the arguments so ably urged by the gentlemen who have preceded me in this debate. The principle seems to have been conceded by the gentleman of the Judiciary Committee, in the remarks submitted by him at an early period of the debate.

I might appeal to all previous legislation on this subject. Whenever, sir, it has been proposed to introduce the Circuit system, withdrawing these Judges from Circuit duties, it has uniformly been proposed to reduce, as early as might be, their numbers to five; thus clearly indicating, in the settled judgment of former times, that the present number is sufficiently large. A Court is not a body to devise or generate measures—to supply defects in former systems. They are simply to apply established principles—not to make, but to declare the law. To entire respect to its decisions, individual examination is necessary; individual responsibility is also required. Its discussions must go forth to the community, sustained by the reasons on which they are founded, and thus become sanctioned by a thinking and discriminating public. The moral power of this tribunal is emphatically its great power. Whenever its decrees, to ensure an acquiescence, shall require to be enforced by its physical, unaided by a moral power of conviction on the minds of the People, it is no longer in a sound and healthy condition.

And, sir, if I am correct in the principle advanced; if the present number of this Court be sufficiently large for its great duties; shall we enlarge it merely to meet an emergency, local in its origin, and temporary in its character? This Court, sir, is the common property of the whole American People. It belongs not exclusively to the West or to the East, the North or the South. If, in the present organization, keeping in view its appropriate functions, we find a just adaptation of means to ends, it is as much the interest of the citizens of the West, that the numbers should not be increased, as it is that of any other portion of the United States.

Sir, I admit most freely, that the evils which now exist in the West, are of a description and a magnitude that require a prompt and efficient remedy; and I, for one, am in favor of giving it. But, in doing so, we should carefully examine the nature and extent of the particular evils to be corrected—lest our application, however well adapted it may seem, to remedy a known and existing defect, may, in its too extensive operation, may produce evils more to be deprecated than those we seek to avert. What is the complaint addressed to us from the People of the West? for this is the only quarter from which the language of supplication has reached us. Let us look at it. It is, that the Circuit Court in the Western district is inadequate to the disposal of the causes which come before it, and that, in consequence, they have accumulated to an alarming degree. Well, sir, shall we, to remedy the evil, great as it is, increase the number of the Judges of the Supreme Court? An argument against doing so, furnished by the gentlemen themselves. They tell us that the business of these Courts in the West, arises from the collection of debts due to the citizens of other States. If it so: can it with propriety be said that causes of this description properly belong to the Supreme Court? Sir, they can come before that Court only in its appellate character, and seem, from their very nature, to pertain to the Courts of inferior jurisdiction contemplated by the constitution.

And again, as to the land titles in the Western States, will it be denied that all this sort of litigation is temporary? Is it not grown out of the condition of that country, as a country newly settled? And can it be denied that the greater part of these disputes as to title, must depend on a few general principles, which will, at no very distant day, be fully settled and clearly understood? Shall we then provide for such an evil, a remedy of the important and permanent character of that proposed by the bill on your table? No, sir, I would prescribe a remedy adapted to, and commensurate with, the evil. This remedy will be found in the organization of Circuit Courts, and the appointment of Judges to perform the duties of them. I would adopt the principle of the bill reported to this House by the Committee on the Judiciary, during the last session of Congress.

The gentlemen from the West insist that they are entitled to equal honors and privileges with any of the States in this Confederacy. Be it so: we all grant it most willingly. But why must we increase the number of our Supreme Court Judges, in order to secure to them these equal privileges? The inequality of which they complain is not the fault of the Judicial system, nor is it the fault of the Western citizens of the Union; it grows out of their situation, and the nature of things; it could not be otherwise. The population of this country has long been flowing Westward, with a mighty and irresistible current; that whole country has grown up under the eye of our present Supreme Court Judges. In 1807, one Judge was added to the Supreme Court; they then had one Judge from the West, which was their due proportion. From the nature of things, the equal distribution of Judicial honors between the East and West, must be the work of time. They must wait till there shall occur a vacancy on the bench; then the eyes of the Executive will be directed to the whole country as to a map. Then, sir, the pride of the West, (a commendable pride, I admit,) will have a fair opportunity of being gratified.

In accordance with this idea, the bill reported to the House at the last session of Congress, and to which I have before adverted, provided, that, when a vacancy occurred, it should not be filled till a provision of law should be enacted for that purpose.

And here I would intimate that, in providing these Circuit Courts for the West, I would still regard them as attached to the great Judicial family of the nation. I would have the Judges of the Supreme Court occasionally to attend such Circuits, and as often as should be convenient, justly apportioning the labor among them. Sir, I would go farther. I would not regard the Judges of the Supreme Court as necessarily and permanently attached to any particular Circuit. I would let them attend alternately in the different Circuits of the Union; and when an exigency required, I would appoint Circuit Judges to provide for it. I merely state these features of a plan which I think preferable to that in this bill; but do not intend now to dwell upon its details. It is barely thrown out for the consideration of the House. Let it not, without examination, be regarded as impracticable. I would remind gentlemen of the rapid march of this country in its internal improvements. Such are becoming the increased facilities of travelling, that the distance of the Circuits will present no obstacle, and scarce any inconvenience. The day is not distant when a Judge, whose home is in Massachusetts, may attend the Circuit in Missouri—and may even take his family with him—performing, if he please, the whole or greater part of the excursion, by water carriage. I do not say I would carry the principle of alternating to this extent: I would leave it to be regulated by experience. The House will, therefore, perceive, that, by this plan, the whole business of the country may be done; that the business of the inferior Courts may be overtaken without suffering it to fall into arrears; and full time be allowed for doing that of the Supreme Court also.

It is said by the advocates of the bill, that it introduces no change in our Judicial system, but merely proposes an extension of the system as it at present exists. Sir, I deny this position. What is the form of the system as it now exists? The *number* of the Judges of the Supreme Court is sufficient for all the business of the Supreme Court, and is wisely regulated with reference to a correct and prompt discharge of that business; and when the business properly pertaining to inferior Courts increases, it contemplates a corresponding increase of District Judges, to be clothed with Circuit Court powers. But what is the system of the bill? To meet the increase of business in the

inferior Courts, it increases the number, not of the inferior, but of the Supreme Court Judges; it makes the Supreme Court subordinate and secondary, and burthens it with a number of Judges confessedly too large for its own business, that they may attend to the business of the Courts below!

Can it be concluded that ten Judges will always be sufficient for this purpose? No, sir: the Northern district of New York, and the Western districts of Pennsylvania and Virginia, are entitled to their full proportion of the Judicial benefits, and the Judicial honors, of this Government. The Northern district of New York, including a large part of the Western territory of that great, populous, and enterprising State—extending for many miles along the frontier of the United States; holding a direct and profitable internal commerce with the Territories of Great Britain; having great facilities of internal communication recently opened with the Ocean on one hand, and the great Mediterranean Lakes on the other; containing an industrious, brave, and intelligent population, of more than half a million of the People of this Republic—is, by the provisions of this bill, wholly passed over: and you may rely upon it, Mr. Speaker, if this, and other not less important parts of this Confederacy, are to be left destitute of the advantages which the bill seems to intend exclusively for the Western States, you will hear (to use the language of the gentleman from North Carolina) "a still small voice" at your doors, that will speedily command the attention of this House. I mention this, not by way of menace, but as furnishing one consideration, which unites with the others which have been already urged in favor of a postponement.

The gentlemen who have argued this bill, seem to take it for granted, that one of two courses must be pursued: either to increase the number of Judges of the Supreme Court, or to separate them altogether from the discharge of Circuit duties—they must do all the duties, or none. Now, sir, I am in favor of a middle course. I would leave them enough of Circuit business to keep them active; and, consequently, to make and preserve them able Judges: but not believing them adequate to the performance, both of their appellate and of all their present Circuit duties, I would have them required to do only so much of the latter as is consistent with their physical powers.

Sir, I am conscious that I have trespassed too long on the patience of the House, anxious, as I know it to be, to have this discussion brought to a close. I have troubled them much longer than I contemplated, or intended when I rose; and I have only been induced to say what I have said, by the solemn conviction, that, if we pass the bill, a day is coming, and that not distant, in which our act will be regretted by the People of this nation; and when those who shall then be honored by a seat on this floor, shall, in common with their fellow citizens, deprecate this inconsiderate measure, and be left to lament, too late, their inability to correct it.

Mr. WEBSTER, then again addressed the House. I had not intended, sir, (said he) to avail myself of the indulgence which is generally allowed, under circumstances like the present, of making a reply. But the House has been invited, with such earnestness, to postpone this measure, to another year; it has been pressed, with so much apparent alarm, to give no further countenance or support now to the bill, that I reluctantly depart from my purpose, and ask leave to offer a few brief remarks upon the leading topics of the discussion.

This, sir, must be allowed, and is, on all hands allowed, to be a measure of great and general interest. It respects that important branch of Government, the Judiciary; and something of a Judicial tone of discussion is not unsuitable to the occasion. We cannot treat the question too calmly, or too dispassionately. For myself, I feel that I have no pride of opinion to gratify, no eagerness of debate to be indulged, no competition to be pursued. I hope I may say, without impropriety, that I am not insensible to the responsibility of my own situation as a member of the House, and a member of the Committee. I am aware of no prejudice which should draw my mind from the single and solicitous contemplation of what may be best; and I have listened attentively, through the whole course of this debate, not without the feelings of one who is meditating the means of replying to objections, or escaping from their force, but with an unaffected anxiety to give every argument just weight, and with a perfect readiness to abandon the measure, at any moment, in favor of any other, which should appear to have solid grounds of preference. But I cannot say that my opinion is altered. The measure appears to my mind in the same light as when it was first presented to the House. I then saw some inconveniencies attending it, and admitted them: I see them now; but while the effect of this discussion, in my own mind, has not been to do away entirely the sense of these inconveniences, it has not been, on the other hand, to remove the greater objections which exist to any other plan. I remain fully convinced, that this course, is, on the whole, that which is freest of difficulties. However plausible other systems may seem in their general outline, objections arise, and thicken as we go into their details. It is not now at all certain that those who are opposed to this bill, are agreed, as to what other measure should be adopted. On the contrary, it is certain that no plan unites them all; and they act together only on the ground of their common dissatisfaction with the proposed bill. That system which seems most favored, is the Circuit system, as provided for in the Senate's bill of 1819. But as to that there is not an entire agreement. One provision in that bill was, to reduce the number of the Judges of the Supreme Court to five. This was a part, too, of the original resolution, on motion of the gentleman from Virginia; but it was afterwards varied, probably to meet the approbation of the gentleman from Pennsylvania, and others who preferred to keep the Court at its present number. But again, other gentlemen, who are in opposition to this bill, have still recommended a reduction of that number. Now, sir, notwithstanding such reduction was one object, or was to be one effect, of the law of 1801, it was contemplated, also, in the Senate's bill of 1819, and has been again recommended by the gentleman from Virginia, and other gentlemen, yet I cannot persuade myself that any two members of the House, upon mature reflection, would now be in favor of such reduction. It could only be made to take place when vacancies should occur on the Bench, by death or resignation. Of the seven Judges of which the Court consists, six are now assigned to Circuits in the Atlantic States—one only is attached to the Western Districts. Now, sir, if we were to provide for a reduction, it might happen that the first vacancy would be in the situation of the single Western Judge. In that event, no appointment could be made until two other vacancies should occur, which might be several years. I suppose that no man would think it just, or wise, or prudent, to make such legal provision, as that it might happen that there should be no Western Judge at all, on the Supreme Bench, for several years to come. This part of the plan, therefore, was wisely abandoned by the gentleman. The Court cannot be reduced: and the question is only between seven Supreme Judges with ten Circuit Judges, and ten Supreme Judges, with no Circuit Judges.

I will take notice here of another suggestion, made by the gentleman from Pennsylvania, who is generally so sober-minded and considerate in his observations, that they deserve attention, from respect to the quarter whence they proceed. That gentleman recommends

that the Judges of the Supreme Court should be relieved from Circuit duties, as individvals, but proposes, nevertheless, that the whole Court should become migratory, or ambulatory, and that its sessions should be holden, now in New York or Boston, now in Washington or Richmond, and now in Kentucky or Ohio. And it is singular enough that this arrangement is recommended in the same speech, in which the authority of a late President is cited, to prove, that considerations arising from the usually advanced age of some of the Judges, and their reasonable desire for repose, ought to lead us to relieve them from all Circuit duties whatever. Truly, sir, this is a strange plan of relief. Instead of holding Courts in his own State, and perhaps in his own town, and visiting a neighboring State, every Judge is to join every other Judge, and the whole bench to make, together, a sort of Judicial progress. They are to visit the North, and the South, and to ascend and descend the Alleghany. Sir, it is imposible to talk seriously against such a proposition. To state it, is to refute it. Let me merely ask, whether, in this peregrination of the Court, it is proposed that they take all their records of pending suits, and the whole calendar of causes, with them? If so, then the Kentucky client, with his Counsel, is to follow the Court to Boston; and the Boston client to pursue it back to Kentucky. Or is it, on the contrary, proposed, that there shall be grand Judicial divisions in the country, and that, while at the North, for example, none but Northern appeals shall be heard? If this be intended, then I ask how often could the Court sit, in each of these divisions? Certainly, not oftener than once in two years; probably, not oftener than once in three. An appeal, therefore, might be brought before the Appellate Court, in two or three years from the time of rendering the first judgment; and supposing judgment to be pronounced, in the Appellate Court, at the second term, it would be decided in two or three years more. But it is not necessary to examine this suggestion further. Sir, every thing conspires to prove, that, with respect to the great duties of the Supreme Court, they must be discharged at one annual session, and that session must be holden at the Seat of Government. If such provision be made, as that the business of the year, in that Court, may be despatched, within the year, reasonable promptitude in the administration of justice will be attained: and such provision, I believe, may be made.

Another objection advanced by the member from Pennsylvania, applies as well to the system as it now exists, as to that it will be if this bill shall pass. The honorable member thinks, that the Appellate Court and the Court from which the appeal comes, should, in all cases, be kept entirely distinct and separate. True principle requires, in this judgment, that the Circuit Judge should be excluded from any participation in the revision of his own judgments. I believe, sir, that in the early history of the Court, the practice was, that the Judge, whose opinion was under revision, did not partake in the deliberations of the Court. This practice, however, was afterwards altered, and the Court resolved that it could not discharge the Judge from the duty of assisting in the decision of the appeal. Whether the two Courts ought to be kept so absolutely distinct and separate as the member from Pennsylvania recommends, is not so clear a question as that competent Judges may not differ upon it. On the one hand, it may very well be said, that, if the judgment appealed from has been rendered by one of the Judges of the Appellate Court, courtesy, kindness, or sympathy, may inspire some disposition in the members of the same Bench to affirm that judgment; and that the general habit of the Court may thus become unfriendly to a free and unbiassed revision. On the other hand, it may be contended, that, if there be no medium of communication between the Court of the first instance, and the Court of Appellate jurisdiction, there may be danger that the reasons of the first may not be always well understood, and its judgments consequently liable, sometimes, to be erroneously reversed. It certainly is not true, that the chance of justice, in an Appellate Court, is always precisely equal to the chance of reversing the judgment below; although it is necessary for the peace of society and the termination of litigation, to take it for granted, as a general rule, that that is decided right which is decided by the ultimate tribunal. To guard against too great a tendency to reversals in Appellate Courts, it has often been thought expedient to furnish a full opportunity at least, of setting forth the grounds and reasons of the original judgment. Thus, in the British House of Lords, a judgment of the King's Bench is not ordinarily reversed until the Judges have been called in, and the reason of their several opinions stated by themselves. And thus, too, in the Court of Errors of New York, the Chancellor and the Judges are members of the Court; and, although they do not vote upon the revision of their own judgments or decrees, they are expected, nevertheless, to assign and explain their reasons. In the modern practice of the Courts of Common Law, causes are constantly and daily revised on motions for new trials founded on the supposed misdirection of the Judge in matter of law. In these cases, the Judge himself is a component member of the Court, and constantly takes part in its proceedings. It certainly may happen in such cases, that some bias of preconceived opinion may influence the individual Judge, or that some undue portion of respect for the judgment already pronounced, may unconsciously mingle itself with the judgments of others. But the universality of the practice sufficiently shews, that no great practical evil is experienced from this cause. It has been said in England, that the practice of revising the opinions of Judges, by motions for new trial, instead of filing bills of exception, and suing out writs of error, has greatly diminished the practical extent of the appellate jurisdiction of the House of Lords. This shews, that suitors are not advised that they have no hope to prevail against the first opinions of individual Judges, or the sympathy of their brethren. Indeed, sir, Judges of the highest rank of intellect have always been distinguished for the candor with which they reconsider their own judgments. A man who should commend himself for never having altered his opinion, might be praised for firmness of purpose; but men would think of him, either that he was a good deal above all other mortals, or somewhat below the most enlightened of them. He who is not wise enough to be always right, should be wise enough to change his opinions when he finds it wrong. The consistency of a truly great man is proved by his uniform attachment to truth and principle, and his devotion to the better reason; not by obstinate attachment to first formed notions. Whoever has not candor enough, for good cause, to change his own opinions, is not safe authority to change the opinions of other men. But at least, sir, the member from Pennsylvania will admit, that, if an evil in this respect exist under the present law, this bill will afford some mitigation of that evil; by augmenting the number of the Judges, it diminishes the influence of the individual whose judgment may be under revision; and so far, I hope, the honorable member may himself think the measure productive of good.

But, sir, before we postpone to another year the consideration of this bill, I beg, again, to remind the House that the measure is not new. It is not new in its general character; it is not entirely new in its particular provisions. The necessity of some reform in the Judicial establishment of the country, has been presented to every Congress, and every session of Congress, since the peace of 1815. What has been recommended, at different times, has been already frequently stated. It is enough,

now, to say, that the very measure of extending the system by increasing the number of the Judges of the Supreme Court, was presented to the House, among other measures in 1823, by the Judiciary Committee; and that so late as the last session, it received a distinct expression of approbation in the other branch of the Legislature. Gentlemen have referred to the bill introduced into this House two years ago. That bill had my approbation; I so declared at the commencement of this debate. It proposed to effect the object of retaining the Judges upon their Circuits, without increasing their number. But it was complex. It was thought to be unequal, and it was unsatisfactory. There appeared no disposition in the House to adopt it; and when the same measure in substance was afterwards proposed in the other branch of the Legislature, it received the approbation of no more than a half dozen voices. This led me to make a remark, at the opening of the debate, which I have already repeated, that, in my opinion, we are brought to the narrow ground of deciding between the system of Circuit Courts and the provisions of this bill. Shall we keep the Judges upon the Circuits and augment their number, or shall we relieve them from Circuit duties, and appoint special Circuit Judges in their places? This, as it seems to me, is the only practical question remaining for our decision.

I do not intend, sir, to go again into the general question, of continuing the Judges of the Supreme Court in the discharge of Circuit duties. My opinion has been already expressed, and I have heard nothing to alter it. The honorable gentleman from Virginia does me more than justice in explaining any expression of his own which might refer this opinion to a recent origin, or to any new circumstances. I confess, sir, that four-and-twenty years ago, when this matter was discussed in Congress, my opinion, as far as I can be supposed to have had any opinion then on such subjects, inclined to the argument that recommended the separation of the Judges from the Circuits. But, if I may be pardoned for referring to any thing so little worthy the regard of the House, as my own experience, I will say that that experience early led me to doubt the correctness of the first impression, and that I became satisfied that it was desirable, in itself, that the Judges of the Supreme Court should remain in the active discharge of the duties of the Circuits. I have acted in conformity to this sentiment, so often as this subject has been before Congress, in the short periods that I have been a member. I still feel the same conviction; and though I shall certainly yield the point, rather than that no provision for the existing exigency should be made; yet I should feel no inconsiderable pain in submitting to such necessity. I do not doubt, indeed, sir, that, if the Judges were separated from Circuit duties, we should go on very well for some years to come. But, looking to it as a permanent system, I view it with distrust and anxiety. My reasons are already before the House. I am not about to repeat them. I beg to take this occasion, however, to correct one or two misapprehensions of my meaning into which gentlemen have fallen. I did not say, sir, that I wished the Judges of the Supreme Courts to go upon the Circuits, to the end that they might see, in the country, the impression which their opinions made upon the public sentiment. Nothing like it. What I did say, was, that it was useful that the Judge of the Supreme Court should be able to perceive the application and bearings of the opinions of that Court, upon the variety of causes coming before him at the Circuit. And is not this useful? Is it not probable that the Judge will lay down a general rule with the greatest wisdom and precision, who comprehends, in his view, the greatest number of instances to which that rule is to be applied? As far as I can now recall the train of my own ideas, the expression was suggested by a reflection upon the laws of the Western States, respecting title to land. We hear often in this House of "Judicial Legislation." If any such thing exist in this country, an instance of it, doubtless, is to be found in the Land Laws of some of the Western States. In Kentucky, for example, titles to the soil appear to depend, to a very great extent, upon a series of Judicial decisions, growing out of an act of the Legislature of Virginia, passed in 1779, for the sale and disposition of her public domain. The Legislative provision was very short and general; and as rights were immediately acquired under it, the want of Legislative detail could only be supplied by Judicial construction and determination. Hence, a system has grown up, which is complex, artificial, and argumentative. I do not impute blame to the Courts; they had no option but to decide cases as they arose, upon the best reasons. And, although I am a very incompetent judge in the case, yet, as far as I am informed, it appears to me that the Courts, both of the State, and of the United States, have applied just principles to the state of things which they found existing. But, sir, as a rule laid down at Washington, in one of these cases, may be expected to affect 500 others, is it not obvious that a Judge, bred to this peculiar system of law, and having also many of these cases in judgment before him, in his own Circuit, is better enabled to state, to limit, and to modify the general rule, than another Judge, though of equal talents, but who should be a stranger to the decisions of the State tribunals, a stranger to the opinions and practice of the profession, and a stranger to all cases except the single one before him for judgment?

The honorable member from Pennsylvania asks us, whether a statute of Vermont cannot be as well understood at Washington, as at Windsor or Rutland. Why, sir, put in that shape, the question has very little meaning. But, if the gentleman intends to ask, whether a Judge, who has been, for years, in the constant discharge of the duties incumbent upon him as the head of the Circuit Court in Vermont, and who, therefore, has had the statutes of that State frequently before him, has learned their interpretation by the State judications, and their connection with other laws, local or general? if the question be whether such a Judge be not, probably, more competent to understand that statute than another, who, without knowledge of its local interpretation, or local application, shall look at its letter, for the first time, in the Hall of the Supreme Court? If this be the question, sir, which the honorable gentleman means to propound, I cheerfully refer him to the judgment of this House, and to his own proper understanding for an answer. Sir, we have heard a remark of observation upon this subject which quite surprised me. It seems to imply that one intelligent man is as fit to be a Judge of the Supreme Court as another. The perception of the true rule of law, and its true application, whether of local or general law, is supposed to be entirely easy, because there are many banks of statutes and many books of decisions. There can be no doubt, it seems, that a Supreme Court, however constituted, could readily understand, in the instance mentioned, the laws of Vermont, because the statutes of Vermont are accessible. Nor need Louisiana fear, that her peculiar code will not be thoroughly and practically known, inasmuch as a printed copy will be found in the public libraries.

Sir, I allude to such arguments, certainly not for the purpose of undertaking a refutation of them, but only to express my regret that they should have found place in this discussion. I have not contended, sir, for any thing like Judicial representation. I care not in what terms I reproach such an idea be spoken of. It is none of mine. What I said was, and I still say it, that, with so many States having various and different systems, with such a variety of local laws, and usages, and practices, it is highly important that the Supreme Court should be so constituted as to allow a fair prospect, in every case, that those be

and usages should be known; and that I know nothing, so naturally conducive to this end, as the knowledge and experience obtained by the Judges on the Circuits. Let me ask, sir, the members from New England, if they have ever found any man this side of the North River, who thoroughly understood our practice of special attachment, our process of garnishment, or trustee process, or our mode of extending execution upon land? And let me ask, at the same time, whether there be an individual of the profession, between this place and Maine, who is, at this moment, competent to the decisions of questions arising under the peculiar system of land titles of Kentucky or Tennessee? If there be such a gentleman, I confess I have not the honor of his acquaintance.

On the general question of the utility of constant occupation in perfecting the character of a Judge, I do not mean now to enlarge. I am aware that men will differ on that subject, according to their different means, or different habits of observation. To me it seems as clear as any moral proposition whatever. And I would ask the honorable member from Rhode Island, since he has referred to the Judge of the first Circuit, and has spoken of him in terms of respect, not undeserved, whether he supposes that that member of the Court, if, fifteen years ago, on receiving his commission, he had removed to this City, had remained here always since, with no other connection with his profession than an annual session of six weeks in the Supreme Court, would have been the Judge he now is? Sir, if this question were proposed to that distinguished person himself, and if he could overcome the reluctance which he would naturally feel to speak at all of his own judicial qualities, I am extremely mistaken if he would not refer to his connection with the Circuit Court, and the frequency and variety of his labors there, as efficient causes in the production of that degree of ability, whatever it may be supposed to be, with which he now discharges the duties of his station.

There is not, sir, an entire revolution wrought in the mind of a professional man, by appointing him a Judge. He is still a lawyer; and if he have but little to do as a Judge, he is, in effect, a lawyer out of practice. And, now is it, sir, with lawyers who are not Judges, and are set out of practice? Let the opinion, and the common practice of mankind decide this. If you require professional assistance, in whatever relates to your reputation, your property, or your family, do you go to him who is retired from the bar, and who has this uninterrupted leisure to pursue his readings and reflections; or do you address yourself to him, on the contrary, who is in the midst of affairs, busy every day, and every hour in the day, with professional pursuits? But I will not follow this topic farther, nor dwell on this part of the case.

I have already said, that, in my opinion, the present number of the Court is more convenient than a larger number, for the hearing of a certain class of causes. This opinion I do not retract; for I believe it to be true. But the question is, whether this inconvenience be not more than balanced by other advantages? I think it is.

It has been again and again urged, that this bill makes no provision for clearing off the term business of the Supreme Court; and strange mistakes, as it appears to me, are committed, as to the amount of arrears, in that Court. I believe that the bill intended to remedy that evil, will remedy it. I believe there is time enough for the term Court to go through its list of causes here, without interfering with the sessions of the Circuit Courts; and, notwithstanding the mathematical calculations by which it has been proved that the proposed addition to the length of the term, would enable the Court to decide precisely nine additional causes and no more, yet I have authority to say, that those who have the best means of knowing, were of opinion, two years ago, that the proposed alteration of the term, would enable the Court, in two years, to go through all the causes before it, ready for hearing.

It has been said, sir, that this measure will injure the character of the Supreme Court; because, as we increase numbers, we lessen responsibility in the same proportion. Doubtless, as a general proposition, there is great truth in this remark. A Court, so numerous as to become a popular body, would be unfit for the exercise of Judicial functions. This is certain. But then this general truth, although admitted, does not enable us to fix, with precision, the point at which this evil either begins to be felt at all, or to become considerable, still less where it is serious or intolerable. If seven be quite few enough, it may not be easy to shew, that ten must necessarily be a great deal too many. But there is another view of the case, connected with what I have said heretofore in this discussion, and which furnishes, in my mind, a complete answer to this part of the argument; and that is, that a Judge who has various important individual duties to perform, in the Circuit Court, and who sits in the Appellate Court with nine others, acts, in the whole, in a more conspicuous character, and under the pressure of more immediate and weighty responsibility, than if he performed no individual Circuit duty, and sat on the appellate bench with six others only.

But again, it has been argued, that to increase the number of the Supreme Court, is dangerous; because, with such a precedent, Congress may hereafter effect any purpose of its own, in regard to Judicial decisions, by changing, essentially, the whole constitution of the Court, and overthrowing its settled decisions, through the means of augmenting the number of Judges. Whenever Congress, it is said, may dislike the constitutional opinions and decisions of the Court, it may mould it to its own views, upon the authority of the present example. But these abuses of power are not to be anticipated or supposed; and, therefore, no argument results from them.

If we were to be allowed to imagine that the Legislature would act in entire disregard of its duty, there are ways enough, certainly, beside that supposed, in which it might destroy the Judiciary, as well as any other branch of the Government. The Judiciary power is conferred, and the Supreme Court established, by the Constitution; but then Legislative acts are necessary to confer jurisdiction on inferior Courts, and to regulate proceedings in all Courts. If Congress should neglect the duty of passing such laws, the Judicial power could not be efficiently exercised. If, for example, Congress were to repeal the 25th section of the Judicial act of 1789, and make no substitute, there would be no mode by which the decisions of State tribunals, on questions arising under the Constitution and laws of the United States, could be revised in the Supreme Court. Or, if they were to repeal the 11th section of that act, the power of trying causes between citizens of different States, in the tribunals of this Government, could not be exercised. All other branches of the Government depend, in like manner, for their continuance in life and being, and for the proper exercise of their powers, on the presumption that the Legislature will discharge its Constitutional duties. If it were possible to adopt the opposite supposition, doubtless there are modes enough to which we may look, to see the subversion, both of the Courts, and the whole Constitution.

Mr. Speaker, I will not detain you by further reply to the various objections which have been made to this bill. What has occurred to me as most important, I have noticed either now or heretofore; and I refer the whole to the dispassionate judgment of the House. Allow me, however, sir, before I sit down, to disavow, on my own behalf, and on behalf of the committee, all connection between this measure and any opinions or decisions, given or expected, in any causes, or classes of causes, by the Supreme Court. Of the merits of the case, of which early mention was made in the debate, I know nothing. I presume it was rightly decided, because it was decided by sworn Judges, composing a tribunal in which the Constitution and the laws have lodged the power of ultimate

judgment. It would be unworthy, indeed, of the magnitude of this occasion, to bend our course a hair's breadth on the one side or the other, either to favor or to oppose what we might like, or dislike, in regard to particular questions. Surely we are not fit for this great work, if motives of that sort can possibly come near us. I have forborne, throughout this discussion, from all expression of opinion on the manner in which the members of the Supreme Court have heretofore discharged, and still discharge, the responsible duties of their station. I should feel restraint and embarrassment, were I to make the attempt to express my sentiments on that point. Professional habits and pursuits connect me with the Court, and I feel that it is not proper that I should speak here, of the personal qualities of its members, either generally or individually. They shall not suffer, at least, from any ill-timed or clumsy eulogy of mine. I could not, if I would, make them better known than they are, to their country; nor could I either strengthen or shake the foundation of character and talent upon which they stand. But of the Judicial branch of the Government, and of the institution of the Supreme Court, as the head of that branch, I beg to say that no man can regard it with more respect and attachment than myself. It may have friends more able—it has none more sincere. No conviction is deeper in my mind, than that the maintenance of the judicial power is essential and indispensable to the very being of this Government. The Constitution, without it, would be no Constitution—the Government, no Government. I am deeply sensible, too, and, as I think, every man must be whose eyes have been open to what has passed around him for the last twenty years, that the Judicial power is the protecting power of the whole Government. Its position is upon the outer wall. From the very nature of things, and the frame of the Constitution, it forms the point at which our different systems of Government meet in collision, when collision unhappily exists. By the absolute necessity of the case, the members of the Supreme Court become Judges of the extent of constitutional powers. They are, if I may so call them, the great arbitrators between contending sovereignties. Every man is able to see, how delicate and how critical must be the exercise of such powers, in free and popular Governments. Suspicion and jealousy are easily excited, under such circumstances, against a body, necessarily few in number, and possessing, by the Constitution, a permanent tenure of office. While public men, in more popular parts of the Government, may escape without rebuke, notwithstanding they may sometimes act upon opinions which are not acceptable, that impunity is not to be expected in behalf of Judicial tribunals. It cannot but have attracted observation, that, in the history of our Government, the Courts have not been able to avoid severe, and sometimes angry complaint, for giving their sanction to those public measures, which the Representatives of the People had adopted, without exciting particular disquietude. Members of this and the other House of Congress, acting voluntarily, and in the exercise of their general discretion, have enacted laws, without incurring an uncommon degree of dislike or resentment; and yet, when those very laws have been brought before the Court, and the question of their validity distinctly raised, and necessary to be determined, the Judges, affirming the constitutional validity of such acts, although the occasion was forced upon them, and they were absolutely bound to express the one opinion or the other, have, nevertheless, not escaped a severity of reproach, bordering upon the very verge of denunciation. This experience, while it teaches us the dangers which environ this Department, instructs us most persuasively, in its importance. For its own security, and the security of the other branches of the Government, it requires such an extraordinary union of discretion and firmness, of ability and moderation, that nothing in the country is too distinguished for sober sense, too gifted with powerful talent, to fill the situations belonging to it.

Sir, I will occupy the attention of the House no longer. I see no reason for postponing the bill. The subject has been thoroughly discussed, and fully considered. For myself, I expect no new lights, and feeling the necessity of doing something, I hope we may now give the form of law to the measure before us.

Mr. BURGES said, the very pointed allusions which had been made to his remarks by the gentleman from Massachusetts, would justify a reply from him. He did not rise, however, at this late hour of the day, to consume the time of the committee in any refutation of that gentleman's observations. He rose merely to beseech gentlemen to remember the difference between the act they were now called to do and the acts of ordinary legislation. Ordinary acts, if grounded on misrepresented facts or mistaken principles, were capable of being reversed; but, in this case, pass the bill, and, though the clamors of the nation should reach the skies, you cannot retract. The Judges, once in office, are beyond your reach. Nothing can shake them but death, or impeachment. He intreated the House to think of this, and surely when it was duly considered, they would not think it was too much if they were asked to deliberate till another session. It was to him surprising doctrine, that, if the People of the West are dissatisfied with their own State tribunals, we must therefore provide them with other Courts at the expense of the nation. Besides, the People of the West have detailed to us no evils: there is not a document before us to shew what their case actually is. When we go home to our constituents, and they ask us what are those evils in the Western States, which have led you to take so serious a step, we cannot answer, no evils have been presented to us in detail. It is said, indeed, that the breath of the Supreme Court depends on us; but I cannot agree in the vanity of a Legislative assembly arrogating to itself what does not pertain to it; nor will I give any sanction of mine to the doctrine, that one branch of this Government depends on any co-ordinate branch of it.

Mr. MERCER again rose. The gentleman from Massachusetts has said, (Mr. M. observed) that he would *not vote for the bill for the purpose of reversing, nor postpone it, for the purpose of affirming, the decision of the Supreme Court on the Occupying Claimant law of Kentucky.* If, said Mr. M. the gentleman means to insinuate that the motion to postpone the bill springs from a desire to affirm that decision, he does the mover great injustice. If personal considerations are regarded, I can say for myself that I would not give one farthing to reverse or affirm that judgment.

The gentleman has paid a merited compliment to the *sobriety* and *discretion* of my friend from Pennsylvania, (Mr. Hemphill.) I wish he had put it in the power of that gentleman to return the compliment.

Sir, long as this discussion has been protracted, it has not yet exhausted the argument. One topic has not yet been even adverted to: the probable accumulation of business in the Federal Courts, from the passage of another favorite measure of the gentleman from Massachusetts—a Bankrupt bill. If such a bill shall pass, in the state which the last received from the motion of a gentleman from Kentucky, no longer a member of this House, and which extended its operation to all classes of society, *farmers* as well as *traders*, then, indeed, the evidence of the title to all the real estate of every citizen of this Union, will, in time, pass through the Federal Courts; and, instead of sixty, six hundred appeals may come up to Washington in a single year. But I ask pardon of the House for the further trespass on their patience. I have done with the subject now and forever.

The yeas and nays were taken on Mr. MERCER'S motion to postpone, and were, yeas 45; nays 151.

So the House refused to postpone the bill.

The yeas and nays were next taken on the motion of Mr. BARTLETT to recommit the bill with instructions, as before stated, and were, yeas 46; nays 144.

The question was at length taken on ordering the bill *to be engrossed for a third reading.* Mr. EDWARDS, of N. C. called for the yeas and nays, which were ordered, and taken accordingly, as follows:

YEAS—Messrs. Adams, of N. Y. Alexander, of Tenn. Allen, of Tenn. Anderson, Armstrong, Bailey, Baldwin, Bartley, Barber, of Conn. Barney, Baylies, Beecher, Blair, Boon, Brent, Brown, Bryan, Buchanan, Buckner, Burleigh, Cambreleng, Campbell, Carter, Cassedy, Claiborne, Clarke, Cocke, Condict, Cook, Crowninshield, Davis, Davenport, Dorsey, Drayton, Dwight, Edwards, of Pa. Estill, Everett, Findlay, of Pa. Findlay, of Ohio, Fosdick, Garnsey, Garnett, Garrison, Gist, Gurley, Harris, Harvey, Hayden, Healy, Henry, Herrick, Hines, Hobart, Holcombe, Holmes, Houston, Hugunin, Ingersoll, Isacks, Jennings, of Ohio, Jennings, of Ind. James Johnson, Francis Johnson, Kerr, Kidder, Lawrence, Lecompte, Letcher, Little, Livingston, Locke, Mallary, Marable, Martindale, Martin, Mattocks, McDuffie, McKee, McLane, of Del. McLean, of Ohio, McManus, Merwin, of Conn. Metcalfe, Miller, of N. Y. Miner, Jas. S. Mitchell, Mitchell, of Md. Mitchell, of S. C. Mitchell, of Ten. Moore, of Ky. Moore, of Alab. Owen, Peter, Plumer, Polk, Reed, Rives, Ross, Sands, Scott, Sloane, Smith, Sprague, Stewart, Swan, Taylor, of Virginia, Test, Thompson, of Ohio, Tomlinson, Trimble, Tucker, of N. J. Vance, Varnum, Verplanck, Vinton, Wales, Ward, Webster, Whipple, White, Whittlesey, Wickliffe, Williams, James Wilson, Henry Wilson, Wolf, Woods, of Ohio, Worthington, Wright, Wurts, Young—132.

NAYS—Messrs. Addams, of Pa. Alexander, of Virg. Allen, of Mass. Alston, Angel, Ashley, Badger, Bartlett, Barbour, of Va. Bassett, Burges, Carson, Cary, Conner, Deitz, Eastman, Edwards, of N. C. Forsyth, Govan, Hallock, Hasbrouck, Haynes, Hemphill, Hoffman, Humphrey, Ingham, Johnson, of N. Y. Johnson, of Virg. Kellogg, Kremer, Lathrop, Lincoln, Long, Mangum, Markell, Marvin, of N. Y. McCoy, McKean, McNeill, Mercer, Merriwether, Miller, of Pa., Newton, O'Brien, Orr, Pearce, Saunders, Sawyer, Stevenson, of Pa. Storrs, Strong, Taliaferro, Thompson, of Geo. Trezvant, Tucker, of S. C. Van Horne, Whittemore, Wilson, of S. C. Wood, of N. Y.—59.

So the bill was ordered to be engrossed for a third reading to-morrow.

And the House adjourned.

THURSDAY, JANUARY 26, 1826.

Mr. CONDICT, offered the following:

Resolved, That the Secretary of the Navy be directed to inquire, and report to this House, whether the construction of a breakwater at the Capes of the Delaware for the security of merchant vessels seeking a shelter from storms, could not furnish important advantages to the Navy of the United States, in operations, offensive and defensive in war, as well as in building and equipping public vessels in time of peace.

APPROPRIATIONS FOR FORTIFICATIONS.

Mr. McLANE, of Delaware, moved to postpone the orders of the day, previous to the several appropriation bills reported by the Committee of Ways and Means. The motion prevailed, and the House went into Committee of the Whole, Mr. CONDICT in the chair, on the bill making appropriation for certain Fortifications of the United States.

The bill proposes the following items of appropriation, viz:

For Fort Adams, at Brenton's Point, one hundred thousand dollars.

Fort Hamilton, at New Utrecht Point, seventy-five thousand dollars.

Fort Monroe, at Old Point Comfort, one hundred and fifteen thousand dollars.

For Fort Calhoun, at the Rip Rap Shoal, eighty thousand dollars.

For the Fort at Bogue Point, North Carolina, twenty-five thousand dollars.

For the Fort at Oak Island, North Carolina, thirty thousand dollars.

For the Fort at Mobile Point, ninety thousand dollars.

For the Fort at Chief Menteur, eighty-five thousand dollars.

For Fort Jackson, at Plaquemine Bend, ninety thousand dollars.

For the Fort to be commenced at Bayou Bienvenu, Louisiana, ninety thousand dollars.

For repairs and contingencies, fifteen thousand dollars.

Mr. McLANE proposed that, as all appropriation bills were understood as being reported in blank, the sums in the printed bill should be taken as having been respectively moved by the Committee of Ways and Means. This arrangement was accordingly announced by the Chair.

The bill having been read through, was taken up by sections. The two first items of the first section were agreed to.

The third item, viz. "For Fortress Monroe, at Old Point Comfort, 115,000 dollars," having been read—

Mr. FLOYD, moved to amend it by substituting the word "Powhattan, for the word "Monroe."

In support of this motion, Mr. FLOYD observed, that the House had now been called upon, for one or two years, successively, to make an appropriation "for Fort Monroe, at Old Point Comfort." He would suggest whether it would not be well, when expending a sum like this, in a place, too, on many accounts, of the greatest notoriety, to make the change he had proposed in the name of the Fortress. The river on which it stands was originally called Powhattan, but the attachment which had prevailed for all that belonged to England, had induced the Colonists to alter it for that of James River. It was one of the noblest rivers in the United States, and the change of the name was to be regretted.

Mr. McLANE, of Del. observed, in reply, that there might be some propriety in the change suggested by the gentleman from Virginia; but, if such alteration was to be made, it would be better it should be done by a separate bill. He would not say that the alteration was not expedient; but, as matters now stood, the power of naming the fortifications is left to the discretion of the Engineer Department. This department has hitherto given names to all of them which have been erected: very possibly some other system may be preferable; but, until such system is adopted by the House, we must abide by that which exists. If the appropriation is made for "Fortress Powhattan," it will be for a fortification of which the War Department has no knowledge. This change may be thought by some gentlemen a small matter, but it is a matter of some delicacy. The Fortress now bears the name of an individual whom he might, without impropriety, denominate as illustrious on the page of our history. It received that name when he was in the full possession of power. Was it proper to take it away now he has lost all his power, and retains only the deserved reputation of having, with upright aim, pursued the best interests of his country?

Mr. FLOYD replied that, if the Fort should be provided for as Fortress Powhattan, on "Old Point Comfort," he imagined there would be no great difficulty for the Engineer Department to find it. He felt little apprehension but the ingenuity of the Department would dis

cover what fort was meant, provided we give them money enough for it. The gentleman tells us the power of naming fortifications is in the hands of the Engineer Corps; but where did they get any such authority? It certainly was never given them by this House. It was very true, that they had acted as though they had the authority: every lieutenant who erects a little stockade in the woods, takes the liberty of naming it; and shall not this House have leave to give a name to a fortification which, from its massive structure, may stand for centuries? When this Fort was first provided for by an appropriation bill, it was designated as a fortification on Old Point Comfort. Now it is named, by authority, *Fortress Monroe.* "The Government" has named it, he supposed; but, for his part, he never could bring himself to think that the President of the United States is "the Government." He was perpetually hearing gentlemen say, "Government" do this, and the "Government" do that: and he supposed *the Government* would send a Minister to Panama, too. But, in his view, Congress was the Government, or, at least, a co-ordinate part of it. He had no very great objection, if the Administration preferred that this Fort should be called Fortress Monroe, that so it should be; but, though Mr. Monroe was the Chief Magistrate of the United States, he imagined that Powhattan was quite as respectable a gentleman as ever he was; and that he possessed quite as much generosity, magnanimity, and as much military tact, too, although he had never been at Bladensburg.

The question was then taken on the amendment of Mr. FLOYD, and was negatived—ayes 49, noes not counted.

Mr. COCKE then said, that, before the Committee took its leave of Fortress Monroe, he should take the liberty of moving to reduce the sum proposed to be appropriated for it. As well as he could recollect, the sum asked, in former years, for this fortification, was 75 or 80,000 dollars a year—and we were then told that these works are to be completed gradually. He acknowledged that this Fort Monroe is a sort of mammoth of the kind—it covers seventy acres of ground, and surrounds the whole of that space with a massy stone wall, and its completion must necessarily require an immense sum. But still, at a time like this, in the midst of profound peace, to go on, and at once, to appropriate so largely, as if we were going to complete the fortification all at once, seemed to him a very strange manner of proceeding. He knew very well it was not now a fashionable doctrine to talk any thing about paying the National Debt; he knew that it was intended that the money that might remain in the Treasury should find a very different direction. He should, however, venture to move to strike out $115,000, proposed to be appropriated for this Fort, and insert $80,000. As there were many gentlemen now here, for the first time, this being a new Congress, he had been induced to make some statements which might tend to bring them acquainted with the true state of this affair.

Mr. McLANE observed, that the same motive which had induced the gentleman from Tennessee to make the statements he had now done, also induced him to make a few general remarks in reply. The gentleman tells us this is a new Congress, said Mr. McL.; and he hopes to find that favor with the present Congress which he has been unable to find with previous Congresses. To those gentlemen who were now new in their seats, this subject was, of course, not so familiarly known, and he should, therefore, make some explanations in answer to the gentleman from Tennessee. He apprehended it was now too late to discuss the fortification system of the United States. That system has already received the sanction of the Government, and is in actual progress of completion. It is a system which was loudly called for by the experience of the late war, and received the approbation of the People of the United States. He need not address to the Committee a word on the propriety of continuing the system now that it was so far advanced. The expediency of continuing it, at any given rate of yearly advance, depends on two considerations: first, the general expediency of the system itself; and secondly, the effect of such rate of advance upon the works concerned. As to the system of National defence, it was surely proper that the Government should provide to meet whatever exigencies may arise; and, come when they may, we ought to be prepared for them. Now, it was not for him, or for any gentleman, to say how soon works of defence may be wanted; but one thing was obvious, that such works ought to be completed as speedily as practicable. If the means of the Government warrant their immediate completion, they ought to be completed immediately.

As to the apprehensions of the member from Tennessee, on the subject of the Public Debt, let me give him, (said Mr. McL.) a word of comfort on that subject. The Committee of Ways and Means have had that subject under their careful attention, and have prepared a report which they have directed me to make to this House, by which it will appear, that, after paying the expense of all the objects provided for in these appropriation bills, the nation will this year be enabled to pay off the whole of the six per cents. in the course of the year 1829, as well as most of the debt due to the Bank of the U. States. Yet the gentleman says the Public Debt is never to be paid.

Every gentleman who is acquainted with these works must know, that, after expending half a million of dollars upon a fortification, unless we go on to make appropriations for continuing the work, what has been done will immediately begin to suffer dilapidation, and the money already expended will be lost. It is, therefore, necessary, on principles of economy, to appropriate enough to keep the works, once begun, in active progress. The gentleman says the present is an unusually large amount for this fortification. He is mistaken; his assertion is incorrect. The sum last year appropriated was $100,000, and that the year before was either $100,000 or $95,000: I believe $95,000. The sum now asked for is about the amount ordinarily required to fulfil the annual contracts; besides, the work being now advanced, more labor can be performed upon it in the same time than could be heretofore. But, if gentlemen will take the trouble of resulting the estimates, which have been submitted to the House by the War Department, they will find that the sum of $100,000, last year granted, was insufficient to meet the contracts by $11,000. The 115,000 dollars now asked for, is intended, in part, to cover that deficiency.

Mr. COCKE returned his thanks to the Chairman of the Committee of Ways and Means for the information he had given the House, that there was some prospect of paying a portion of the Public Debt. I did not say, (observed Mr. C.) that the Public Dept never would be paid: but this I will say, that this House, at the suggestion of that gentleman, last year *exchanged* its stock to the amount of twelve millions. Why did we do this? it was not needed? Would it not have been better to save some of the money we are lavishing on this system of fortifications, than to beg our creditors to let us off by paying them four and a half, and five per cent. interest instead of six and seven per cent.? Besides, there must be somebody put in these forts to protect them after they are built, and this magnificent system will result in forcing this House to increase the Army. I think, sir, I foresee that event. But we are to keep the works in progress, lest they should fall down and go to ruin. Well, sir, I have no objections to go on with them at a reasonable and proper rate; but why go on to expend such immense sums to complete them now, and then involve ourselves in the necessity of other vast sums to man and defend them? The gentleman tells us there are contro-

for the completion of them. Sir, I know there are contracts every year beyond the amount of our appropriations. But, for my part, sir, if any of our officers choose to take the responsibility on themselves of making contracts, unauthorized by this House, they should have the whole benefit of such contracts to themselves. They have no authority to make such contracts. Shall I be told, Mr. Chairman, that any Engineer that chooses can involve the faith of this Government beyond the amount of the appropriations granted by law? Sir, it is a doctrine I will never subscribe to—if he can bind us for one dollar he may bind us for a million.

Mr. KREMER said, he was of opinion this bill ought not to pass at all, and with this view of the subject, he should move to strike out the enacting clause. This system of extravagance had been now going on for years. We had gone on from year to year squandering the public money to erect a parcel of fortifications that were totally useless, and stood as so many monuments of our folly. No doubt they had afforded good jobs, but they were death to the People. The gentleman had told us that the Public Debt is soon to be paid off. Sir, the same syren song has been rung in our ears for the last nine years—the same lullaby—lullaby, "be perfectly secure! your whole debt will soon be paid! ten years more, ten years more, and the day will arrive." Sir, it is high time we should profit by experience, and I hope my honorable friend from Tennessee will join me. Let us try to strangle the monster at once.

The question was now taken on the motion of Mr. KREMER to strike out the enacting clause of the bill, and a division being demanded, it was decided in the negative, Mr. K. himself alone voting for it.

Mr. FORSYTH expressed his doubt whether this House was prepared to pass this bill, with the information which it had before it. Early in the session an honorable colleague of his, (Mr. TATTNALL,) had submitted a resolution, for the purpose of obtaining from the War Department a detailed report on the subject of the system and plan of fortifications proposed for the national defence, specifying the location and the cost of each particular work already erected, and the location and estimated cost of such as are contemplated, &c. This resolution had been adopted by the House; but, to this day, no information had been received under it. Mr. F. begged leave to recall to the recollection of the House what took place in the discussion of that resolution. His colleague had then stated, that, at the two preceding sessions, this very information had been called for, and that neither of these calls had been yet answered. And this information, said Mr. F. it may be impracticable to obtain, unless you lay your hands on a bill of this sort. The object of my colleague was to obtain information, with a view to this bill. Suppose the public interest to suffer from the delay of this bill, until that information be received: to whom is the fault attributable? Not to this House, but to those who withhold information, in their possession, when called upon for it. I need not remind the House, that my colleague prefaced his motion, calling for this information, with the expression of an anxious desire to have a system of fortification properly executed. He knows its importance, and every one who hears me will allow, that he is as anxious to have a system of permanent defence, judiciously planned and executed, as any member of this House. But how is it to be determined whether the system is properly executed? Year after year, the House is called upon for appropriations of money for a system of defence, of which we have none of the details. Last year we appropriated half a million of dollars for this object—the year before, God knows how much: and this year we are called upon to appropriate, for the same purpose, eight hundred thousand dollars. Is so large an appropriation necessary? I am not prepared to say—it is impossible that any man can be, without having the details before him. After this bill leaves the Committee, and such amendments may be made in it as the House shall approve, I hope it will be ordered to lie on the table, and wait for the information which has been called for. This is the only way in which the House can compel those who possess the information to give it to us.

Mr. HAMILTON, (Chairman of the Committee on Military Affairs) then said, that the honorable gentleman from Georgia was certainly mistaken in point of fact. Mr. H. admitted that the Committee was not possessed of a full statement of particulars respecting all the works which are now, or may hereafter be, contemplated for the public defence; but they have full, particular, and minute information, as to all the works proposed to be provided for in the bill now before them. A general plan for fortifying the country was reported by three gentlemen, one of whom was a distinguished foreigner, well known and admired, as well in Europe as in this country, for his great science, and ability in his profession: and two other officers, who had received, and deserved to wear, imperishable laurels for their public services. These gentlemen accompanied that plan with estimates and details, containing all that was necessary to be known, to enable Congress to act on the subject. Gentlemen knew that he alluded to the report of General Bernard, Colonel McRea, and Colonel Totten; and there is not one work provided for by this bill, concerning which the gentleman will not find ample information in that report.

As to what the gentleman from Georgia had stated, in relation to calls made on the War Department by his colleague—concerning whose merit he entirely accorded with the gentleman—one of those calls, Mr. H. said, was, in its relations, so various and extensive, that the Department, though they had immediately applied to the various parts of the country from which the details must be drawn, had not yet been able to receive all the returns which would enable them to present an aggregate containing all the information demanded. Things were in this situation when the call of the gentleman from Georgia, (Mr. TATTNALL,) had been made at an early stage of the present session—it had remained, as yet, unanswered, because it was, as yet, impossible to answer it. The question was, whether, on this account, the House will stop the works already in progress? If gentlemen wish information in respect to *these* works, let them consult the public documents, and they will find it. Why, then, should we pause? He hoped the gentleman would not persist in his intention to make a motion so embarrassing to the public service, as that which he had announced his intention to make.

Mr. FLOYD remarked, on rising again, that, at the last session, an appropriation was asked for arming this Fortress, and the House was told that, unless armed, it was useless to have built it. He wished to know, seeing that, last year, money was asked to arm the fortification, how it happened that more money was wanted now to go on to build it. He was not himself opposed, as he had heretofore had occasion to declare on this floor, to the fortification of the points of our coast which require it. He was of opinion, that where a great capital, and a dense population were collected, fortifications necessary to protect their waters from invasion, ought to be erected. But, in some cases, he thought fortifications utterly useless. The Fort below this place, for example, he thought as utterly useless against vessels coming up the river as if it had been placed on the top of the Alleghany mountain. Did any one believe that the vessels of England, should we ever again come in conflict with her, were coming up this river to attack our Forts? Experience had shewn that they could land a mile or two below our Forts, and march up in the rear of them, or out of their reach. It was an useless waste of money, and an

imposition upon common sense, to suppose that no one could judge of such matters as this but persons who have the disbursement of public money. Eleven or twelve years ago, Mr. F. said, being at New York when they were building Castle Clinton, he had walked down Broadway to the river, and there he saw a great castle, and every body was telling him, if the British should come there, fifteen out of the eighty or ninety guns could be brought to bear upon any given point of their approach. It never entered into their heads, that, whenever any gun could reach the British vessels from the Fortress, the guns of the British vessels would be within rake to destroy the whole City. Afterwards, he believed, there being more scientific men in the army, they tore down that Fortress—and he recollected a gentleman, from that City, making us a long speech here, to prove to us that it was the wrong place for a Fort—the end of which was, that it was receded, with the site of it, to the City of New York.

From all he could see, Mr. F. said, there were no points in the United States, from the fortification of which greater benefits would flow, than those of Old Point Comfort and the Rip Raps; he spoke of them by the names they were known by in the history of the country. A great interior country was to be protected by them, and an inland sea within them. But, he wished more definite information in regard to these expenditures, and he wished also to know whether, in every instance, the expenditures on objects of this description had not overrun the estimates. He knew that this had often been the case, in regard to expenditures for buildings of one sort or other. He instanced the case of the portico to the President's House, when fifty thousand dollars were asked for building a North Portico, which was wanted by President Monroe, who was a magnificent gentleman, and liked things to be done on a great scale. The House, being then menaced with the necessity of borrowing money, was unwilling to give this fifty thousand dollars. The next year, ten thousand dollars were asked for, to build the Southern Porch; and, when it was expended, the sum of 9,000 dollars more was asked, to *finish* the porch, &c. Mr. F. said he knew very well that nothing was more diagreeable to a certain part of "the Government," than this cavilling, as it was called, at appropriations. He was of opinion, however, that at this late hour—for, said he, it seems we must take up the tale of old times—the House owed it to itself, before acting on this bill, to inquire whether the appropriations for these objects have not already exceeded the estimates—how far we are yet to go, &c.

Mr. DWIGHT observed, that the gentleman from Virginia had, in the course of the remarks which he had just concluded, furnished one of the strongest arguments in favor of the bill. He had alluded to a fort in the harbor of New York, now useless; but what were the circumstances under which that fort had been erected? Had we then any gentlemen in our Engineering Department of great and distinguished talent? The very reason why that fort stands as a monument of ignorance, is, that we had no such men then as we now have in the service. The system is now matured—the science is fully understood. Does the gentleman suppose, that, if the fort in question had been directed in its location by such gentlemen as now have the management of our system of defence, it would at this day have stood a monument of folly? The gentleman had thought proper to allude to the portico of the President's House; but, Mr. D. said, he could not perceive what the portico of the President's House had to do with our system of sea-coast defence. The erection of the Southern Portico, so far from showing any particular desire to please or flatter the President, was known to be contrary to his wishes. But, if it had been otherwise, he never heard that that portico was erected as a defence against the enemies of the President. If it was, it seemed to have failed of its object. It was true, that the colleague of the gentleman from Georgia, (Mr. TATTNALL,) did make a pertinent call upon the War Department. The object of it was to know whether Georgia was to participate in the system of defence, as well as the other States, and he would find, by the answer to that call, that she was. The gentleman from Tennessee, before he asked the House to reduce the amount intended to be appropriated, was bound to go into a calculation to shew that the expenditure of 80,000 dollars at this time, would, in effect, be *more economical* than an expenditure at this time of 115,000 dollars. Ought he not to shew why the appropriation of the former amount will be better for the public good? If the gentleman is prepared to shew this by detailed statements, it is to be hoped he will do so. The sum in the bill is founded on the most minute and laborious investigation. Should it be set aside, except in at least as minute a calculation, to shew that it is not needed? The gentleman from Virginia, (Mr. FLOYD) had admitted that it is important that this point on the coast, should be defended. Hampton Roads affords, perhaps, the best harbor for a navy of any on our coast. Fortress Monroe and Fortress Calhoun are intended for the defence of this harbor. Shall we let them fall, half finished, into ruin? Shall we, like the member from Pennsylvania, at one fell swoop, destroy our whole system of defence? On this general subject, we have the lights of experience. If we consult the reports of the Department, we shall find that, after having begun a great work and put it in progress, we must appropriate to a given extent—to that extent necessary to continue all its parts—or we shall waste the public money by losing that which has been already expended. Let gentlemen look at the estimates which accompany the report of the present year, and they will find that, instead of saving the 35,000 dollars which the gentleman from Tennessee wishes to withhold, more than that sum will be lost, unless we give what is now asked by the bill on your table.

Mr. McLANE observed, as the gentleman from Tennessee had been indulged with his remarks, he hoped to be allowed to call the attention of the committee to some observations in reply. He proceeded then to trace the origin, and review, at some extent, the history of the system of fortifications now in the course of execution, and for the prosecution of which this bill proposes to provide. The authority under which these fortifications are constructed, he shewed, is the authority of the appropriation acts, and the system itself has grown up under the auspices of these acts—having, by these acts, received the repeated sanction of Congress. There were no particular laws of Congress marking out the details of the system. These were left to the Engineer Corps, who, after making all the necessary surveys, reported a general plan to the War Department, where it was filed, and where it now remains, and upon which, in the expenditure of money appropriated for fortifications, that Department has acted. The gentleman from Georgia, Mr. McL. said, was under a mistake if he supposed the House was not in possession of that report and that plan. They had been in possession of it for several years; and at the commencement of every session, estimates had been submitted to Congress in a detailed form, founded upon that plan.

Mr. McL. here asked the attention of the Committee to the manner in which that plan had been formed. The Board of Engineers, in projecting and founding these works, had divided them into three classes. The first class consisted of those works which were to be commenced immediately, as soon as the means of the Government would authorize their commencement, because they were deemed most immediately necessary. They were designed to protect those points which proved to have been the most assailable during the last war, and were the most important for the safety of the country. Those works were placed in the second class which could be dispensed

with for a few years longer, and were to be commenced as the works in the first class should be completed. The third class embraced works not proposed to be commenced till both the other classes should be completed.

Mr. McL. said, he held in his hand the Report containing the details of these classes; and it would be found that all the works recommended in this bill, are works comprised in the first class. And as connected with this report, was another, which detailed the expenses necessary to begin those works, to carry them on, and to complete them. Mr. McL. asked, if there were any objections to be made to these works being carried into execution, was not the proper time to have made them, the time when that report was submitted to Congress by the War Department, and made the foundation of the legislation of that year? Why was this report submitted to Congress? To procure their sanction to it. To show what had been done, and what the War Department contemplated to do under this general authority. Then was the time for Congress to act, either rejecting the plan, or sanctioning it; and they did sanction it. They adopted it in the only mode in which they could have done it, by passing an act appropriating the money necessary to commence and carry on the works proposed by the Board of Engineers. Mr. McL. argued, therefore, that this was now no longer a plan of the War Department, but of Congress itself. It was brought here by the War Department, adopted by Congress, and carried into execution by them, so far as the previous appropriations had gone. And why were they now to stop?

Mr. McL. then adverted to the alleged fact of the amount of expenditures on these works having exceeded the estimates. There were a few instances, he said, in which those works which had been completed, cost more than it was supposed they would have done. And he admitted it to be probable that the works which were yet in a state of progression, might exceed the estimate of their cost; but, he would ask, if any man in his senses could suppose that, in a great fortification, or system of fortifications, like that which had been projected, it was possible for a man to sit down and estimate the expense within a few dollars, more or less?

It would be impossible for any man, however accurate he might be, to foresee the changes which might take place in the value of labor and materials during the progress of a system like this: for it was not to be completed in a year, or in five years, but was to be in progress for ten or fifteen years. The variations in the price of labor and materials were to be allowed for, and all the accidents which were likely to occur in a fifteen years' work of this kind. Now, then, was it possible to form a precisely accurate estimate of the expense? Yet the committee were now called on to say, that because this system will cost more than it was originally supposed it would do, every thing that had been already expended was to be lost. This argument he did not think entitled to much weight.

Mr. McL. here answered the objections which had been made to this bill, on the ground of the want of information. If the gentleman would examine the files of this House, he would find that, in reports made at former sessions, the information which he desired, or which the House could possibly require, to act upon the subject of this bill, was in their possession. He objected to waiting for the answer to the resolution adopted on the motion of Mr. TATTALL, on the ground that the information which it would furnish would not bear on the present bill. The estimates on which this bill was founded, Mr. McL. said, were here, and he asked if it was necessary to authorize this committee to make an appropriation for Fortress Monroe, to wait till information could be obtained on all the other fortifications of the Union, not embraced by this bill? If the committee were prepared to follow up the parts of this system, already far advanced, then they would grant appropriations for those fortifications which were begun; but, if they were prepared to abandon all these, and submit to the loss of what had been already expended on them, then they would accede to the proposition of the gentleman, and stop the further progress of this bill.

Mr. FORSYTH said, in reply, that he had not yet made any motion in relation to this bill. He had said that he hoped this bill would be laid upon the table. There appeared to be a curious contradiction between the statements of the Chairman of the Committee of Ways and Means, and the Chairman of the Military Committee. One of these gentlemen tells us that the information we ask for cannot be got, while the other tells us that we have it already in our hands.

[Mr. McLANE here explained. He had not said that it was impossible that the information could be got. He had said that all the information asked for could not be procured during the present session, nor was it necessary that it should be, because the greater part of it has no respect at all to the present bill.]

Mr. FORSYTH resumed. I am to understand, then, that, since the resolution was offered by my colleague, Mr. TATTNALL) the information he asked for could not be obtained; but, Mr. Chairman, the same call has been made for two years in succession. When will it be complied with? In four years? In five years? Will it be obtained at any time before the whole system is executed? If it comes then, it will not be wanted. The very object of asking for this information, is, that we may judge of the propriety of that whole system; that we may know what are the works commenced, and what are the works intended, and what proportion the one bears to the other. We wish to see the plan, as corrected by the latest experience of the Engineer Department.

Sir, there has been a great error in the manner in which this whole affair has been carried on. The Engineers presented us with a project, in which the fortifications proposed by them to be erected, were distributed by them into three classes, some of which were to be commenced immediately, others not so soon, and others at a still later period. Sir, was that project ever adopted? Was there ever a law passed by which it was sanctioned? No, sir, no such thing. But certain appropriations were made in compliance with the first part of the project, and this was taken by these Engineers as an adoption of the whole; because some money was expended in a partial execution of the system, they took it for granted that Congress sanctioned it in all its parts. Now, sir, I have no idea of this: and to me it appears quite time that the error was corrected. As to the information sought by my colleague, the first branch of his resolution could be answered in two days. It asks for the scheme of defence contemplated to be pursued in the erection of these forts. Sir, cannot that document be got? Surely it is in the War Department. We have one instance of the extreme anxiety of the War Department to give information to this House. They have given it to us this session by piece-meal, in another instance. Why have we had nothing in this case? But the gentleman from Delaware, and the gentleman from Massachusetts, tell us that this scheme is already in our hands, and that the object of my colleague, who desired to know how Georgia was to be defended, is already answered by the scheme which is before us. Sir, what is the scheme before us? We have a naked list of three classes of forts; of the places where they are to be erected; and the sums of money they are estimated to cost. Sir, is this a scheme of national defence? Does this tell us what they are to be; how they are to bear on each other, and what are the principles upon which they have been resolved? No, sir. Now, it is most unfortunate that the gentleman from Massachusetts should have referred the committee to this document. Of these classes of forts, the first is to cost upwards of four millions; the second, upwards of five mil-

lions; and the third, nearly ten millions. But not a dollar is allotted to the State from whence I come. No, sir; the military resources of the Government are employed in my State to repress the execution of its laws. It is by measures of this character alone that we know any thing of the military protection of the General Government. Sir, I beg pardon; there is one exception—for our defence, the enormous sum of four thousand dollars has been expended on the repairs of one old fort. For the good City of Boston is to be expended about a million of dollars: the good City of New York, after all the enormous sums that have already been expended in that harbor, (some of them, as the gentleman admits, are monuments of folly,) is to be benefitted by a further appropriation of more than half a million.

The City of Charleston is not on this list; Savannah has no place on it. Look along the coasts of South Carolina and Georgia; you find not a single fort proposed. Pass round to the Western Coast of Florida, and there is an immense work in Alabama, and a greater still on the Mississippi, in Louisiana. Now, sir, I do not complain of all this, if it is right. I care not where the forts are placed, if the great object of the public defence is accomplished. But I do hope that this House will not go on appropriating money, year after year, without knowing what the scheme intended actually is; and without being satisfied that it is a proper one.

Mr. COOK said, that he could perceive no ground for delay. In 1816, at the close of a war in which the country, whatever it may have gained, lost much both of blood and treasure, we found ourselves in need of a general system of fortifications, and this House, after the greatest deliberation, appropriated for that object the sum of eight hundred thousand dollars, but did not specify any particular place in which any part of that sum was to be expended. The whole was left under the control of the Executive, and down to the year 1821, a similar course continued to be pursued. The House appropriated a sum in gross, and the Executive applied it to such points of the country as he thought stood most in need of it. After that time, special reports were made to this House of the particular points intended to be fortified, and each proposed fortification was separately discussed, and decided on or rejected, at the pleasure of the House. When any one of these was brought into discussion, the House was always put in full possession of the plans of Government respecting it. And, from that day to this, Congress has continued to make specific appropriations. Why are we now to pause? It had long since been a settled principle, that, when a work was once commenced, economy required that it should proceed as fast as the means of the country would allow. According to the statement of the Committee of Ways and Means, it is manifest that the Government has within its reach the means of paying off the public debt as fast as the People of the United States can reasonably expect it should be paid; and as the Government, by their engagements, are bound to pay it. He saw, therefore, no reason why we should now pause in carrying on the system of defence. The gentleman has spoken of expenditure on the Mississippi. Sir, I live on the banks of that river, and I know of no fortification upon it, in the interior, but one: and that being made by soldiers, has cost the Government comparatively little. As to that part of the river which is below New Orleans, it can hardly be called the Mississippi: it rather pertains to the Gulf of Mexico, and is identified with the interests of all the country bordering on that Gulf. But, sir, while these sums are expended on your Atlantic sea-board, what have you done on our side of the mountains? You have penetrated the Western forests by a road, and it has cost you one hundred and forty thousand dollars: a sum scarcely sufficient to build you a single light-house; nay, less than has been expended on some light-houses. Yet, sir, we do not complain. In seven years I have never raised my voice against any expenditure on the Atlantic frontier, nor shall I oppose the appropriation in this bill.

Mr. WHIPPLE said, he should submit a single remark to show that there should be no delay in passing this bill. The gentleman from Georgia had said that they ought to have before them the whole system of fortification before they began to act. He would submit it to that honorable gentleman, and to the Committee, whether they did not derive great advantage from carrying that system into operation in detail. The House had, since his acquaintance with the business of it, proceeded in this manner to appropriate for individual works, as they found it necessary for the safety of particular points of the country. He recollected a celebrated debate, which was carried on between the Executive Department and this House, on the subject of the propriety of a large work erecting on Dauphin Island. The Executive thought it an important one, and the then President of the United States transmitted a long and laborious message on the subject, and the House, after serious debate, decided that the work ought not to progress, and it was abandoned. If they had adopted this system as a whole, they would have been compromitted, and would not, in this instance, have been able to retrace their steps. The probability was, they derived great advantage from legislating on this subject, by acting in detail on each work as it was presented to their consideration. The works which were provided for in the bill now before the Committee, were works for which appropriations had been made, and Congress would proceed regularly with appropriations for their completion, as the wants of the country required. Mr. W. said he did not apprehend it would be necessary to arrest the progress of this bill to obtain any information whatever. If, after making an appropriation of money for the progress of these works, any of our Executive officers should be found unworthy of the confidence placed in them; if they did not render a just account of the expenses, there were Committees of this House, and this Government was so organized that their conduct might be scrutinized, and they be called to account; and he would submit it with deference whether, in the progress of a measure like this, we ought to bring into question things which have a tendency to arrest the public business without informing or burdening the House.

Mr. PEARCE was in favor of the bill. Of his motive for being so, he could speak with great sincerity. As it was presumed, let him say what he would, that it would be difficult to satisfy some gentlemen of the Committee that he was not actuated by some sinister considerations for the District he had the honor to represent, a considerable fortification was now going on, but he considered the sum which had been appropriated for it, not in the light of a gratuity to Rhode Island. That money had been granted, not for the benefit of his constituents, but to promote and secure the interests of the Nation at large. He viewed this, and all the other fortifications which had been ordered, only as parts of a great National work, long in contemplation, and now in progress, for the benefit, not of any particular section of country, but of the whole Union. But for these fortifications on the Eastern border, what would now be the condition of the West? If not prepared to meet and to repel the enemy at the point where he landed, how could we preserve the interior from invasion?

These different fortifications ought not ever to be considered as matters of sectional strife. They were only particulars of a general plan for the good of the whole. In this light, he was persuaded, the subject was viewed by that very able Board which had formed and had matured the plan. And was it not too late to say that these great works should now be stopped; that they should be suffered, when half finished, to fall into dilapidation and de-

at the five millions of dollars expended on them should
e money expended to no purpose, but only so much of
e public treasure wasted and thrown away? The sum
ow asked to be appropriated, has been recommended
y the Board of Engineers. It comes to this House enfor-
ed and recommended by the Committee of Ways and
eans—gentlemen whose situation puts them in possession
every means of information of which this subject is sus-
eptible. All the light which can be brought upon it by
e Department of War, by the Chief Engineer, and by
l his subaltern officers, has been before the mind of this
ommittee. Are we, then, prepared, without documents,
ithout any counter statements, to say that the sum in
e bill ought not to be allowed? On proper subjects, I
n prepared to go all lengths with the gentleman from
ennessee; but to refuse this appropriation will be no
conomy: it will be a waste of public money. When one
f these fortresses is resolved upon, and an appropriation
ade to begin it, large sums must necessarily be expend-
d in digging the trenches, and preparing a mass of mate-
als. But, after proceeding to such a point, is it wisdom,
it economy, to stop on a sudden, and say, we will go no
rther? What is the result? The necessary result is,
he loss of all that has been done.

Mr. P. earnestly hoped that no sectional feelings would
e indulged on this subject. He was persuaded that the
ngineers, in forming their plan, had been influenced by
e purest motives, and had sought nothing but the pub-
c good. But if gentlemen farther South considered
emselves as neglected, and wish that more should be
one in their quarter of the country, he, though situated
many hundred miles from them, would vote for it with
leasure. Sir, what would Savannah, or what would
harleston, be, without Boston, or without New York?
nd what would Boston, or what would New York, be,
ithout the trade of the South? Sir, these comparisons,
nd these distinctions, are all odious in their nature, and
njurious in their tendency, and I hope we shall all avoid
em.

Mr. FLOYD did not think any thing he had said war-
anted the gentleman in saying that he was disposed to
ithhold the appropriation. He, however, was not so
uch disposed to favor it as that gentleman seemed to be.
his system, he was told, had been adopted by the
overnment, and the Government was to find agents of
he greatest abilities in the country, to carry it into effect.
or his own part, he did not know any thing about this
ystem: he had heard of it for many years past, but he
ad never seen it, and this was precisely the point on
which he wanted the bill to be laid on the table. He would
ake the gentleman's word as far as any other gentleman's
ord, but when he saw a thing himself, he could judge
or himself. He did not want the President or his officers
o judge for him: he was willing to pin his faith to no
an's sleeve. He did not hold that the President was
he Government. This Congress was the Government;
r at least the most effective part of the Government, and
e hoped it would know how to preserve its own power,
nd its own dignity.

Mr. F. said, he had no sectional feelings: what object
was it to him whether Old Point Comfort or the Rip Raps
were fortified at all? We had had a destructive war, yet Old
Point Comfort and the Rip Raps were not then fortified;
and from the documents now in the Library of this House,
it would be found that, in that war, Virginia had 71,000
men on foot, from nearly the beginning to the end of it.
He did not pretend to say that Old Point Comfort and the
Rip Raps, as he must still call them, should not be fortified
to the whole extent proposed. If they were so, he ad-
mitted the fortification would be well situated. It would
protect very great and valuable interests. He did not
dispute the great knowledge and abilities of the Corps of
Engineers. When they took up the subject of engineer-
ing, and such things, he admitted they were better qual-
ified to judge than he was; but when it came down to a
plain matter of fact, and of common sense, he would rely
on his own judgment more than on that of any one else:
he would not pin his judgment on the sleeve of any body,
not even the President. He would wish gentlemen to
understand him that it was not his purpose to withhold the
appropriation, but surely it was due to their constituents that
they should know something, if they should ever be called
on, about this system, and why this money was appropriated.
If he were called on to say what this system is, Mr. F. said
he could not say any thing about it. He was told that
there was one from the War Department, and that, from
the *usual accuracy* of the papers that came from that De-
partment, they might depend upon it. "The usual accu-
racy!" Yes. He supposed Dauphin Island was one in-
stance of their accuracy. They had given the House es-
timates for the fort at Dauphin Island, and a great many
details; but after the fort was half built, it was found that
no ship could get within miles of it. This, too, was a part
of the grand system of National Defence. If so, it was a
very defective one, and called loudly for their inspection.

The proposal now before the Committee was pretty
much after the manner of what was said and done here
some years ago. This Old Point Comfort and the Rip
Raps occasioned considerable excitement and debate
in this House at that time, and it was believed abroad;
that is, the notion was cast abroad, that those who were
disposed for an inquiry into these kind of appropriations,
were disposed to withhold the appropriation altogether.
That, Mr. F. said, was never understood to be the fact, as
far as he had any agency in it: it never was his inten-
tion. He had said that perhaps great good would result
to the country from the fortifying of these points, but
when an iniquitous contract was entered into in any
mode, or in any possible shape and form, and presented to
this House, he had great doubt whether the House ought
not to interpose, and refuse to sanction it.

To the appropriation of money for fortifications for the
service of the country, he had no objection. But till
your call for information is answered by the Department,
he would propose to lay the bill on the table. Such is
the dignity of the House of Representatives, that they
sit here and pass a law to create a thing called a De-
partment, and when they gravely send there a resolution
of the House of Representatives of the People of the
United States, it is laid on the table and treated with si-
lent contempt. Yet, when we want this information, and
insist on receiving it before we consent to appropriate,
gentlemen tell us we are to trust to the President and Board
of Engineers. For his own part, Mr. F. said, he was dis-
posed to respect them in their official capacity, but he
thought the House ought to lay this bill on the table till
it was shewn that a system did exist, and what that sys-
tem was. But they were "radicals" because they want-
ed this information. He, for one, thought the "capitals"
had made a capital error in not furnishing it.

They had been told, from high authority, that liberty
was power. He thought it had been conceded on all
hands, that money was power; and as it seemed to be
acquiesced in, that liberty was power, and held by all
that money was power, things that are equal to the
same, being equal to each other, it follows that liberty is
money.

Mr. COOK observed, in reply to Mr. FLOYD, that,
so far as relates to these very fortifications, the Go-
vernment, or, in the sense of the gentlemen, the Con-
gress, have already adopted them. The estimates and
the plans, with all the details relating to them, have
been laid before this House. The House has passed
upon them; it has adopted them; and the gentleman
himself will not deny that he has voted for, and does still
approve, the erection of the fortress now under consi-

deration. If, then, that which the gentleman says is the Government (I mean the Congress of the United States) has sanctioned this measure by five years' successive appropriations, the gentleman stands committed. We have him now, for once, upon our side. As to the particular sum of $115,000 the Committee of Ways and Means, after a careful examination of the subject, are of opinion that this can be expended with better economy than a less sum. It will not indeed complete the fortress, but it will go so far towards its completion, I hope the gentleman will ask no delay. What great system may be in the contemplation of the War Department, does not now immediately concern us. This fort has been submitted to our judgment, and we have approved it. We, who, the gentleman says, are the Government, have determined that this fort is proper, and shall be built. If, hereafter, other appropriations shall be recommended for other fortresses not now begun, the Government will exercise its pleasure, and adopt or reject them, as it sees most advisable.

Mr. MITCHELL, of Tennessee, was very far from being satisfied that the course which was taken was the correct one. He had heard a good deal of this system, but he wanted to know where it was to be seen? At what point in the Government was it to be found? Were they to look for it in the laws of appropriation? If they were, they would only see that certain sums had been appropriated for carrying on certain improvements, at certain points. Where did this mighty system begin? At what point on the wide extended coast of the Atlantic even to the strong stream of the Gulf? Did it begin in the State of Maine, or at the point called the Rip Raps, or in Deleware Bay, or at Castle Williams? Gentlemen, in their argument, had not attempted to say where it began, nor to where it extended. He wished to know if it was a kind of eternity in itself—an eternity in end as well as in beginning? Was there no point on which the mind could rest? As far as he had heard, it was the most chaotic argument ever brought before the human judgment. It was darkness void, and without form: for, as yet, he had seen and heard nothing to tell about.

One of the gentlemen had said, that, when it became necessary to erect fortifications at another place, that Government would extend these advantages to that point. He had thought that when going into the thing called Atlantic Defence, there should be something like a regular declaration on the part of Government, to commence at some point, and to go on graduating it (in three classes if they pleased) as the exigencies of the country required. But there ought to be certainly some point at which to begin, and at which to terminate. Were they to stop short at that point in North Carolina, where the Great Architect of the Universe had formed fortifications which would be much more effective than any our ablest engineers could construct? He meant their shoals and sand bars, leaving only a depth of some few feet of water, by which vessels could enter. It could never be better fortified than it is now. But South Carolina and Georgia—were they to be left open to the ravages of a merciless enemy? Were they to have their towns destroyed, and their women deflowered?

Mr. M. did not know that the next Congress would be made up by the same men as this was; he thought it was extremely doubtful, and they might possess a different mind. Would they extend this system far around so as to cover all the Southern coast?

Were these vulnerable points to be rendered invulnerable by these fortifications? The gentleman, arguing on philosophical principles, had said, that, by the things which have been and are, we might guess how things to come would be; but, if we went on philosophical principles, we ought to have data to calculate from, lest we found ourselves gazing, as a German had lately done, on the cities in the moon. Give him land to stand on, and, Mr. M. said, he would stand by them. Give him a footing, and he would not flee; but, till he saw some beacon to guide him, he had a right to call on the Committee to give him information to light up his path. He did not wish gentlemen to imagine he was viewing any thing like portending evils to this Government. He never liked to look on the dark side of a picture. He did not like to look into futurity with an eye portending every evil, and declaring ruin to be hanging over the country. That was not his disposition, nor his character; but in this he thought he saw a dial which pointed to evils the country felt in its widest extremities. If fortifications were placed at all these points, the consequence would be, they must be preserved from falling into a state of dilapidation, and this could only be done by a regular system of police. Our handful of an army, which had been reduced, and rightfully reduced, down to the small number of which it is at present composed, will be incompetent to take charge of the fortifications to be erected in this country. In the years 1802 and '3 one of the most eminent police officers of this Government had charge of 150 men at Old Fort Niagara, and, in spite of his utmost exertions, it fell into ruins about his ears. He alluded to Major Moses Porter, who stood as high, and deservedly too, in the opinion of this Government, as any other officer in it.

The gentleman had told them that in those days we were not in possession of those enlightened Engineers whose services we can now command; but, said Mr. M. five years hence, much more enlightened men than ourselves may occupy the situation we now occupy, and they may then say that Gen. Bernard, for whom I profess the highest esteem, and his fine associates, did not possess the competent information for placing Fort Monroe and Fort Calhoun—which I understand to be so far apart that a point blank shot from each leaves a vacant spot in the middle through which a ship may pass without injury. And, probably, at that day they may say that all these things have been done wrong, as has now been said in relation to the Engineers who had charge of the construction of Castle Williams. Ought we not, then, to pause before we went on to construct so many fortifications, according to this ideal phantom called a system? How many soldiers would be necessary, with their officers, to take charge of them, and prevent their falling into decay? Are we to have a standing army? He hoped they would never lay the foundation for the mockery of freedom, which will destroy any Government wherever it is established. Our fortifications must be locked up in the breast of every freeman of America. Congress, in their legislation, should enact such things as will knit them closer and closer to the People: we shall then have fortifications that are invulnerable: but shake the confidence of the People, and your Government is destroyed. We should pause before we look into this phantom, this chimera, called system of internal improvement. It will be injurious to the liberties of the American People. These things he dreaded; they had great weight on his mind, and if he failed to bring them forth in the way he wished to have done, it was not for want of feeling, but for want of the power of expression.

As he understood the matter—and, Mr. M. said, if he had been mistaken it was time he should be corrected—it was for a general increase of fortifications; then there was a greater necessity for voting for the smaller sum and not the larger. If the larger sum were voted for, it would be on the presumption that they were to be completed directly. If they were to be completed directly, it would not be a gradual increase of fortifications. So long as these works were gradually carrying on, the mechanics who were employed would take care of them; but the very moment they are finished, it will be neces-

sary to have some others there to supply their places. If it is to be a gradual increase, it would be right we should go into the matter by voting for the lesser sum instead of the greater, and finish those which have been commenced. He did not wish to lose all that had been expended; but he could not see, nor had he heard of any thing which would be convincing to his mind, that there was any necessity for voting for this very large sum. If it was to be done immediately, to what end was it; where was the necessity for it? No gentleman had attempted to urge the immediate necessity. We hear a little rumbling at a distance, or a prospect in view of a war, and hence the necessity of having them. But, Mr. M. said, he had heard of no declaration or threats of a war; peace and good will existed amongst all men, with some trifling exceptions, over the habitable globe. We ought not, then, to vote for the larger sum, but for the lesser one, so as to keep within bounds. Whilst they are gradually carrying on, they will be kept in repair; and gentlemen would perceive there was a great difference between gradually increasing them and letting them fall into a state of ruin.

Mr. M. said he should vote for laying this bill on the table, and would give notice now, once for all, that he should vote for the least sum mentioned for each, in every instance, till it came down to the one that is to be constructed at Bienvenue, and should vote against every appropriation for such as had not been commenced; and till the great necessity of erecting one there was made manifest to him, he should vote against it.

Mr. STEWART said, he was opposed to the motion of the gentleman from Tennessee. He should vote for the sum asked for by the Committee of Ways and Means, and would have voted for a larger sum, if more had been asked for. He was not, however, in favor of all the appropriations in this bill. On this fort, one million and thirty-two thousand dollars had already been expended; two hundred and twenty-seven thousand dollars will yet be required to complete it; and, if the whole of that sum were now asked for, he should be prepared to grant it. After spending so large a sum, shall we abandon the work and lose our money? Surely not. The argument of the Chairman of the Committee on this subject, was, in his opinion, unanswerable. There were, however, he understood, several new works now to be commenced, under apropriations proposed by this bill, and he could not vote for any of these until he was well satisfied of their necessity. He had learned, from one of the first Engineers in this country, that many of the forts already built would, in effect, be superseded by the new system of internal communication by means of canals, now in progress and prospect.

[Mr. S. was now proceeding to enumerate several fortifications which he thought would be thus rendered unnecssary, when he was called to order by Mr. McDUFFIE. The Chair decided that Mr. S. was not in order—the question being simply between the two sums proposed for the particular fortification at Old Point Comfort.]

Mr. STEWART then proceeded to say, that he was not only willing to grant the larger sum asked, but to give his support to any well digested system of fortifications, and to any extent, although the expenditures of Government had hitherto been almost invariably bounded by a line running through the head of tide water on the Atlantic streams. Not as much had been expended in the whole interior as would suffice to build a single one of those forts on the Atlantic border.

[Here Mr. S. was again called to order by Mr. McDUFFIE.]

And Mr. S. concluded by saying, that it was folly now to limit our expenditure on this fortress; he was in favor of giving the whole sum that was asked.

Mr. VANCE rose simply to state the course which, in his opinion, was the correct one to be adopted by this House relative to the fortifications of the United States. In the first place, he thought it was quite correct that this House should be informed of the whole scheme, as it is intended to be carried into operation by the Engineer Department. He thought it was the duty of the House, under present circumstances, to let the bill lie on the table till they could get this plan from the War Department. After getting this plan, he thought the proper course would be, to refer it to the Committee on Military Affairs, who would make such a report as they thought the interest of the country required, and they would then know what fortifications were necessary for this country. That was the correct plan to be pursued, and he thought if the Committee considered it, they would agree with him on the subject. By the present mode of erecting fortifications, we went on by degrees, and we did not know how many were to be erected in this country; every year there was edged into the appropriation bill, so much, to commence another fortification. Mr. V. said he was once at the pains to examine this magnificent scheme of fortifications, as reported by the Engineer Department. He would not state it with any degree of certainty of being correct, but if his memory was good, the whole number of fortifications, allowing the proper quantity of men to each gun, would require something like 19,000 troops; and thus they would compel this country, by degrees, to have a standing army—a thing they would not dare to come into boldly and above board. In a few years it would be said they must have a number of men to man the forts, or they would go to ruin. It was time, he thought, to stop at this point, and for Congress to say what was the number of fortifications to be erected in this country, and to limit the expenditure. He should, therefore, move that the Committee rise, and that the bill lay on the table for the present, till the Military Committee get the report.

Mr. V. withdrew his motion at the request of Mr. McDUFFIE.

Mr. McDUFFIE said, he would submit to the Committee whether it was compatible with the interests of this nation that, on every petty question of appropriation, the members of this House shall enter into a debate on the State of the Republic. And whether, before they will grant a single appropriation for a single specific object, they not only ought to require all the details of the whole system of which the item may form a part, but that each individual should proceed to pour out all his private griefs about the conduct of Government, or state of the Country, and heap them together upon the bill? The gentleman from Georgia, (Mr. FORSYTH) said he, tells you that the War Department has refused to give certain information called for by this House. Suppose they have—

[Here Mr. FORSYTH explained. He had not said that the Department refused to give the information, but only that they had not given it.]

Mr. McDUFFIE proceeded. But, suppose the Department had refused, and, by their refusal, had subjected themselves to impeachmect, what would that fact have to do with this bill? Sir, I put it to gentlemen how they can, consistently with their duty, thus consume their time, and the money of the Country? What is the question which we have to determine? No gentleman on this floor intends to abandon the fort. Such a proposition, he would venture to say, would not obtain five votes in this House. The thing cannot be thought of. Does the question, then, how much money we shall appropriate, admit of such latitude as has been given to this debate? Sir, we have had every sort of matter and thing brought up in this debate. The question is a narrow one—how much money shall we now appropriate for this particular object? And there is but one way to

determine it. We must refer to the estimates of those who are qualified to judge how much is necessary, and by those estimates we must be governed. If it is wise to have a Government at all, and that Government employs able officers, and those officers go upon the ground, make a full examination, and then sit down and make a diligent, minute, and accurate calculation, is that calculation to be disregarded? Are we at once to abandon the principle of faith, which is essential to all Society? The estimates presented to us, correspond with contracts actually made and entered into. If we refuse to appropriate, the gentleman from Tennessee thinks we save the money. No, Sir, we save not one dollar: the money must be paid: if not to-day, it must be paid some other time, and the sooner the better. If the fort can be completed in two years, it is better than to take ten years—it is more economical. The only restriction in urging on the work, is the restriction which arises from the funds of the nation. If you have the money, and can afford to apply it to this object, the sooner you apply it the better, and the cheaper. The gentleman from Tennessee moves to reduce the sum in the bill to $80,000; and on what grounds, Sir? For the sum proposed, you have the estimate: you have the data on which that sum is founded. Why are you to throw this ground away? Does the gentleman from Tennessee give you any estimate? Has he been on the ground? Has he inquired the price of labor? Has he made his calculations? In a word, Sir, does he know any thing about the matter? If he does, it is more than I do. And, without any knowledge whatever of the subject, (I say this without disrespect) he moves to fill the blank with one sum instead of another. But why does he fix on $80,000? Why does he not propose seventy thousand? why not sixty? The only question is, does the sum proposed in the bill, exceed the capacity of your finances? Sir, the Committee of Ways and Means have made a careful calculation, and they are prepared to tell you that, since the close of the late war, we have paid one hundred millions of our national debt, and nearly the whole of what was then contracted. Yet the gentleman tells you there is no intention to pay the public debt. Sir, can the gentleman be serious? Is it possible he can be serious in supposing that, by all his miserable savings, he can contribute to pay the national debt? Sir, the whole amount of these miserable savings of his, would not pay a thousandth part of the interest of that debt. Sir, I have observed the course of that gentleman for some years: he proposes no important public measure which goes to the payment of this debt; and, supposing that every motion he has ever made, for all these miserable savings, which he is proposing to us so often, had fully succeeded, what would they all have amounted to? Not, Sir, to the amount of expense that they have consumed in debate. Sir, this is the miserable fruit of saving without knowledge. If your Government is unfit and incompetent to discharge its duties, withhold your confidence from it altogether. But, if not, when they present you the estimates of their ablest officers, unless you have been on the ground, and are prepared to shew that these estimates are false, you must receive them. I have made these remarks of a general character, because I think they bear on the merits of this question; and, as to what the gentleman from Virginia has said with regard to preferring his own judgment, my rule on that subject is simply this: where a duty belongs to me, and I am employed immediately to perform it, I go by my own judgment; but, when another man is employed by Government to perform a duty which belongs to him, and I believe him competent to that duty, I go by his judgment. Now, there is not an Engineer in that Corps, that does not know every thing relating to this subject a thousand times better than I do, and I may, without disrespect, add, much better, than most of the members of this House. I am not an Engineer; I do not come here to criticise the Engineer Department. I come here to receive their estimates, and to grant the sum which is necessary to the public service.

Mr. MALLARY, was in favor of granting the sum proposed in the bill. It was predicated on estimates, which were the best data that the case admitted. He had great confidence in the Board of Engineers, and thought they were entitled to it. But it was not necessary, before voting for this appropriation, that we should know all that was intended by those gentlemen. We are called on to appropriate money for a specific object we are capable of judging whether it is a proper one—and, if we think it is proper, we ought to give what is requisite to carry it on. For his part, Mr. M. said, he cared very little whether the system of the War Department was good or bad, narrow or extensive, or whether they had formed any system at all. All that this House is called on for, is to grant a specific sum for a specific object. By such a grant, the House commits itself for no system—and it can never be compelled to go farther than the object distinctly presented to it. He thought this fortification would be a useful one; great progress had already been made in it, and he should vote for the whole sum asked.

Mr. LITTLE then moved that the Committee rise. The Committee rose accordingly, and having obtained leave to sit again, the House adjourned.

FRIDAY, JANUARY 27, 1826.

The resolution laid on the table yesterday by Mr. CONDICT, calling for information from the Navy Department, relating to a Breakwater in Delaware Bay, was read a third time.

Mr. FORSYTH inquired whether this subject had not already been referred to a Committee of this House?

The SPEAKER replied that it had already been referred as a matter of Commerce, to the Standing Committee on that subject—but the present resolution contemplated it solely in a military point of view, and he therefore thought that the introduction of the resolution, in relations so entirely different, was not forbidden by the rules of the House.

Mr. MANGUM said, he presumed the introduction of this resolution was intended as a means of effecting, in a different manner, the object formerly in view when the subject was referred to the Committee on Commerce. That Committee had carefully considered the subject, and had sought to aid their own judgment by obtaining all the light they could from other sources. They had had a consultation with Commodore Bainbridge, and with other gentlemen, who treated the subject both in a military and commercial view—and, after obtaining what information they were able, they had come to the conclusion of reporting against the measure.

Mr. CONDICT said, he did not know what might have been the proceedings of the Committee of Commerce in respect to the subject of this contemplated improvement in the Delaware; but he could not but believe that the call now proposed, would obtain for this House important and useful information. The measure to which it related, was of acknowledged importance. It would, of course, cost a considerable sum of money; but it might be of important service to the interests of the country, both commercial and military, far beyond its greatest cost.

Mr. MINER said he was surprised at the hostility which seemed to be manifested to the resolution. He must presume it was not rightly understood. The object of it was to obtain information which might be useful to the House to enable it to decide on the propriety of an appropriation for a Breakwater at the mouth of the Delaware. The subject was an important one, and deeply felt to be so

Pennsylvania and New Jersey. The Legislatures of both those States had, at their present sessions, passed resolutions instructing their Senators, and requesting their Representatives, in Congress, to use their best exertions to obtain an appropriation to commence the work. The merchants of Philadelphia had petitioned in its favor, and the whole commercial interest within the waters of the Delaware, were impressed with its necessity, and exceedingly anxious for its accomplishment. There was a long extent of sea coast, from New York to Norfolk, in which there was no harbor, and when storms from the South and East prevailed, many vessels, every year, were cast away; a great amount of property was lost; and, what was more to be deplored, many valuable lives were sacrificed. The proposed Breakwater, said Mr. M., would prove a shelter for our merchant vessels, and it was the object of the resolution of the honorable gentleman from New Jersey, to ascertain how far it might be useful to the public, connected with the Naval service. The House would recollect that there was a bill on the table—he referred to the one under discussion yesterday—appropriating heavy sums for the defence of the sea-board. The whole amount of appropriation contemplated by the system, exceeded seventeen millions of dollars. Of this, about two millions were for Boston; more than five millions for New York; and less than one million for the Delaware. The ports in the Delaware had paid into the public Treasury more than seventy millions of dollars, he presumed to say, though he had not the statement before him. He submitted to the House, whether it would, under such circumstances, be acting with its usual courtesy, to refuse a call even for information, and which was deemed important, on a subject so interesting.

Mr. McCOY said, he was averse to making this call upon the Secretary of the Navy for his opinion. That officer has no data on the subject which are not already in possession of the House. If the gentlemen are not satisfied with the report of one of the Committees of this House, let them get the report of another Committee; and, if none of the Committees' reports will suit them, let Commissioners be appointed to inquire.

Mr. SAUNDERS observed, that, as he understood from what had been stated, that the Committee on Commerce were prepared to make a report on the subject, but had not yet brought it into the House, he would move, that, in the mean while, the resolution lie on the table.

The motion prevailed; and the resolution was ordered to lie on the table accordingly.

FORTIFICATION APPROPRIATION BILL.

Mr. McLANE moved again to go into Committee of the Whole on the bill "making appropriations for Fortifications."

Mr. FORSYTH moved to postpone the further consideration of this order of the day till Monday week.

Mr. FORSYTH, in support of his motion, observed, it would not be necessary for him to make many observations. The House was already informed, that, at an early period of its session, his colleague had offered a resolution to obtain information intended to bear upon that bill. The object of the call was distinctly stated: it is not yet answered. We have been told that the War Department has not had time to act upon it. A similar resolution had been before that Department for more than two years. Suggestions have been made by the Chairman of the Committee of Ways and Means, and by the gentleman from South Carolina, which deserve consideration, that the information asked, if it could be obtained in time, would have no bearing whatever on the present bill. If I understand this subject, these suggestions are erroneous: without the information sought for we cannot do our duty. It has a direct and important bearing on the question of granting or refusing these appropriations. The subject before us is a bill making appropriations for the execution of what is called the great scheme of national defence. To the question, Where is this great scheme? we are told that the House has had the plan of Fortifications before it, and that it has been adopted—public judgment has been pronounced in its favor. When, sir? Why, some years since, appropriations were made for the erection of forts, at certain points, on the representation of our Engineers that these points, with many others, ought to be fortified; and this is the foundation of the assertion, that the whole scheme was adopted in all its parts—those for which appropriations were made, and those for which there were none. I subscribe to no such inference. If such opinions are entertained by old and distinguished members of the House, it was time the whole subject should be seriously examined. Can this examination be made without an answer to the resolution of my colleague? But let us inquire how far we are now prepared to act even upon the forts commenced, and in progress. The want of requisite information would be best shewn by referring to particular works. There is to be a fort at Old Point Comfort; enormous sums have been already expended upon it; the engineers ask for more; we ask, in turn, what has been done? We are answered, certain walls of stone or brick have been constructed, barracks and comfortable quarters for the officers have been erected, and we are going on with the fort. We ask, further, what sort of fort is it that your are building or intend to build? Is there a plan before us—has one been submitted for examination—if it has, have the engineers adhered to it? Has a new plan been adopted, or have alterations been made in the original scheme? Who among us is now able to answer these questions? See the danger and folly of proceeding thus at hazard, in its consequences. We are now to give 115,000 dollars for this work; we place the whole at the discretion of the War Department. What is to prevent the plan of to-day from being abandoned to-morrow, and the plan of to-morrow, half a year hence, for another, which promises to be more effective? What means have you for knowing or preventing such changes, every one of which necessarily protracts the execution of the work, and increases indefinitely the expense of it? So much for a work in progress. Take another example from this bill, Fort Calhoun. By the report of the engineer, sent with the President's message to Congress, it appears that the foundation of this work is at length perfected. On this foundation, so long preparing, and so expensive, there is to be a fort, no stone of which is yet laid. Give us money for this fort, say the engineers, 80,000 dollars, to begin with. For what kind of fort is the money wanted—what is its shape? Is it circular, or square, or octangular? What are its dimensions—how many guns will it require—what will it cost—what is its bearing on other fortifications? What others are intended to be erected to bear upon it? Will gentlemen deny the importance of these questions? It is, however, said, that these questions come too late; Fort Calhoun is determined on. By what act? Where is the law of its creation? Some years ago money was appropriated to build Fort Calhoun, and to this you are to look for the form and value of the projected work. This, too, is considered so solemn an act, that the determination must not be reviewed; the plan has been scientifically laid, and the work will be most scientifically executed. What is worse than all this, we have been told that we have nothing to do with such matters. According to my judgment, Mr. Speaker, we have a great deal to do with these matters. The duty of our engineers is to furnish this House with plans and estimates for military works. For this they are employed and paid; when this has been done, our duty is obvious. To judge of the plans and estimates; of the fitness of the plan to accomplish the object proposed; of the value of the object compared with the necessary expenditure, &c. To adopt or

reject them, as they seem most beneficial or useless to the country. All this can be done without being ourselves engineers, or possessing very profound scientific knowledge on the subject. It is a business of plain common sense. Admitting, however, that more than sound sense is required, is our military committee destitute of science? If it is, why did we raise it? It was appointed for the express purpose of sitting in judgment on the plans of the War Department. To give us their opinions of them, and not to recommend them because they came from the War Department.

There is a question, which has been repeatedly asked, with a very triumphant air, Will you arrest the progress of these works? Will you now stop short, and consent to lose the money already expended? The answer is perfectly easy. Some of the works embraced in this bill are not yet begun. As to those under way, the propriety of going on or abandoning them, depends upon circumstances. If the works begun will be useless when finished, not a dollar should be expended upon them, whatever may be the sums folly has already wasted upon them. In that case, the first loss is easiest repaired. Do gentlemen suppose the country has not benefitted by the experience of the past years? Have we not been told, in the course of this discussion, that one of the projected works was abandoned because impracticable? There is a fact recently stated to me, and on good authority, that there is not a drop of fresh water to be got at this Fortress Monroe, for which a large appropriation is asked, the amount of which appropriation is increased by the necessity of paying an annual expense of procuring drinking water for the workmen. No doubt we may be told that the resources of science and ingenuity will remedy this defect. I question not their science, and give our officers full credit for their ingenuity. Yet let us understand how this difficulty is to be overcome. It would scarcely be doubted that a small fleet would soon reduce a fort destitute of water. But we are called upon to complete works already begun, and to begin new works, the corner stones of which are not yet laid. If gentlemen consider themselves concluded by previous appropriations from inquiry about the first, are we to have no information about these? But, sir, what is most important in this discussion, is to fix the attention of the House to this perversion of appropriation bills. The legitimate object of an appropriation bill is simply to provide money for an object which has been previously resolved upon, and which has received the form of law. Yet, sir, we have seen, before this, under the pretext of an appropriation bill, officers appointed, contrary to the plainest provisions of the Constitution. Now, we are told that a magnificent scheme, which contemplates the expenditure of eleven millions of dollars, has been adopted by an appropriation bill. Where are we to stop? What is this Government to come to, if such practices prevail? Appropriate money, and the Executive officers have all they want. They may do with it just what they please. If they commit an error, it is beyond your power to correct it; and unless you can prove that they have been actually corrupt, even then, punishment is impracticable. Let them plan what they please, if you once begin to give them money for it, you must go on giving money as long as they choose to ask it. Sir, I am not casting the least reflection on the gentlemen who fill these offices. I do not say that they have been guilty of any thing improper; but I do say, that the principle of this procedure leads directly to the grossest abuses, and to the vilest corruption.

Mr. M'LANE, of Delaware, (Chairman of the Committee of Ways and Means) observed, in reply, that he did hope the House would not, at this time of day, gratify the gentleman from Georgia, (Mr. FORSYTH,) by consenting to discharge the Committee of the Whole, and lay this bill on the table. He would assure gentlemen that, as Chairman of the Committee of Ways and Means, he had for himself no interest whatever in the present bill, except such as was connected with high public considerations. Gentlemen asked for delay, that they might have time for consideration whether the purpose of these appropriations is, in its nature, reasonable. If (Mr. M'LANE said) he believed that the gentleman from Georgia could reasonably expect to obtain any further light on this subject, he would not oppose it; but disbelieving, as he did, that the information which has been called for will, when it comes, in the least enlighten the House, or the gentleman, on that point, or that the gentleman from Georgia can believe that it will, he could not consent to delay a bill of so much importance to the public service. He begged the House not to be misled by general insinuations, like those which have been thrown out by that gentleman. He begged leave to say, that he believed he knew what was the duty of the Committee of Ways and Means, in relation to subjects like that now under consideration. When the War Department proposes to erect a new work, which has never been passed upon by this House, it is the duty of that Committee to lay the plan of such work, with the estimates, and the whole details respecting it, before the House. But, when that Department asks an appropriation for a work which is not new, but the plan of which has been sanctioned and adopted by Congress, it is the duty of that Committee to shew, from proper estimates, what is the sum required. When they have done this, they have, as a Committee, performed their whole duty in the matter. Farther they do not go; but then a further duty devolves on them as members of this House; and he begged leave to say, if his honorable friend from Georgia had been as astute as he should be, in examining the information submitted to the House by the Committee of Ways and Means and the War Department, he would not have placed himself in the attitude in which he now stands before this body. He talks of information being withheld by the Department. Sir, (said Mr. M.) the whole of the information for which he clamors is already at his command, and has been on the files of the House since the year 1818. It has been, and is, within his reach, whenever he chooses to look at it. Sir, I think I cannot be mistaken in this fact: and I pray the attention of the Committee to what I am about to state, because it is indispensable to a right understanding of this subject. In 1816, the Congress of the United States organized a Board of Engineers, and constituted them a distinct bureau of the War Department. It made it the duty of the Board to visit our entire sea-board; and, after examining it from one end to the other, to project a general system for the fortification of the country. This measure was adopted by Congress when the memory of the evils which had been felt during the late war, from the want of adequate defences, was fresh in every mind; and the energies of the nation, yet smarting under what it had suffered, were directed, in all their concentration, to this great object of the public security. They invited, from Europe, the most distinguished individual of the time, in this branch of military science; and, having obtained him, they placed him at the head of that Board, and set him to explore our entire Atlantic frontier. He performed the duty assigned him; and with what ability he performed it, is manifest from the detailed and elaborate reports laid before this House in 1817, '18, '19, '20, and 21. Those reports have, from that day to this, been within the reach of the gentleman from Georgia; and might have been consulted at any time he pleased. So much in detail was one of these reports, in relation to the principal works in this bill, that it contained not only an account of the various fortifications proposed, but all the minutest angles of each one of those fortifications. The points they were intended to defend, with the exact extent of the defence they would afford, were minutely pointed out. It

the report shewed, besides, how a military force, drawn from the neighborhood of each of these fortresses, could most readily be concentrated, so as to act in unison with them and with each other. This report was thought, by Congress, to be a document of such vital importance, that its publication would be highly prejudicial to the interests and safety of the country. They therefore suppressed the publication of the greater part of that report, but the report itself remains entire on the archives of this House. If the gentleman from Georgia had consulted this document, he would get more information, ten-fold, than all which has been called for by the resolution of his honorable colleague. Will the House delay the bill a week, that the gentleman may have time to consult documents, which have been so long within his reach? I hold in my hand a printed document, containing more than all the information he now asks. When this system was projected, and these reports were rendered, not a stone was laid of any of these works. They presented a full and complete view of the plan or system of fortifications, by which, in the opinion of the Engineers, the country could be best defended, and were submitted to the deliberations of Congress. Congress was then asked to commence appropriating for the gradual accomplishment of this plan. Sir, what did Congress do? Did it call for new surveys? Did it order fresh estimates? Did it ask for more reports? No, sir, it examined—it considered—it discussed the system presented to it; and it then deliberately began to appropriate money to commence it. And what is Congress now asked to do? It is not asked to begin new works, but, in the best and most economical manner, to carry on those which are already begun. What is the object of the resolution of the gentleman from Georgia? (that of the gentleman from Tennessee has a wider range.) Is not his object to discover whether the Government were not bound by the plan, to begin their defences in some particular places to which others have been preferred? I do not now mean to say, sir, that the State of Georgia has or has not had her proper proportion of these proposed works. I will not be drawn into any such discussion. I do not look—I will not look, at the parts of this plan, but at the plan as a whole. Sir, as to the necessity of selecting some great points first to be defended, we have received some lessons from experience. The plan proposes, as one of these points, to defend New Orleans; and why, sir? Because it is one of the keys of the country; and the enemy, if in possession of New Orleans, is in possession of a very large portion of the country. It is proposed, again, to place a fortification at the harbor of Boston, and at Newport, Rhode Island; because those harbors are inlets to the whole Eastern sections of the Union, even to New York. It is proposed to fortify the Chesapeake, for a similar reason; the Delaware, for a similar reason; and we fortify these points, as well to keep them out of the possession of the enemy, as to guard our commerce, and afford protection to our own fleets, when blockaded by a superior Naval force. Now, sir, what is the question before the committee? Is it a question of system or of plan? Not at all, sir. The House is not called upon to adopt this whole plan. The House is called on to defend Boston—to defend the Chesapeake—to defend New Orleans, among the most important parts of the plan. Is there any gentleman who will stand up in the face of the American People, and say we shall not defend Boston? If there be, let him come forward. Is there any man here who will say we shall not defend the Chesapeake? If there be, where is he? Where does he come from? Sir, I repeat it, the question before us is not a question of plan: it is a question of the works of defence included in this bill. We have begun these works, and the point to be decided is, shall we go on with them, or shall we stop them? And, Mr. Chairman, I would ask, whether it is respectful to the American People thus to hesitate, and thus to deliberate, on such a question? Sir, is there any gentleman here who will say that we ought to abandon the system, or give up these works? Will any gentleman go home and tell his constituents "I have abandoned the defence of New York: I have given up the defence of New Orleans," these great keys of the country. And when they ask him, "Why have you done so?" who will reply, "Because an honorable member of the House called for certain information from one of the Departments, in relation to other matters, and did not get it?" Sir, that is the amount of it: that is, in substance, the answer he must give, unless, indeed, he should tell them, "It was because a gentleman from Georgia said, in debate, there was no spring water on Old Point Comfort." Sir, it may be that there is no water on Old Point Comfort. I know that this is the case with one of our fortifications in the Delaware; and for this plain reason, that the fort stands on an island recently formed, in the midst of water that is salt. But if Old Point Comfort happens to be so situated, as to furnish the spot from which an enemy can be most successfully resisted, would the gentleman from Georgia abandon it, and leave the whole country open to the enemy, because he can't get water, unless he carries it there?

In these few remarks, said Mr. McLANE, I have confined myself simply to the question of postponement; I have not now entered on the general merits of the bill. I have endeavored to shew that no good purpose can possibly be answered by delay; and that all the information called for, is already before us, and much more. The bill was reported this year, at an earlier period in the session than had hitherto been customary; and the committee had been induced to take this step, from having learned that the service had suffered very materially, and the national expenditure been in some instances greatly increased, by the delaying of these bills to so late a period of the session. The necessity for an earlier appropriation arises from the fact, that many of the works have to be carried on at remote points of the Union. Owing to the climate, and other causes, the execution of the contracts begin earlier at some of these points than at others; it was very desirable that the appropriation should be made in time to precede the commencement of the works, &c.

Mr. FORSYTH rose, in rejoinder, and observed that the honorable Chairman of the Committee of Ways and Means had, with marked emphasis, denominated the resolution, offered by his colleague, "a Georgia resolution;" and had said that it related only to the defence of the coast of Georgia. He knew well, and had felt for the last two or three years, that there was a strong prejudice, either already existing, or intended to be excited, whenever the name of Georgia was mentioned; but he had hoped this prejudice did not extend to Delaware.

[Mr. McLANE explained. He entertained no prejudices against the State of Georgia. What were the sentiments he felt toward that State, he should not now express; but perceived the honorable gentleman had entirely mistaken his meaning. He had denominated the resolution, to which the gentleman alluded, "the Georgia resolution," merely for the purpose of distinguishing it from another resolution, of a similar complexion, offered by the gentleman from Tennessee, which, for the same purpose, he might have named "the Tennessee resolution." He intended no such allusion, or insinuation, in using the term, as the gentleman seems to have supposed.]

Mr. FORSYTH continued. The object of my colleague's resolution had no special reference to Georgia; and what has led the gentleman into this mistake, was the reply to the gentleman from Massachusetts, (Mr. DWIGHT) made yesterday, who appeared also to have misunderstood it. I beg the House to recollect that my colleague stated expressly, at the time he offered the resolution, that he did not wish to embarrass the service, or to retard the appropriations which might be required; but he told the

House that he wanted the information in order to enable him to understand and perform his duty. He voted, for two or three successive years, for the appropriation bills, as they were reported, relying on the Government to furnish the information afterwards. Sir, we have voted two years on faith, and we are unwilling to vote on faith any longer. But let the gentleman from Delaware recollect that the resolution calling for this information, though it had been offered by his colleague, had been adopted by the House; and it was, therefore, the resolution, not of his colleague, but of this House. Why was it passed? The gentleman tells us that it was an unnecessary call; that the plan to be pursued, with all the details respecting it, is already on the files of this House: that a portion of the documents was kept secret, but may be discovered if sought for, with due diligence, among the archives of Congress. Sir, this is the first hint I have heard of this fact; and it is certainly new to most of us. Why was it never stated before? This would have been an excellent reason against passing the resolution. When my colleague charged the Government with withholding from the House information which it was proper we should possess, why were we not told that the information was already on our files? Why were we told that it was preparing and would be soon furnished?

But, sir, the honorable gentlemen is mistaken. All the information, desirable on this subject, is not before this House, including this secret document, as the published report of 1824 shews.

[Mr. McLANE here explained. He referred to the report of 1821, three years earlier than that of which the gentleman speaks.]

Mr. FORSYTH replied, that the report of 1821 contained a list of fortifications of the general plan—but that in 1824 proves, that that plan was departed from. I mean not the general plan, but of a particular fort—Fort Monroe, (and the alteration of it cost the United States near two hundred and thirty thousand dollars.) But is there any reason why, since this alteration, further information should not be communicated? These gentlemen appear to think that they are at liberty to do as they please; they are scientific gentlemen, and all is at their discretion, provided it be done for the general defence. Sir, I do not say that these gentlemen have misapplied the public money; nor do I say that the changes they have made in the plan are not advantageous and necessary; but I wish to know what they are, and whether other changes are not contemplated.

The gentleman from Delaware begs the House not to be misled by my insinuations. Sir, I hazarded none. I advanced no charges against these gentlemen; my sole object was to shew that, in passing this bill without further information, the House is acting indiscreetly. I know perfectly well, that, if there is corruption in our officers, if it can be proved, we have the power to punish them. Yes, sir; but will that remedy the injury which the public service has sustained by their mal-conduct? I have long been taught, (and it is peculiarly applicable to the business of legislation) that a little prevention is better than a great deal of cure.

We are told, however, that the bill does not call upon us to sanction any system, but only to provide a definite sum for a definite object of local defence. Now, sir, I will submit it to the House, whether that is a true statement of the question before us. The gentleman says, a great plan has been adopted, and that we began these works in consequence. Then, sir, we have begun the system; we are carrying on the system; and the question respecting these works, is not a question of mere local defence, but involves the system at large. The gentleman asks if we will refuse to defend New York, or to defend the Chesapeake? Sir, who would be so mad as to stand up and say, he will refuse to protect the humblest village in the United States? or the humblest individual who is habits it?—especially in an assembly like this, composed of the Representatives of the People? But, sir, that is not the question. It is impossible, in the nature of things, that we can place a fort before every village: the most points must be omitted, and we must confine ourselves to those great and prominent points, at which the country can be the most easily assailed. Now, the entrance from Lynnhaven Bay to Hampton Roads is to be protected by Forts Monroe and Calhoun. For this object they are insufficient—useless. Finish them as you will, and the Chesapeake is still open to the vessels of an enemy to enter without molestation. They protect, properly speaking, nothing more than Lynnhaven Bay and the mouth of James River: and, after they shall be completed, all the shores of the Chesapeake will be, as formerly, without defence, except what it receives from the militia. York River; the Rappahannock; with the great Potomac, are to be as defenceless as ever: the shores of Maryland exposed to the ravages of parties in cock-boats, as during the late war.

But, sir, I wish to ask the gentleman at the head of the Committee of Ways and Means, whether that committee has not deliberately introduced into this bill, items of appropriation for new works—works never dreamed of by the Board of Engineers.

Mr. McLANE replied, that the committee had not done so.

Mr. FORSYTH said, he understood that there was at least one such item, which had been introduced at the suggestion of an honorable member from North Carolina.

Mr. McLANE said, that the gentleman had put the question in express terms, and he had answered it as it was put. It was not true that the bill contained any "works which the Engineers had never dreamed of." There is no work in the bill, which is not to be found in one or other of the classes of works designated in the report of the Engineer Board. He had not said, as yet, anything about these items, because he did not understand that it was expected of him to discuss all the points of the bill at once. It is true that neither the Board of Engineers, nor the Secretary of War, recommended the commencement of the works in North Carolina, *at the present time*, and therefore the bill had, at the last session, been reported without them. The member from North Carolina, however, moved to amend the bill, by inserting an appropriation for a fort at Beaufort. This was not opposed by the Committee of Ways and Means—they did not consider themselves called upon to do so—they submitted the measure to the House, and the House rejected it. The bill then went to the Senate, and there, by the influence of the Senators from North Carolina, the item was restored. The bill, thus amended, came back, and was discussed in this House—and the House passed it with the amendment. The work in North Carolina is, therefore, in a peculiar manner, the child of Congress, and not of the War Department. Congress ordered the Department to go on with it, contrary to its own views and those of the Engineers. This, then, was not to be charged as a fault, either on that Board, or on the Committee of Ways and Means. As to the item in this bill, for a work at New Orleans, such a work has been represented as of the utmost necessity. It is situated at the very point where the British entered during the late war, and is indispensable to the safety of that City.

Mr. FORSYTH replied. I now, then, understand that these works are included in the report, but are placed in the second or third class, and the bill removes them to the first class. The work in North Carolina was last year ordered; but, if he was rightly informed, it is not yet begun. The site has been purchased, but not a stone has been laid. The House, therefore, is not committed as to the point of time when this fort shall be commenced. It is

ppropriate for its commencement now, or some years ience—no injury to the works can be pleaded as an ar- ument against delay.

It has, besides, been suggested by a member in his lace, that the system of canals, along the seaboard, will ender such a fort perfectly useless. Ought we to pro- eed until this point is settled?

The gentleman from Delaware has said, that if I had sed due diligence in examining the documents, I might ave saved myself from my present situation before the Iouse. Sir, I did inquire. I inquired sufficiently to sa- isfy myself, that the scheme adopted by the Engineers is ssentially defective; and that, in pursuing it, the Govern- ent is doing rank injustice to the nation; that it is strong- y fortifying some points, and at a vast expense, while ther points, of greater importance, are wholly neglected. The great object of the Government ought to be, to begin rst with those objects which are of vital importance; and do not consider all the objects now presented to us, to be f this description; and I, therefore, thought it my duty o bring the subject before the House. If the suggestion f particular States, or of the Board of Engineers, is es- eemed a sufficient reason for commencing new works; and f works of the third class are to be removed into the first lass, by an appropriation bill, I think it is high time that ve inquire further. A large part of the coast of this coun- ry, and that part of it which is most vulnerable, is left, by hese measures, wholly undefended—not a fort is even roposed for its protection.

We ask, what is the plan to be pursued? I wish to ex- mine it. Gentlemen say we have examined the plan lready. Sir, if it has been examined, I wish it re-exam- ned. Why is the port of Boston to be defended in pre- erence to the port of Savannah? Is it because it is veaker and more exposed? Sir, we have been officially old that Boston is able to take care of itself: and we were old this, sir, at a time when the truth of the declaration vas liable, every day, to be put to the test. Yet, the plan roposes to give more than a million of dollars to defend Boston—not a dollar to protect Charleston or Savannah. The defenceless parts of the country are left out of the cheme—while vast sums are lavished on those which eeded no further defence in the hour of danger.

Mr. Speaker, I have been drawn into this discussion: he unfortunate indisposition of my colleague has imposed n me a task to which I had no previous inclination. He ought for information to guide his judgment, but he ought it in vain: and with me, sir, whether the informa- ion was necessary or not necessary, the mere fact that it vas withheld, would present a sufficient reason for put- ing our hands upon this bill.

But there is another point which demands explanation. These bills are out of time: they have been pressed upon us at a period of the session at which they were never ntroduced before. The gentlemen of the War Depart- ment say that the service has suffered from the delaying of these bills, and this is taken for granted: but, sir, let them shew what injury has resulted from it; what is it? Possibly some inconvenience may have been felt; but what is this, when put in competition with the character and dignity of this House? Sir, this is not the first in- stance in which the calls of this House have been utterly disregarded. We have asked more than once before, for information, and it has been withheld from us. Nay, sir, not so much as a poor apology has been returned to us. In one instance, we were told that there was not time to answer the inquiry; yet, at the succeeding session, not the least notice was taken of the call, and it yet remains unanswered. In the present case we have had two calls disregarded. I hope we shall make a stand upon the third.

Mr. STEVENSON, of Pennsylvania, observed, that he should not have said one word on the present bill, but for the, to him at least, most extraordinary doctrines which fell from the lips of the gentleman from Delaware, who, in substance, says, it is not our business to deliberate or ask for information on this bill; and who will not allow one week, to enable us to examine into the propriety of the appropriation of eight hundred thousand dollars to be expended on fortifications, and this because the Executive Department may be put to inconvenience by delay, and because the Engineers have said this sum will be wanted. And when we wish for information as to the location, pro- gress, and plans of their works, tells us it may be found in our books, documents, &c. if we seek it. That we ought to be already informed, as little is necessary to be known, the system having been matured in 1818, and that we have nothing to do but make good the measures of a former Congress.

This is to me extraordinary doctrine indeed. As to those gentlemen who have been members of this House for several years, they may be informed, on all essential points; they may have kept pace with the progress of this system, as it is called, (though they seem at fault when called upon to impart information;) but there are many members (amongst which number he was included,) who have this year taken their seats for the first time upon this floor. He believed that there were between seventy and eighty members who were in this situation; and even if the information on the subject before the House was contained in its records, it was spread through a mass of documents of great extent, and for a series of years. New members were not familiar with the readiest mode of referring to it; yet they preferred the labor to a blind compliance with the views of others. For himself, he made no professions of remarkable industry; he should, however, strive to acquire the necessary information on the various subjects that come before the House, and more particularly with regard to bills appropriating large sums of money, which, after all, seems the main matter. The gentleman tells us that these works were resolved upon by a former Congress, and therefore we must now make appropriations to complete them; but, Mr. Speaker, this is doctrine to which I cannot subscribe. I came here perfectly untrammelled, and am not prepared, blindly, to adopt any measure, because it has been approved by others. I have no belief that this Congress is bound to continue a system of folly or extravagance, because be- gun by our predecessors. If I am to vote for these forti- fications, it will not be because the gentlemen who prece- ded me, may have thought them advisable, but because, from the facts before me, I believe them useful. I am, therefore, in favor of some delay, that I may inform myself more fully, and that others may do the same. I am not as yet prepared to proceed. I am not, sir, quite convinced, that the whole scheme had not better be abandoned, or, at least, part of it. I do not quite think that this is the best possible system of defence, nor indeed that it is ne- cessary at all. I know, from the history of this nation, that with relatively feeble numbers—with a Government comparatively unorganized—without wealth—without ex- perience—without arts—almost without arms, this coun- try was able to effect its separation from the strongest na- tion upon earth. Sir, we were then without forts, and, during our late war with the same Power, we were able to defend ourselves without them; and multiply these for- tifications as you will, there must still remain "wondrous gaps between them." The enemy who seeks to invade you, can enter at these vacant spaces, unless indeed he considers himself bound in honor to attack your forts. Sir, the strength of a nation does not lie in its fortifica- tions, and modern experience has occasioned the system to be almost abandoned. Look at the late wars on the European continent. That continent is studded with forts of every description, and of vast strength; yet, sir, did they stay the progress of the French armies? No, sir,

those armies ranged throughout all Europe. In spite of forts, the French troops were enabled to penetrate to the very capital of the Russian empire, and, unchecked by forts, that empire was enabled to carry back the tide of war to the very centre of Paris. The doctrine is undoubtedly true, that in time of peace we ought to prepare for war; but the question still remains, what is the best kind of preparation? Is it the erection of ramparts, and the building of stone walls?

Sir, a better preparation would be to pay your debts, that you may have untrammelled resources; to let all the acts of your Government be so marked with wisdom and justice, as to avoid the causes of collision with foreign nations. I do not believe, sir, that there are any of our neighboring Powers whom we have cause to dread, and without the building of castles; but sure as the progress of time, there is a silent operation going on in society, which is giving to this Republic an unconquerable strength. In the Revolutionary war, our whole population amounted to about three millions; now it exceeds ten millions. We have wealth—we have arts—we have arms—we have organization—and no traitors within. But it seems the men of this day are to depend on castles and stone walls for their safety. Their fathers depended on their manhood. Let us have the same dependence, and no enemy that comes to attack us will ever succeed in making any material impression on the country. It is true, sir, that in the last war, the British succeeded in making some impression on this City: but what then, sir? The Phœnix has risen from its ashes: the nation was not weakened; it was but roused; and should it hereafter happen that some small place is destroyed by an invader, what will the effect be? The sufferers may mourn, and we may sympathize with them; but the safety of the nation will not be endangered, nor its strength at all impaired.

If you have a surplus revenue, and must expend it, I should like that the wisdom of this House should be exerted to discover whether some more beneficial system might not be devised. Perhaps I might think that the many millions which your system of forts will require, might be expended on opening roads throughout the Union; in making canals; connecting the lakes, rivers, and seas, of our country; in clearing your water courses; in providing for a general system of education; in preparing and placing arms in the hands of every citizen; in introducing arts, sciences, and manufactures, of a useful kind, into our country. I might think this were better, since we cannot accomplish all, than the hazard of entailing upon posterity the curse of supporting an army of useless men, to man and watch these dignified edifices, and to palsy the most valuable feelings of our freemen, by leading them to trust to castles and enlisted guards.—Vain dependence!

Sir, in this free Republic you will always find men enough, if furnished with arms, who will repel every invader. Arms, freeborn hearts, life, liberty, and property to defend, will effect more than castles. Look to the walled cities and fortifications through all history, from those of Babylon down to those of Copenhagen: did they prevent their destruction by armies or by navies?

It has been proudly said, "Britannia needs no bulwarks;" "no towers along her steeps:" and it may be as truly said of America. Cherish your navy; your floating movable towers of strength, that can be transported to every coast and every sea. Your castles have short arms; they reach not far.

Mr. S. concluded, by remarking that he should not have troubled the House with these unarranged and disjointed remarks, had he not felt impelled at once to repel the doctrine, that we were bound to pursue the system laid down by others, without examination or reflection on our part. The bill had been taken up out of its order, and earlier than usual in the year; and, said Mr. S., it is as much as those can do who are not informed by a species of intuition, to keep pace with the regular business. The most important information asked for in 1824, had not yet been communicated. He hoped gentlemen would allow a few days for consideration.

Mr. WOOD, of N. Y. observed, that he was perfectly surprised at the course of the debate; yet, he should not have said any thing had not sentiments been uttered that caused him great alarm. Sir, are we to have the policy of this system discussed at every session of Congress? Are we not so much as to look at the past? Are not the great pillars of our Government to be supported? Sir, we are asked for this delay because the new members of this House have not yet consulted the documents which relate to this subject. But, is it not the business of new members, as well as old, to consult the documents, and to make themselves acquainted with the subjects on which they have to act? Is the business of this House to be suspended until every new member has consulted the documents? This bill has been more than a month upon the tables of gentlemen, and the documents are accessible to all. Surely, gentlemen might have read a few reports before this time. Sir, we cannot complete the defence of the nation in one year. Our navy, of which the gentleman speaks, was not built in one year. One Congress began it—other Congresses carried in on—and other Congresses increased it. In works of this kind, each Congress must necessarily refer to the acts of their predecessors. Do gentlemen expect that we will now arrest the progress of our great national works? Do they argue that the contracts that have been made are not to be fulfilled? Reports on every part of this subject are on the files of the Clerk's office, and no gentleman who holds the honor of a seat on this floor can excuse his ignorance of them. Sir, what would gentlemen have? Is it so much as suggested by any body that we are to abandon this whole subject? Gentlemen tell us that the militia can defend the country; that they can defend it even without arms in their hands. But, are we to disregard all history? Look back, sir, to the days of our beloved Washington! How often did the recommendation of this system proceed from his venerable lips! Let us at the last speech of President Madison to this House. And how often was the same admonition repeated by our late President? For the security of the country, and to promote economy in attaining its security, we established the Board of Engineers. It was wise to do so—and we have profited by their labors. As to the plan of defence who formed it? Those very persons whom we ourselves selected for that very purpose. They made their report to Congress—Congress passed them all in review, examined, considered, discussed them, and the policy was then adopted. It is the policy of this Nation and this Government, and it forms a part of our great system of national defence. I say, sir, of Naval defence, because these works are not only intended to annoy an enemy's fleet, but to protect our own vessels from an unequal force. As to the ability of the country to defend itself upon the land, not for a moment to be questioned. On land, we are prepared to meet an enemy at any time, on equal terms. But who knows in what direction they will attack us? Experience has taught us the most assailable parts of the country, when it is attacked from the Ocean, and it is on those points that works of defence are intended to be erected. Sir, during the last war, this nation had on foot 500,000 militia, the greater part of them distributed along the coast. They were all needed for the defence of the country—but why? We had no fortifications. This was a much more expensive mode of defence, than that contemplated in this bill, or in the whole system of the Engineer Department. There is no mode of defence so economical as that by fortifications—nor is there a worse or more expensive mode, than that of calling the militia from the plough. The next scheme will be

presume, sir, to sell our Navy to some of the rising States of Italy—and then there will be nothing left for us but to abandon our habitations, and take up our departure to that beautiful Territory of Oregon, so well described to us by the gentleman at the head of the Oregon Committee. There is nothing else for us, sir; you might as well attempt to turn the course of our rivers, as to obtain security and cheap defence on any other plan but the fortification of your sea-board.

So much, Mr. Speaker, for the general consideration involved in this bill. As to the argument of the gentleman from Georgia, it can be of no consequence to these appropriations. The gentleman insists on seeing the plan intended to be pursued by Government, in order that he may judge whether it is impartial in its provisions, and whether it will not leave the coast of the Southern States unprotected. Supposing it is partial; supposing it does not contain a sufficient provision for Georgia, is that to operate against our passing this bill? Sir, the gentleman will not contend that it is. If he thinks Georgia is neglected in the plan, he can move to have the defect supplied; and, if the information he calls for is to result in an appropriation for Georgia, that appropriation can as well be put in another bill, after the information is got. We need not surely wait for that before we pass the present bill. As to the new works which the gentleman says are included within the bill, they are of course subjects of investigation. If the gentleman is opposed to those works, he will, of course, vote against them. But, if the gentlemen from Louisiana and North Carolina, shall make appear that they are essential to the safety of these States, I shall support them.

Mr. STORRS said, that it could hardly be necessary for a member who had occupied a seat here for six or seven years, to say anything in recommendation of the appropriations in this bill; but, so extraordinary were some the reasons which had been urged for the delay of its passage, that he felt bound at least to protest against legislating on such grounds. It would tell very singularly the history of the House, that, when Congress were called upon for appropriations to continue the fortifications on the system which they themselves had adopted years ago, and after the bill had been upon our tables for a month, we were not prepared to act upon it. We are gravely asked from one quarter, to postpone the subject to the present, to enable the new members to study the documents. He was confident, that the new members would not respond to this kind plea put in on their behalf. Every gentleman who offers himself for a seat here, is presumed to have some considerable acquaintance with public affairs, and is, at least, expected, in the course of two months from the commencement of a session, (the time we have been here) and one months' reflection and examination, if he examines at all, (the time this bill has been on our tables,) to have collected some useful information on the matter. If we are to be asked by our constituents when we return home, "how happens it that the fortifications of the sea coast are going to decay and ?" Are we to reply, "it is all very plain. We postponed the appropriations to give time for the new members to study the documents." When the public enemy approaches your shores, and comes to the entrance of your harbors, and asks, "why do we find no defences here?" we must be sneeringly told, "why, the American Congress were not prepared to rebuild these dilapidated works—time was given to enable the new members to study the documents." There are here, many of my own colleagues who are new members, but, I trust, that none of them want argument or information to show the importance to their own State, or the nation, of fortifying the waters which lead to the city of New York. It is a great mistake, to consider the defence of the points proposed to be protected by this bill, as local objects. The interior of the country has an equally deep stake in the defence of the coast. The works at the Narrows of Staten Island, are as much national in respect to Utica, as to the city of New York. The fortification of Boston is not for Boston alone. The interests of Worcester, or the county of Berkshire, are equally concerned, though not perhaps to so great an extent as Boston itself. These are the points where an enemy finds an adequate object of attack. It is here that he can most deeply wound your great national interests by a successful incursion, and it is a very superficial view of the subject, to consider that we defend a particular position, solely for the ground which it covers, or its vicinities merely.

I was surprised, said Mr. S. at an observation of the gentleman from Georgia, (Mr. FORSYTH,) which seemed to imply, at least, that we need not fortify Boston, because Boston is able to defend itself.

[Mr. FORSYTH here explained. The gentleman had mistaken his argument altogether. He did not object to the fortification of Boston, but that the question was upon the expenditure of money first, upon those points which are most in need. The sentiments of the city of Boston, and of its Legislature, and of its Governor, was, that Boston was able to protect itself. Boston, then, is already secure; and, therefore, my argument was, that the expenditure ought not to be made.]

Mr. STORRS resumed. I agree with the gentleman as to the general principle, with perhaps a little more explicit qualification. We ought first to fortify those points which the greatest national objects require first to be securely protected. And I then ask, (for that is all the question which this bill presents, let the rest of the system be what it may,) are we not bound by a just regard to the national interests, to fortify, at this time, the points named in this bill? I do not speak of the mere location of the works. We are not about to protect the point of New Utrecht, in the bay of New York, for the sake of the little eminence where the works are to be erected. It is of no consequence to defend the waters of Narraganset Bay, for the sake of the few villages which are scattered round it, or the oystermen who fish in its waters. But, we select these and other prominent positions for other reasons, and first complete these works, because we have the deepest stake in their protection. New York pays thirteen or fifteen millions into your Treasury from her commerce. Now, the waters of Narraganset Bay furnish the key to New York, and to your whole Atlantic coast. I should be astonished to hear it asked, why we should find it necessary to fortify Newport? It is, perhaps, the finest harbor on the coast. An enemy's fleet, sheltered there, can annihilate your naval power on your own coast, or palsy all its operations. He can there block up Long Island Sound—a single wind carries him to Sandy Hook, or the Delaware—in forty-eight hours he can strike you at the Chesapeake. Let us then ask the question, and the only question now before us. Is it necessary to fortify New York, the Chesapeake, and the entrances to the Mississippi waters? This bill proposes nothing else. When we are asked to go on with the rest of what is called the general system, it will be time to consider of that matter. Be the future projects of fortification what they may—be they never so absurd or ridiculous, we must certainly agree that the present appropriations are demanded by all principles of public defence, and true national economy. I cannot be brought to believe, unless gentlemen will openly avow it, that they intend or wish to stop these appropriations altogether. Our legislation, would present us in no very enviable light to the country. I believe that three Congresses—two, I am certain—have established and continued the system thus far, and are we, now, in 1826, to be called upon to stop the appropriations? We are told that the Department will not suffer by a little delay. But let me ask in reply, will not the character of

our legislation suffer? Is there to be no stability in our systems? Are we to upturn and root out all we have done thus far, because we have now found out that we do not precisely comprehend all the details of these works? because we are not Engineers? Shall we stop these appropriations till we have sent to West Point and brought the Professors down, and send ourselves, new and old members too, all to school? If we want all these minute military qualifications to enable us to settle these questions, which have been started on this bill, we may want the same knowledge and science for other bills too. Shall we now turn cadets and sit down to our books? Is it necessary that we should be military men? officers? Generals? Engineers?—to know whether the national interest require certain great prominent inlets to our country to be defended? Why should we not, sir, carry this thirst for knowledge to all lengths? Why not extend it to the Navy appropriations? If we are to begin anew at every session with these inquiries, and are to have nothing settled, why not now refuse the appropriation for the gradual increase of the Navy, till we have inquired of the Department and ascertained whether our ships are built on good models—whether they have not too great a draught of water—if their guns are of a proper and most useful calibre—and how many square yards of canvass is required to stretch the mainsail of a 74? We may as well call for this kind of information, in my opinion, as to ask for the details of the particular location of our forts. I know nothing, sir, of the advantages of the location of these works. I have confidence in the military skill and integrity of the agents of the Government to whom these matters belong, and I am willing—nay, I feel bound, in voting for these appropriations, to repose my confidence in the Department to which these duties belong. I am no military man and know nothing of engineering, and shall never study the science. If I had these details here, I should know no more of the subject than I now do. But this I do know, that the Navy requires shelter and protection in war; and that our great Atlantic cities and bays must be defended. Can we carry on the Government without it? Are we to profit nothing by the calamitous experience of the late war? The destruction of the fortifications in this bill strikes at the whole naval defence of the country. Suppose, sir, that the system, in our imaginations, or in our sober judgments, to be different from our scientific views, and we change it, we conclude that our predecessors have acted unwisely. The next Congress which comes after us, pass the same judgment on our doings and change all our schemes of fortification. Is this the true or the prudent course of legislating on such a subject? The last war has given us an instance of the kind of national defence which such a system of defence, (if system I ought to call it) would furnish. One General who came to Sackett's Harbor, erected a wooden fort of basswood logs, and located it according to his notions of engineering: his command of the post lasted about three months. Another, I believe a militia Colonel, defended another point, which he deemed important, with a redoubt: his command soon passed away, and another General came; he patched up the first rudiments of a work, which some naval officer had once begun, and created Fort Tompkins: by-and-by, a wooden fort appeared at the head of a street. On another side of the Bay, another succeeding General built Fort Pike: a fifth, sixth, or seventh, built up a set of picketts and stockades; and, at last, to render these scientific combinations of skill perfectly impregnable, a militia General surrounded the whole with a *chevaux de frize!* Are we now to run into a system of fortification which is to end in the same way? I understand nothing of engineering, nor do I consider it my duty to know any thing of it: and I am willing, for one, to place a reasonable confidence in those who I believe do understand it. I will not agree to take on myself, nor that the House shall assume, the responsibility of this system of defence: it does not belong here; it rests on others. We are not to take charge of the location of these forts, or the extent and distribution of their strength. We should expose ourselves to ridicule and censure if they are placed wrong. I hope we shall take no more responsibility than what properly is imposed on us. We know where and how to find those who are responsible for the proper application of these funds to a wise and scientific system. I will not consent to relieve the Executive Department from this responsibility, and take it on ourselves. They might, perhaps, in the end thank us for it, but I do not choose to oblige them in this way. Leave it in their hands, where it properly belongs; and if the funds which we here vote for the particular purposes specified in this bill, are ignorantly misapplied, or corruptly dealt with, I will go as far as any gentleman here to detect and punish the offenders; but I cannot agree to make myself answerable for that responsibility which we properly impose on those whose duty it is to carry into effect our measures. It has been said, sir, that this was an unusually early period of the session to bring forward this bill. It is, indeed, so; and we have had complaints at every session that the public service suffered by our delay on the appropriation bills. The year has already commenced, and its annual funds have not been voted. So injurious has this delay been, that it has been already proposed at this session to provide an earlier commencement of the appropriation year. Instances have often occurred where the Departments have been obliged to ask the Banks to make advances for the public service, on the faith of future appropriations for the year. It is quite time that we remedied this inconvenience: and I hope that we shall not postpone the bill now before us to any future day. If we mean to pass it at all, we should act upon it now. We may embarrass the Department which is responsible for executing the duties of the law, by withholding the means of performing these duties; but no good reason appears to me for the delay, I trust we the House will refuse the postponement.

Mr. BUCHANAN said he should vote in favor of the postponement, for reasons entirely different from those which had been urged by any other gentleman. He would, therefore, take leave to state them to the House. Before he did this, however, he felt himself bound to notice the remarks which had been made by the gentleman from New York, (Mr. STORRS,) upon the observation which had been made by his colleague, (Mr. STEVENSON.)

The gentleman from New York, (Mr. STORRS,) thinks it wonderful that my colleague should ask for more time to make himself acquainted with the subject. Sir, said Mr. B., I would ask how new members could have obtained information? Must it not have been by intuition? It was impossible that they should have procured it in any other manner. The Chairman of the Committee of Ways and Means has informed us this day that the system of fortifications, about which we have heard so much, and which we are now called upon to carry into execution, was never published, but remains filed among the private archives of this House. Did the new members know this fact? Certainly not. How then were they to obtain the information?

[Mr. M'LANE here explained, and stated, he had said that only so much of the plan as it was deemed policy to conceal was among the private papers of the House.

Mr. B. said, that he had understood the gentleman perfectly. That part of the plan which was all important which it was deemed necessary to conceal from foreign nations, lest they might take advantage of the information which it imparted, had not only not been exhibited to the new members, but they had not, before this day, been informed of its existence. This was the case as it regarded himself, as well as most of the old members of the House. Sir, said Mr. B., has the gentleman from New York,

self (Mr. STORRS) read all the reports which have been presented to this House at different periods upon the subject of fortifications? Is he well acquainted with their whole contents? I will venture to hazard the assertion, much respect as I feel for his talents and his industry, that I can propound to him twenty questions of importance, having immediate relation to the fortifications provided for by this bill, not one of which he can answer.

Sir, said Mr. B., it is not necessary, judging from the principles advanced by that gentleman, that he should be acquainted with the subject, concerning which he has been called upon to act. He has introduced a new and dangerous doctrine into this discussion, which I trust and hope never will prevail. Confidence in an Executive Department was, with him, to take the place of knowledge. And why? Because, forsooth, we are not Engineers; and, therefore, we are incapable of judging. The will of the Engineer Department is thus to become the law of this House. The principles which the gentleman has advocated carry him to this fearful extremity.

[Mr. STORRS explained. He said, that he hoped the gentleman from Pennsylvania would only answer what he had said: that he had urged that the House ought not to take on itself the responsibility of details which belonged to the other Departments: that he, for one, would not consent thus to invert the responsibility of the Government. As to his own knowledge on the subject of location of the forts, and the science of Engineering, Mr. S. said, that he had no doubt, and willingly confessed, that the gentleman could, indeed, put to him a catechism which he could not answer; and he might, perhaps, justly add, that the whole House, including the gentleman from Pennsylvania, would be apt to answer it about as correctly as he himself could.]

Mr. B. thanked the gentleman for the compliment to himself. He did not know whether it was sincere or not. He would, however, follow the French maxim, and when expressions were susceptible of two constructions, he would take them in the most favorable sense. Now for the argument. Sir, said Mr. B., the gentleman in his explanation has, in substance, repeated the doctrine I imputed to him. I will state to the House what my opinion is upon the subject, and it is very different, indeed, from that advanced by the gentleman. We should repose a proper degree of confidence in the reports made to this House by the Executive Departments, whilst we believe them to be worthy of confidence. It is our duty, however, to examine and to consider their representations; to rejudge their judgment; and to decide upon their recommendations, justly and impartially. We must, in every matter of legislation, act upon our own responsibility. We cannot release ourselves from it, and impose it upon the Department, as the gentleman has contended. I think, therefore, that my colleague has given no just occasion for the remarks which the gentleman had thought proper to make.

Mr. B. said, he felt friendly to the erection of fortifications. He was not willing that we should retrace our steps; but thought we should proceed cautiously and wisely, having a proper regard to what our means would justify. In his opinion, his colleague (Mr. STEVENSON) had erred in comparing the fortifications proposed to be erected in this country, with those in the interior of Europe. It was true, that, in the annals of modern warfare, these fortifications had been left behind and disregarded; and Generals had penetrated into the countries whose frontiers had been fortified, without fear and without danger. This argument, however, did not apply to our fortifications. They are intended to be placed upon our coasts, our bays, and at the mouths of our large rivers, to afford protection to our great commercial Cities against Naval attacks. Indeed, they may become important for the defence of our own Navy.

Notwithstanding, said Mr. B., that I shall vote for carrying into effect a judicious system of fortifications, yet I think there is the strongest reasons for granting the delay which has been asked. In 1822, Congress had this subject before them. The Department then asked for five hundred thousand dollars. The House got all the information they could obtain: they discussed the question fully, and decided that three hundred and seventy thousand dollars was sufficient. They granted this sum; and, for the first time, designated the particular objects to which it should be applied. They did not then act upon the doctrine of confidence which has been recently avowed; but reduced the estimate of the Department. In 1823, five hundred thousand dollars was granted, and I approved of the measure. I considered this sum was then established as the annual appropriation, in analogy to the appropriation granted for the gradual increase of the Navy. Since that time, however, the appropriations for fortifications have increased in such rapid progression, that we are now asked for the sum of seven hundred and ninety-five thousand dollars for the present year. In addition to this sum, there remained in the Treasury, on the first day of the present year, more than one hundred and fifty thousand dollars of the appropriations for the last year which had not been expended. If you pass this bill, therefore, you will grant nearly a million of money to be applied to the erection of fortifications during the year 1826. In the short time which has elapsed since 1822, you will have nearly trebled your annual appropriation. I should not now object to five hundred thousand dollars; but, before I can vote for a greater sum, I wish to know precisely the means of the Treasury for the present year, and compare them with the necessary objects of expenditure. We have been told, said Mr. B., by the Chairman of the Committee of Ways and Means, that there will be sufficient money in the Treasury, gradually to pay our debt, between this time and the end of the year 1829; and, in the mean time, the sum asked for by the present bill, may be applied to fortifications, and all the other proper expenditures of the country may be made.

[Mr. McLANE here observed, that he had not stated the whole national debt would be paid in 1829: it was the six per cent. debt—the war debt, to which he had referred.]

Mr. BUCHANAN said, he did not misunderstand the gentleman from Delaware. He understood him to mean the six per cent. war debt, and would have so expressed it, if the gentleman had permitted him to proceed. The gentleman had also declared that, within that period of time, a large portion of the debt due to the Bank of the United States might be liquidated. Sir, said Mr. B., on this subject I doubt exceedingly. Much respect as I feel for the opinion of the Committee of Ways and Means, and for that of their Chairman, I must still be permitted to doubt, until I see and examine their report. We have been told, that report will soon be made to the House. We shall then be able to decide what proportion of the public money we can, with propriety, apply to fortifications—and what to other objects. We should not take so much for one important object, as will prevent us from making any appropriations to objects of equal importance. The sum which we think it prudent to withdraw from the payment of our debt, should be fairly distributed; so as to give a part to all the great objects of national interest.

Mr. B. concluded by saying, it was probable we should gain time by the delay of one week; and that the bill might, in that event, be passed as soon, as if it were now urged upon the consideration of the House.

Mr. BAYLIES said, that, as the gentleman from New York, (Mr. WOOD) had travelled out of his course, as far as Oregon, to allude to him, he trusted he should be excused if he took the liberty to allude to that gentleman.

[Mr. WOOD explained. He had not had the slightest intention of reflecting upon the gentleman. The Oregon

Territory, having been mentioned by him, as the only place to which we could with safety flee, when our homes were left defenceless. he had casually adverted to the honorable gentleman, as the Chairman of the Oregon Committee. He had the highest respect for the member; and in relation to such a migration to Oregon, he felt inclined to exclaim

"*Nil desperandum, Teucro duce, et auspice, Teucro.*"]

Mr. BAYLIES resumed. The gentleman has said, that there is no excuse for not understanding this subject. Are we, sir, to come here and be censured like schoolboys, because we have not learned our lessons? He had been in Congress five years, and yet he had not been able to understand this subject in all its parts: neither could he see his way clear, to vote for this bill. Why? Because this general system, as it is called, is constantly varying. For four years, we received, annually, a schedule of the works which were contemplated, divided into three classes; this year we have another schedule presented to us. Is it the same? No, sir. Eight new works are added to the first class; eight to the second; and three to the third. If we cannot comprehend a system, which is constantly changing, the fault is not ours: and if the Department of War cannot keep steady to its own system, are we to be blamed for pausing for a week to consider it? He had, heretofore, voted all the appropriations which were asked: he had done so, because he then thought that our confidence ought to be given to those whose duty it was to plan these works, and to estimate the necessary expenditures. It was worthy of remark, that sums annually asked, have been annually increased: four years since, half a million was asked, and three hundred and seventy thousand dollars voted: the next year more was asked, and more was voted: and these estimates have now swelled to a sum, little short of eight hundred thousand dollars; and, including the unexpended balance of former appropriations, to nearly a million. He was not disposed to adopt the new doctrines of confidence—implicit confidence. He would require something more than bare assertion, before he gave his confidence.

He had some doubts as to the efficacy of this system. Even military men differed in opinion about it. He had the good fortune to reside (when at home) in the neighborhood of a military gentleman of distinction, a Revolutionary officer, once in the family of the Commander-in-Chief, (General Washington.) He had often conversed with him on this subject, and he entertained no confidence in the efficacy of this system of defence. Still he was willing to vote an annual sum, to continue the experiment; for he was disposed to consider it an experiment only, not as a system which had been tested. But he was still willing to wait a little while, to ascertain whether any further information would be furnished. He thought with the gentleman from Pennsylvania, that bayonets and stout hearts were our best defences. Some of the most successful defences, have been made behind very slight works. Bunker-hill was defended behind banks of earth, thrown up in one night, and loose hay thrown in between hurdles.

In 1817, Mr. B. said, he was in Canada. In company with some other gentlemen, he viewed the massy works of Quebec; after returning to his Hotel, when dining, he observed to the gentlemen who had accompanied him, that it seemed to him impossible for human effort to make any impression on such works. A servant, who had been a soldier in the Peninsular war, was in attendance at the table: he exclaimed, "St. Sebastian's was stronger, and yet we took it." He was an Irishman, and he spoke in the fullness of his heart. And who were the men that took St. Sebastian's? They were the veterans, who attempted to storm the American lines at New Orleans. And what were those lines? A trench, and bank of earth, which had been thrown up in a few days: but behind that bank of earth, there were men, with bold and patriotic hearts. And there, sir, was a Commander, who,

"Wherever danger press'd the field,
"Came like a beam of light."

One further remark. Some gentlemen from the West seemed to complain, because a due proportion of the public money has not been expended among them. He thought this complaint a little unkind. Whenever an appropriation for any Western object has been asked, he had voted for it. When he first came to Congress, nine thousand dollars was wanted for the Cumberland Road it was voted, but the President had constitutional scruples and the bill was returned: twenty-five thousand dollars was afterwards asked for the same; it was voted: sixty or seventy thousand dollars was asked for removing the obstructions to navigation in the Ohio and Mississippi: it was voted. Every request which had been made from the West had been complied with.

He was willing that half a million should be appropriated. He saw no immediate and pressing danger, which required the appropriation of a larger sum.

[Mr. VANCE asked, who was the gentleman from the West, to whom he had referred.]

Mr. BAYLIES said, that he did not allude to the gentleman from Ohio, but to a gentleman from Pennsylvania, and the gentleman from Illinois; who had not, it was true, made any direct charge against the Eastern members; but rather spoke in a tone of complaint, as if the interests of the West were disregarded. Before he sat down, he wished to make another remark. Much had been said about the payment of the national debt, and its magnitude. Its magnitude did not alarm him; but he would pay it not because it was large, but because it was small. Some politicians believed, that a public debt was a public curse others, that it was a public blessing. A public debt is a public blessing, when it strengthens and secures the union of a great Confederacy, by its equal and extensive distribution. It is not a public blessing, when it does not answer that purpose; when it is held by foreigners and by a very few of our own citizens.

The House then adjourned to Monday.

MONDAY, JANUARY 30, 1826.

ACCOUNTS OF MR. MONROE.

The resolution, moved on Friday by Mr. COCKE, ing for copies of the settlement of certain items account of James Monroe, late President of the States, was taken up in its order.

Mr. BRENT inquired what was the object of the tleman from Tennessee, in proposing this resolution report had been already made at this session, upon call of another member, which, Mr. B. presumed, braced all the information which could be necessary this subject.

Mr. COCKE said, it would afford him pleasure to nish to the gentleman from Louisiana the information he had asked. The documents on the subject, were at the last session, and referred to the select committee stated *in gross* the three items which had been admitted the credit of Mr. Monroe, by the accounting officers of the items 4, 6, 7, & 8 of his accounts, which had mained unsettled for a considerable time; and in reference to which, finally, the Secretary of State, Mr. Smith, wrote a letter to the Auditor, directing the Auditor to pass to the credit of Mr. Monroe the three items leaving item the eighth suspended. On looking at information received the other day, on this subject, C. said he perceived that the same items continued stated in gross. The object of this resolution, then, to have those items stated in detail, being shewn by

document which had yet been placed before the House. Mr. C. recapitulated the general statements of these items. No. 4 being for expenses incurred in England, for presents, contingent expenses, &c. $5,539; No. 6, for expenses incurred in a mission to Spain, &c. $10,598; and No. 7, for extra expenses of that mission, not included in the above, $1,461. The letter of the Secretary of State directs, in the name of the President, that these several charges should be admitted to the credit of Mr. Monroe, except the eighth, which was to remain suspended for consideration: The object of the resolve was to get these accounts in detail. They might be such as he should be very well satisfied with; but he could not, as long as he was unacquainted with them, say whether he should or not.

Mr. BRENT said he did not feel satisfied, from the statement of the gentleman from Tennessee, that this resolution ought to prevail. The honorable gentleman wished, if he now understood him, to call for the details of an account, which had been settled at the Treasury fifteen years ago. Before this information was called for, Mr. B. wished to know, from the honorable gentleman, how he meant to apply it when received; undoubtedly, if he had no object in view, and wished to make no use of it, the House would not act on his resolution.

Mr. COCKE said, if he was not mistaken, the gentleman was one of the committee appointed at the last session on Mr. Monroe's request, to re-examine those accounts, for the details of a part of which this resolution proposed to call. In his message at the last session, Mr. Monroe had told that he wanted a revision and re-examination of those accounts. On that subject a committee had been appointed at this session; and it was desirable that when the House came to act on the subject, it should have information respecting all the items of the accounts. It was the request of Mr. Monroe himself, that all the items of the accounts should be re-examined. If this subject was to be no further stirred, Mr. C. said his application would be useless, no doubt. But, if it is to be looked to, said he, let us take it fairly into examination. I suppose, sir, the gentleman now understands the object I have in view. If a balance shall be due to Mr. Monroe, on a fair investigation of his accounts, I say he ought to have it. But, when we come to investigate his accounts, we find that he has received pay for items which he ought not to have received pay for, whilst others have been suspended which he ought to have received, it would be fair to balance the one against the other.

Mr. PEARCE observed, that he could perceive no reason why the person concerned in this resolution should, on account of the distinguished offices he had held in the State, have a different course pursued in respect to him, from that which was adopted in regard to the meanest and humblest citizen of the public. His claims are before a Committee of this House; that Committee has not made any report upon them; and, while it is yet in their hands, a resolution is introduced which takes from the hands of the Committee a detached part of the account with a view, as it would seem, to work upon the prejudices and feelings of the People, to his injury. When the Committee make their report to this House, all the items will be presented, and the House will then judge of them. Sir, I would extend to this claimant no favor that I would not readily extend to others; but he is entitled to the same measure of justice with any other individual. If this resolution is adopted, the next motion, I suppose, will be to publish these items, and to spread them before the People, before the House has acted on the subject. And who is the man, to whom the common privileges of citizens, before this House, are to be denied? A man who has for eight years been President of these United States; a man who has fought your battles; a man who met your enemy, and shed his blood at Trenton, and, when weltering in his gore, was carried from the field by one of my own constituents; a man who has been your Ambassador to Foreign States; who has twice been chosen Governor of his own State; and whose name will live in history, when these columns have crumbled into dust. This is the man, Mr. Speaker, to whom it is now asked, to deny the common rights of a citizen. Sir, I hope that the opposition to this claim has not had its orgin in disappointed pride. If such have been the feelings towards him of hungry expectants out of doors, whose wishes were denied under his administration, I hope, sir, that, at least, they will not be found in activity on this floor.

Mr. ALSTON observed, that his voting for the resolution would depend entirely on one consideration. If it was expected that any items, in the accounts of the late President, which have already been passed upon by the Department, are now again to be brought forward, it would certainly be proper that this resolution should pass. But if it was intended merely with a view of exposing items which have been already decided and settled, and which are not now to be the subject of any judgment by this House, it would be altogether improper and unnecessary. He thought that, after an account had been examined and acted upon, fifteen years ago, it was improper that it should now be examined again. The gentleman from Tennessee must know what use he intends to make of these items when obtained, and would no doubt state it to the House.

Mr. INGHAM observed, that the relation in which he stood to the committee to whom this subject had been referred, would, he hoped, excuse him for making a few remarks before the question was taken. In answer to the inquiry suggested by the honorable gentleman from North Carolina, (Mr. ALSTON,) he could state that the accounts of which the detailed items were proposed to be inquired into, had not, as he understood them, any relation whatever to the items claimed by Mr. Monroe; but were entirely distinct from them, and could give no aid in forming an opinion of any part of the claim. Mr. I. said, that, seeing so many efforts were making by members to obtain the aid of the House in procuring information on this subject, he owed it to the committee to state, that, notwithstanding the seeming imputation of negligence which these resolutions might imply, they had engaged in the duty assigned them immediately after the papers were put into their hands; and being aware that the House had adopted a resolution, calling for information, the committee had determined to wait for the answer. In the mean time, he had addressed a letter to the Secretary of the Treasury, inquiring whether that answer would contain all the information the Department could furnish on the subject of the claims of Mr. Monroe; to which the Secretary had replied, that it would contain all the information in the Department. Notwithstanding all this, when the answer was received, the committee had directed their Chairman to make a further inquiry from the State Department, for which they are now waiting. From these facts, it would be seen that the committee could not be charged with any neglect of duty, or disposition to give this subject a superficial investigation. If, however, the House thought proper to interpose, and obtain further information, he was not disposed to complain; nor would he, said Mr. I. wish to be understood as opposing the adoption of the resolution before the House; but he wished to call the attention of members distinctly to one consideration involved in the proposed inquiry. The detailed items alluded to in the resolution, are accounts which have been long since settled by the proper officer, in relation to which there is no controversy now; and if it was intended

that the committee should re-examine all the details of the various settled accounts of Mr. Monroe with the Government, in order to ascertain whether there may not have been some allowance made to him so liberal or improper as to constitute a proper offset against his unsettled claims, he would only say, (said Mr. I.) that such a procedure had never been adopted in relation to any other claim ever presented to this Government; and there was no reason why this inquiry should not extend to every other *settled account* of Mr. Monroe, as well as to the items named in the resolution.

He could not suppose, said Mr. I. that the House did so intend: for it was well known to every member who had ever settled an account at the Public Offices of this Government, that they were settled with a rigor, bordering, as we sometimes thought, on injustice; at all events with an extremly rigid and severe hand. But should the House determine to apply this rule to this case, as an exception to all others, the committee would not complain; they would endeavor to perform whatever duty the House might think proper to assign them. In order, however, to give members a little more time to reflect upon the subject, and determine how far it would be proper to adopt this course, he had risen for the purpose of moving to lay the resolution on the table. He would beg leave to state, before he made the motion, (as the gentleman from Louisiana was precluded by the rule from replying,) that that gentleman was not, as had been said by the gentleman from Tennessee, a member of the Select Committee, either at the last session, or the present. He would now move to lay the resolution on the table.

Mr. COCKE, desired the gentleman from Pennsylvania to withdraw his motion for a moment, which request having been complied with, and Mr. C. having obtained leave to speak a third time, he observed, in explanation and reply, that those items which had been suspended, the accounting officer had not considered himself authorized to pass, and it was in consequence of this, that other and extraordinary means had been resorted to, in order to have them allowed. It was far from his intention to impose upon the Committee any burdens of unnecessary labor. But it was Mr. Monroe himself who asked that these items might be re-examined. He had applied for compensation for services rendered anterior to the settlement of his accounts. The items in question which the resolve referred to, were general charges, stating no particulars. There were but few of them, and it would not be much labor to ascertain whether the details were to be found in the Department. The resolution contemplated no more. One word to the gentlemen from Rhode Island—

Here Mr. INGHAM interposed. He consented to withdraw his motion, that the gentleman from Tennessee, might have an opportunity to explain, but, if he proceeded to general debate, he must again renew it.

Mr. COOK said, that the resolution appeared to him entirely unnecessary. The mover spoke as if it was wished only to obtain the items of a suspended account: whereas the express words of the resolution refer to accounts which had been settled. Mr. C. moved to lay it on the table.

The question being then taken on laying the resolution of Mr. COCKE on the table, it was decided in the affirmative, ayes 69, noes 47.

CONGRESS OF PANAMA.

Mr. METCALFE, upon rising to offer the following resolution, said, that it was his intention, before he resumed his seat, to submit a resolution which was intended for the consideration of the House, on to-morrow, or shortly thereafter, calling on the President for information respecting the invitation, which had been received by this Government, from the Governments of Mexico, Colombia, and Central America, to join in the deliberations of a Republican Congress, to be held at Panama. He and patiently have I waited, said Mr. M. on the gentleman from South Carolina, in the hope that he would ... to take up and consider the resolution which had ... offered by him several weeks ago, on the same sub... But, as it has not been his pleasure to have it taken ... I am anxious to obtain, for myself, my constituents, ... the public, as well as for this House, all the information which can be had in relation to this interesting subject. Shall it be said, Mr. Speaker, said Mr. M. that the Representatives of the United States, which is hereafter to be honored with the title of the great Mother of Republics, once received an invitation to send Ministers to deliberate ... doubt on subjects very deeply and alike interesting to all the parties, and perhaps, among other things, to ... a consultation upon the great principles of Republican Government, a knowledge of which is rapidly extending itself, not only in this, but in other and distant hemispheres; and which is hereafter to add so largely to the grand total of human happiness and enjoyment: and that days, weeks, and months elapsed, before the kind invitation was even responded to by one of the constituted authorities—and that which is composed of the immediate Representatives of the People? Shall we sit here in cold and heartless indifference, shivering as if were with a sleet of ice around us, and talking ... thousand other things of so much less importance, ... our constitutents are hailing with rapture and ... these newly born Republics?

Mr. M. had proceeded this far, when Mr. M'DUFFIE rose to the question of order, deeming it contrary to order to debate a proposition before it was in possession of the House. He did this, he said, with great reluctance in this case, but from a sense of duty.

Mr. METCALFE, being asked to submit his proposition, presented the following:

Resolved, That the President of the United States be requested to communicate to this House such information, documents, or correspondence, touching the invitation to be represented at the Congress of Panama, which has been received by this Government, from the Governments of Mexico, Central America, and Colombia, as may be communicated without detriment to the public interest.

This resolution, by the Rules of the House, lies one day for consideration.

FORTIFICATION SYSTEM.

The House then resumed the consideration of the ... making appropriations for fortifications—the question being on the motion of Mr. FORSYTH, to postpone the ...

Mr. McLANE, of Delaware, in rising again to ... the House on this subject, said, he could assure the House that he did it with the greatest reluctance; and he would not do it—because he never rose to address this House without experiencing more or less pain—but under a ... perious sense of public duty. He had been particularly appealed to by the gentleman from Pennsylvania, ... vited, in a spirit of accommodation, to suffer the bill ... on the table. In declining to accede to this request, Mr. McL. said, he was influenced by no illiberal feeling; ... if he could do it consistently with his public duty, ... would give him more pleasure than to comply with ... wishes of the gentleman from Pennsylvania, or ... other member who might make the same request. He ... would now inform that gentleman, that, since he had ... that request, he had reflected on the objects of the ... man from Georgia, now absent from the House, ... on the Department for information; whose objects ... lieved, considering him to be a devoted champion ... system of defence, were very different from what ... supposed: and, feeling it to be his duty, to ...

whether, consistently with the public interest, the consideration of this bill could be deferred to a future and uncertain period of the session, he had taken proper steps to obtain information on the subject; from which he was convinced, that the public interest required that this bill should pass through this House as speedily as was consistent with the right of every member to examine and decide upon its merits for himself. If he thought the proposition of the gentleman from Georgia, had no other object than to gain a little time for examination, he might, probably, assent to it: but, he asked of the House, in candor, to say, whether this could be the only object of the proposed postponement, or the only effect of its success? He did not impute to the gentleman from Georgia, any motive different from that which he had avowed, but he inferred from the whole of what had been said in debate, what the object of the postponement was. One gentleman, for example, who had engaged in the debate, discovered in this bill gorgons and chimæras dire—combustibles that were to shake the Union to its centre—so that one would really imagine these fortifications were to be erected against our citizens, instead of being for their protection. One found fault with one thing, and one with another: one proposed to reduce the appropriation, and another to postpone the bill, &c.;—from all which he apprehended, that the system of fortification itself was to be assailed, and that the battle was to be fought here, between its friends and its opponents, at one time or other: if not to-day, to-morrow—if not to-morrow, at some later day. Under these circumstances, Mr. McL. said, the friends of the bill had a right to treat the motion for postponement, as a measure to get rid of the bill; and, as the battle was to be fought, it might as well be fought now.

When this bill was before the Committee of the Whole, Mr. McL. said, he had no intention to take up the time of the House in examining the details of the system, having no idea that it could be necessary to do so. The duty had been devolved upon him, however, by the course of the debate, and he should not shrink from it.

Proceeding to animadvert on the remarks of a new member of the House from Pennsylvania, (Mr. STEVENSON) Mr. McL. said, he did not allude to that gentleman, particularly, as being a new member, or to other gentlemen in the same situation, invidiously: on the contrary, he was happy to observe, that the House had obtained a great accession of talent in its new members. He was sure, the gentleman from Pennsylvania was as capable of understanding this subject as he was. The reputation of that gentleman had preceded him, and it must be gratifying to his friends that he had, on this occasion, redeemed the pledge which that reputation gave. But he must say to that gentleman, that, whether a new member, or not a new member, he did not enter this House perfectly free, and, (to use his own expression) untrammelled. A Representative does not come here, at liberty to set every thing in the nation afloat; or, as the gentleman from New York, (Mr. WOOD) had well expressed it, to root up the foundations of the Government. That gentleman is bound, we are all bound, more or less, by the acts of our predecessors. We do not come here, sir, to overturn things which are fixed and settled We are sent here, not to pull down, but to build up. We come to support and establish, not to overturn and destroy. We come to aid the proceedings of the Government, and the affairs of the country; not to maim and to cripple them. As well might the gentleman say, he comes here at perfect liberty to destroy the Government; to refuse to pay the President's salary, &c. The system of national defence is as much an institution of the country, as the Constitution itself. For what is it, sir, that endears this Government to the People? What is that attribute of this Government which reconciles them to its burthens, and gives it the parental character? It is its protecting arm. There are no other means so effectual in securing to it the affection and support of the nation. None need ever apprehend it to be a dangerous course for the Government to extend its power in the protection of its citizens. The foundations of the Government were laid for this very end, and the gentleman is under that moral obligation which binds every statesman to maintain and cherish the system of the national defences.

The gentleman from Pennsylvania had said, that the system of fortifications was bad, because the system of fortifications on the continent of Europe was bad. But, Mr. McL. said, he could tell the honorable gentleman from Pennsylvania, it would not do for him to look to Europe for their system of inland or land fortification, and draw any argument thence to apply to the system of fortification for a maritime nation. There might be, he admitted, some difference of opinion amongst the best informed men as to the expediency of a system of defence by fortification, on an extended land frontier, but it was impossible to establish a maritime defence without a system of fortification. It is the only species of defence that is available against a naval force. France had found it so for fifty years; and England, with her immense Naval resources, had never neglected it.

The gentleman had said, we must rely on the Navy for defence by sea. That gentleman, Mr. McL. said, was not a more devoted friend to the Navy than he was. He would go with him to any extent to cherish the Navy. But a Navy, itself, requires protection. It requires stations, harbors, rendezvous, and a vast number of facilities that cannot be afforded without fortifications; and thus this system would render this Navy more efficient, if it was not indispensable to the maintenance of a Navy. Before the late war—and he should be permitted to recur to that, because it was a most important era in the history of this country; it was important in all its consequences, and in none more than in the fact, that it directed the energies, the science, and the talents of this country to repair previous defects, and to guard against their future recurrence—previous to the last war, we were undefended; undefended on any large scale, he meant. We had, in some of the ports, small forts, but they were erected without any view to a general system. They were selected with a view to single positions: each of them defended the single position on which it stood, the town in the rear of it, or the points to which it was adjacent. But there was no system, no kind of connexion between these forts; they extended the defence no where else than in their immediate vicinity. Much had been said about the imperfections of that system; but it should be recollected that, such as it was, it repelled the enemy from almost every point to which it extended. A fleet blockading the Chesapeake and Delaware, kept the whole country in a state of alarm. It obliged us to call out detachments of our army, and place them in different positions: it obliged us to draw the militia from their occupations, and every man became a soldier; they were obliged to be every where, because they did not know where the enemy would come. We were almost ruined by this war of threatenings, which drained the Treasury; destroyed the energies of the People; ruined their industry; paralyzed the efforts of the Government; and created dissatisfaction throughout the country. Could gentlemen say what would have been the consequences, had it not been for the bravery of those men who fought at New Orleans, and the skill of their accomplished leader? What would have been the fate of this country, had the British not been repelled there? It was probable the war would have had a very different termination.

It was, Mr. McL. said, to guard against a recurrence of these dangers, and to place this country in an attitude of complete defence, that the moment the apprehension of war had passed away, the first interval of leisure the Go-

vernment had, was employed to discover the means of remedying these defects, and to establish a new system of fortification on a larger scale. Having determined to establish this system of national defence, they appointed Commissioners to reconnoitre the whole maritime frontier, and ascertain where the fortifications could be best placed. After making this examination, these Commissioners made their report; and they reported a system, not of fortifications only, but a general system of national defence. They pointed out the means by which, in any future emergency, we could be defended at all points. What, asked Mr. McL. were the basis and objects of this system? He would state to the House what they were; and he had extracted the whole of his information from those reports, drawn up by men well acquainted with the subject: for, Mr. McL. said, he did not profess, himself, to have any military skill or science. This system, which was to render the defence of this nation complete, was to consist of a Navy; fortifications; interior communication by land and water; a regular army; and a well organized militia. These were all parts of the great whole; they were all connected: and to render them efficient, they should be all combined, and so combined, that each one should protect the other; by which each would be thereby rendered efficient. It would be impossible to take from the system any of its parts, without impairing the whole.

Mr. M'L. said, he spoke now of this great system, concerning which they were so often called on for information. This was the system devised by the Board of Engineers, and adopted by Congress—a system of defence, consisting of a navy, fortifications, interior communications, an army, and a militia. Here, then, was the navy of the gentleman from Pennsylvania. It was a part of this system of fortifications which he had been recommending. It was with a view of supporting the navy, of keeping it up, of taking care it should not suffer from the want of other support, which it had not in itself, that these fortifications were to be erected. The navy, Mr. M'L. said, requires ports, and harbors, and stations, and dock yards; and it is necessary to guard them against maritime invasion, and keep off the enemy. Misfortunes may happen at sea, or the war may prove disastrous; the ships may want repairs, and how are they to procure them? By returning to our ports, and whilst they are repairing, they will be protected by our forts: and this was one grand object of the system of fortifications. No nation that regarded its navy, disregarded this object; and it would be unwise in us to disregard all the lessons of experience which are staring us in the face.

That he might not be misunderstood on this subject, Mr. M'L. begged leave to call the attention of the House, and the gentleman from Pennsylvania, to the report of 1821, which, he had stated on Friday, contained all, and more than all the information called for by the resolutions adopted by this House, on the motion of a gentleman from Georgia. In treating of the fact of the operation of this system of fortifications on the navy, the commissioners (of one of whom, General Bernard, he could say, there was not an abler man, in his profession, in this or any other country) proceed to state "that Burwell's Bay, in James River, and Charlestown near Boston, have been specially recommended as the most proper sites for the great naval arsenals of the North and South; Hampton Roads and Boston Roads as the chief rendezvous; and Narragansett Bay as an indispensable accessary to Boston Roads." "It is also from an attentive consideration of the whole maritime frontier, of the interior and of the coastwise navigation," the Engineers go on to say, "that Mobile Bay on the Gulf of Mexico, St. Mary's in the Chesapeake, the Delaware, New York Bay, Buzzard's Bay, New London, Marblehead, Portsmouth, Portland, the mouths of the Kennebec and Penobscot, and Mount Desert Bay, have been fixed on as stations and ports of refuge," &c.

Was there any doubt, said Mr. McL. that ports of refuge were needed; and where else could the navy find refuge but in those ports here pointed out? These points were selected for the express purpose of protecting and defending the naval operations of the country; and he hoped the gentleman from Pennsylvania would be satisfied that, in this system of fortifications, they were looking to his own object, and giving to it efficiency and protection.

Gentlemen would perceive, in this great plan of defence was comprised a system of internal communication. On this subject of Internal Improvement, he had been, and he took pride in saying it, an uniform and consistent advocate of the doctrine and of the constitutional power of this Government in regard to Internal Improvement. He stood in this House, eight years ago, if not a solitary advocate for the system, at least under circumstances when it was considered almost temerity for any gentleman to advocate the doctrine of Internal Improvement. He had seen this doctrine gradually gaining ground with the American People; he had some satisfaction in believing that it would be one of the great means by which the General Government would obtain the objects of its oragnization, and he looked forwards to the day when they would reap the fruits of this policy. He looked at this doctrine as a liberal one, and not a selfish one. he considered it as essentially connected with the other great means of defence; but, he said, when it stood array itself in this House, as an insulated means of appropriating money, or as an exercise of power to stand in the way of the other great objects of the Government, he would use all his exertions, and vote against every appropriation for it. In giving his vote in favor of this system he had always been governed by the consideration of its connection with other great national objects.

Mr. McL. inquired how this system of internal communication was to be effected without the aid of fortifications? We make roads and canals, and why do we so? To facilitate the intercourse with every portion of this country. We open the way to every part; we cut a canal to connect the West with the East, or the North with the South; and where is the advantage to be derived from it? It would be found in the termination of the canal in some large navigable stream, which would connect it with the Ocean. And would not these internal communications afford the same facility of conveyance to the enemy as to our own citizens; and must they not, therefore, be protected against that enemy? We may cut a canal from the Chesapeake to the Delaware, but if there are no fortifications to exclude the enemy from the entrance to it, what is to prevent him from getting to the mouth of the canal, and availing himself of that very facility to transport armies? What is to prevent him from obtaining possession of this canal, and carrying the war into the very heart of the country? The way is opened to him, and he is invited to come: but, erect fortifications to defend the waters, and he is excluded. This system of fortifications, therefore, was connected with the system of internal improvement, and is a most essential part of it.

This system of fortification, Mr. McL. went on to say, could not be accomplished in a day, or in a year. It would require more money and more labor than could be employed on it. It must be done deliberately, according to the means of the Government, and in the manner best calculated to provide for the exigencies of the country. With this view, the projected fortifications were classified: some were to be commenced as soon as the means of the Government would allow of it: others, which were not so important, were deferred to a more remote period; and the third class to a period still more remote. He was afraid he should tire the House by this detail, but it was his duty, as a member of the Committee of Ways and Means, to lay this information before them.

fortifications were placed in the first class which were intended to deprive the enemy of strong positions, where, protected by his maritime superiority, he might fix his quarters in our own territory, where he might maintain himself during the war, and keep the whole frontier in a state of alarm. These were the most material points to be guarded. Supposing the enemy was to gain possession of any part of the Chesapeake, with a fleet and army, what would be the consequence? Our whole frontier would be in a state of alarm, and the whole intercourse through those waters would be cut off. Recurring to the late war, Mr. McL. said, it would be found, that when the British had possession of the Chesapeake and Delaware, the produce of the Southern country would be locked up, and remain rotting in possession of its owners. Suppose the enemy were to get possession of New Orleans, and to erect a fortification on the Mississippi, above the City, how was he to be driven off? He gets possession of the whole country, and entrenches himself there, and our energies would be paralyzed. The way to prevent him from getting there, would be to place fortifications near N. Orleans, so as to exclude him from the river.

Mr. McL. here read to the committee a short extract from the report of the Board of Engineers, as follows:

"A rapid review of the works which have been projected by the Commission, will exhibit with sufficient distinctness, the advantages which must result from their construction.

"In Louisiana, the forts projected at the Turn of Plaquemines; at the Bayou Bienvenue; at the Chef Menteur; at the Rigolets; form altogether a system of defence, not only covering New Orleans, but preventing an enemy from taking and holding his position at the Northern Point of the Delta of the Mississippi, where, presenting a small front, easily fortified in a few days, and impossible to turn, he might defy all the forces of the West. Supposing even that he were expelled from it, he might, in his retreat, pillage and burn all the habitations, and carry off the slaves from both sides of the river, for a length of one hundred and fifty miles. This whole projected system of works will cost a little more than one million of dollars: a sum small, indeed, to avert such calamities, and which bears no sort of proportion to the effects which it will produce. The fortifications projected at the mouth of Mobile Bay, prevent, as far as practicable, its blockade; secure the communication of the Tombigbee and Alabama with the ocean, as well as that which is proposed to connect these rivers with the Tennessee: protect also the communication between Mobile Bay and Lake Pontchartrain, by the interior channel, lying between the Main and the chain of islands, bounded by Cat Island to the West, and Dauphin Island to the East, and deprive an enemy of a station whence he might act either against New Orleans, or the establishments which the United States may form hereafter in Pensacola. At present, Port Boyer, at Mobile Point, which could not hold out three days against a regular attack, and Fort St. Philip, which is much too small and weak to defend the Mississippi, are the only protection for Louisiana."

For the defence of Virginia, the report proposes a fort on Old Point Comfort, and on the Rip Raps. For the defence of New Jersey, a fort at the Pea Patch. And here, that I may shew the unreasonableness of this call for more information, I refer the House to the documents A and B, accompanying the report; in which they will find these works distributed into their respective classes; the number of men required to garrison each of them, in peace and in war; together with the expense of their construction. Here is also given the order of their relative importance: from which it appears that the fortification first recommended, was at Chef Menteur: then, that at the Rigolets; next, that at the Bayou Bienvenue; then at Old Point Comfort; then at the Rip Raps; and then at the Pea Patch. Now, in this bill, no other works are inserted, except those reported as of the first class, and recommended as of immediate and indispensable importance, with the single exception of the work in North Carolina. And I need not, I presume, again state, because I fully explained on Friday, how this work got into the bill. It was not at the instance of the Committee of Ways and Means, nor by the recommendation of the Board of Engineers—not at the application of the War Department. It was the act of this House. Congress chose to change the plan of the Board of Engineers, and required the commencement of this work out of the order in which it had been placed in the original plan. The Department, therefore, was bound to carry the order of this House into effect; and, on this subject, said Mr. McL. I must be permitted to make a statement which is due, in justice, to the Department. When, at the last session, they were urged to recommend this work for immediate commencement, instead of complying with the request, they addressed a letter to the Committee of Ways and Means, apprizing them that its commencement, at this time, would be inconvenient to the Department, as they had no officer whom they could detach on that service. Congress, notwithstanding, put the work into the appropriation bill, and they cannot now take it out, unless they will violate the contracts entered into by the War Department, and thus increase the embarrassments to which that Department has been innocently subjected in this matter.

As to the work at the Bay of Bienvenue, it is not a new work in fact. It is only a part of the fortifications at New Orleans. New Orleans was one of those points at which the system of fortification was to be commenced immediately, and ninety-five thousand dollars was proposed to be appropriated to begin and to finish the defence of that place. This is no more a new work, than if you were to order a new bastion to be added to any one of the forts already built. The fortifications of New Orleans were commenced at the Rigolets and Chef Menteur. The Fort at the Bay of Bienvenue was deferred, until these previous works should be in a state of forwardness. The Department now informs us that they are ready to commence it, and they ask an appropriation for that purpose. It is, therefore, essentially an old work, and not a new one.

But we are told that, if these works are completed, we are to have a standing army, and there will be no end to the expense. A gentleman from Ohio, (Mr. VANCE) has taken the trouble to make a calculation on this subject, and has ascertained that nineteen thousand men will be required to man these forts in time of peace. That gentleman is, in general, so accurate that, when he mentioned this, I took it for granted he was correct, and supposed it must be so. But, on turning to the documents, and consulting the original report of the Board of Engineers, I found an official statement already made out, of the exact number of men which it will require to garrison these fortifications. That number, in time of peace, is four thousand six hundred and ninety; and, in war, it is thirty-seven thousand nine hundred and sixty-two: that is, on the supposition that all these fortifications should be attacked by the enemy at the same time—a state of things almost impossible. It appears, therefore, that the gentleman from Ohio has labored under a great mistake; and that less than our present army, small as it is, will be sufficient to garrison the entire line of fortifications along our whole frontier. Many of these forts will require but two hundred men each, even during war; and there is but one that will require six hundred.

One word about the expense of this system. The cost of completing the entire three classes proposed in the original report, will not exceed, in all, seventeen millions of dollars. It has, however, been said, that all of them which have yet been erected, have exceeded the estimates, and that, therefore, there is no knowing what the total expense

will be. I concede that two of these works have exceeded the estimate. One of these is Fort Delaware, where it was discovered that the ground sunk under the weight of the erection, and this occasioned an extra expense, and swelled the amount beyond the estimate: and at Fort Monroe, where an alteration took place in the plan of the Fortress. With these two exceptions, all the works which have been built have been completed for a sum less than the estimate.

If the gentleman wishes a minute statement of the alteration in Fort Monroe, with a full explanation of the causes which led to it, he will find them in the document to which I have referred. Again, therefore, I ask, where is the want of more information? Whenever we arrive at a point where any particular fact is needed, I find it in a document which has been before this House for six or seven years. I said that the whole system of defence contemplated the employment of a regular army and a well disciplined militia. We have seen that a regular army of less than five thousand men, is sufficient to garrison this whole line of fortifications in time of peace. But how are they to be defended in time of war? The plan proposes, that, in addition to the garrison, a draft should be made on the neighboring militia. Instead of waiting, as some gentlemen have suggested, for a standing army, it is proposed to receive into the forts, the requisite number of militia. Protected by the works, and supplied with every thing they need, militia will here be efficient; and may, with safety, be relied on. Here, then, is your system: an army, a navy, a system of internal communications, and a line of fortifications, garrisoned with regulars in time of peace—with regulars and militia in time of war. Could you have a better system? And are gentlemen prepared to stop the progress of it? Though I have already, I fear, exhausted the patience of the House, I must ask leave to read one short extract from the Engineers' report, in explanation of the whole:

"A defensive system for the frontiers of the United States, is, therefore, yet to be created. Its bases are, first, a navy; second, fortifications; third, interior communication by land and water; and fourth, a regular army and well-organized militia. These means must all be combined so as to form a complete system.

"The Navy must, in the first place, be provided with proper establishments for construction and repair; harbors of rendezvous; stations, and ports of refuge. It is only by taking into view the general character, as well as the details, of the whole frontier, that we can fix on the most advantageous points for receiving these naval depots, harbors of rendezvous, stations, and ports of refuge.

"On these considerations, Burwell's Bay, in James' River; and Charlestown, near Boston, have been especially recommended by the commission, as the most proper sites for the great Naval Arsenals of the South and of the North. Hampton Roads and Boston Roads as the chief rendezvous; and Narraganset Bay as an indispensable accessary to Boston Roads. See reports of 1819 and 1820.

"It is also, from an attentive consideration of the whole maritime frontier, of the interior, and of the coastwise navigation, that Mobile Bay, on the Gulf of Mexico; St. Mary's, in the Chesapeake; the Delaware; New York Bay; Buzzard's Bay; New London; Marblehead; Portsmouth; Portland; the mouths of the Kennebec and Penobscot, and Mount Desert Bay; have been fixed upon as stations and ports of refuge; as necessary and essential to our merchant vessels as to our Navy.

"Smithville and Beaufort, North Carolina; Annapolis and Baltimore, Maryland; New Haven, Connecticut; Salem, in Massachusetts; and Wiscasset, in Maine; have, likewise, been examined with attention, with a view to secure them from attack by sea or land. See reports of 1819, 1820, and 1821.

"St. Mary's River, and Savannah, in Georgia; B. fort, Charleston, and Georgetown, in South Caroli will be examined and surveyed in the course of this ye

This embraces all the works contained in this This system was recommended to Congress in 181 so much of it as referred to the system of fortifica was referred to the Committee on Military Affairs; a much of it as related to the expense of the system, referred to the Committee of Ways and Means. Be committees reported in favor of the plan. The Mil Committee gave their fullest sanction to the details of fence; and the Committee of Ways and Means repor a bill making the necessary appropriation to commen the works. The House adopted the report, and pass the bill: thus sanctioning the entire system, as wise a proper. Congress sanctioned it in the only mode in whic they could sanction it. To have passed a law declarin that every part of this system should ever after be adhe to, would have been most unwise; because a system extensive, founded on a *reconnoissance* not yet perfectl completed, must necessarily be subjected to change i some of its details. Congress approved and adopted th system, as a great whole; they said they would appropr ate money to carry it into effect; and they did appro ate; but they left the system under the care of the Bo of Engineers, that they might carry on and complete th surveys, and gradually perfect the plan. The system long been under review: has any thing been produc shew that it is unwise? Nothing that I have ever h of. If there has been any improvidence in the expe ture of the money, hunt it out, let it be produce then punish the offender. But, in the mean while, that it is not only not wise, but that it is not defen insinuating mal-practice against the gentlemen com

Gentlemen ought to reflect, Mr. McL. said, on t and elevated station which they occupied as mem this House. Persons might talk, out of the walls House, and say there is corruption here, and there ruption there. Such language, out of this House, by as the idle wind: unless some fact is stated, listens to it. But no member can rise on this flo say that corruption does exist in the Government, its having its effect. The word of a gentleman something in this House, and will never go for until this House itself is thoroughly corrupt. If been corruption, root it out—expose it and cor But, because any member chooses to insinuate it abandon your whole system of national defence a stop to the works which you have already begu McL. hoped gentlemen would not act so unwise.

Have these works progressed too rapidly? H progressed too rapidly for the means of the Gove Have they progressed too rapidly for their own or utility? Certainly not, as far as he understoo ject. Are we less able to carry them on now t were when we commenced the system? We be great work when our debt was double as much as We did not stop then to inquire, within a few t dollars, of what were the means in the Treasu began our march with the whole of the war debt back: and shall we stop now, when we have freed ourselves from that burthen? If there is to change in our course, we ought to go on faster we can now go faster with less fatigue.

This system of defence has been approved, not Congress, but by the People of this country: it sanctified by their approbation, and they are no ed to abandon and give it up. If there be any on this subject, it is that the People of this co rather too sensitive in regard to it. They have ed these defensive works as almost too sacred much beyond the reach of Congress. So much efforts of a portion of this House to sift and re

penditures for these objects disapproved, that they procured for the authors of them, in some parts of this country, the epithet of Radicals. Although the motives of these gentlemen were good, their design patriotic, and its fruits generally good—for Mr. McL. admitted that the exertions they had made had had some beneficial influence—yet bitter fruits had also sprung from it. The People of the country, thinking this system of fortifications was about to be assailed, were the first to rally around them: and one of the bitterest fruits of this exhibition of popular sentiment was to be found in its effects upon the public prospects of one of the best and ablest men of that day. I hope, said Mr. McLANE, I may be permitted now to speak of the late Secretary (Mr. Crawford) without fear and without reproach. He is, so far as regards myself, beyond the reach of hope or envy. I may be permitted to speak of him as I knew him. He was, of all men, the least obnoxious to the charge of hostility to the system of permanent defence. Nay, he was one of the principal founders of that system. His able report on the subject, whilst Secretary of War, to which I refer with pride and pleasure, originated this system—inviting here the able engineer, whose services have been continued under the enlightened auspices of those who have since had charge of that Department. I speak of the high merit of that distinguished individual who has now withdrawn from public life, without invidious sentiment: for I am not one of those who sit down and grieve and grumble over what has passed. I look to the future, and would so act here, that, when the future comes, it may find the People happy and the country prosperous. With regard to that distinguished individual, however, I know that a cardinal point of his policy was a vigorous prosecution of the system of maritime defence; and I wish him to hear, in his retirement, that the friends who stood by him in the hour of trial, still abide by his principles—that he may be able to say of his friends as he has magnanimously said of his adversaries, "let them be judged by their measures." This system, sir, is established by Congress, and approved by the People. It is ours, and we cannot abandon it.

The gentleman from Pennsylvania thinks that we are proceeding in this system too rapidly. He would prefer the application of our resources to works of internal improvement. But, sir, look at our system of internal improvement. During the last session of Congress, we appropriated more than one million of dollars to objects of that description; so that, if our estimate for fortifications, instead of being 795,000 dollars, had been a million of dollars, it still would have been within the amount which we willingly gave last session for internal improvements. And, sir, if we appropriate the public money for the construction of roads and canals, must we not spend it in the same ratio on fortifications to defend those roads and canals? We are told of the expense, and it is represented as likely to be ruinous to this nation. Sir, nothing is easier than to raise a phantom of financial dangers. But, let us put our hand on this expense, and let us see, from an exposition of facts, whether laying out this amount on the defences of the country, is or is not likely to ruin the country. Let us suppose a state of war, and let us suppose that war to take place without the existence of any such system. The enemy would attack New Orleans, Norfolk, Baltimore, Philadelphia, New York, or Narraganset Bay. Suppose him to have concentrated about twenty thousand men at Halifax or Bermuda, and with his force to come down to attack you. How are you to resist him? As you cannot tell on which of these points the attack will fall, you must have at each of the points exposed, a body of men equal to at least one-half of the attacking force. Such, at least, is the computation of the ablest and most experienced military men. These stationary troops would amount to sixty-seven thousand; in addition to which, you must have a corps of reserve of not less than fifty-three thousand. All these are regular troops. In addition to these, you call out the militia. You then have both the regulars and the militia to support. You place raw men in the midst of a camp, and you very shortly have sickness breaking out among them. In the mean while, the enemy manœuvres in such a manner that it is concluded he means to attack New Orleans, or that he means to attack New York. It is only a manœuvre; but as this cannot certainly be known, it forces you to march your troops, and, by the time you have discovered it to be only a manœuvre, your troops have been in full march, they cannot be recalled but at an immense expense: perhaps cannot be recalled at all before the enemy is attacking another point of your sea board. Now, the expense of keeping such an army on foot for six months, has been estimated at seventeen millions of dollars. The documents are before you, and gentlemen may estimate for themselves: to which must be added the interruption of the labor of the citizen. You take him from the common occupations of life—you fill him with all the vices of a camp, and, by this system, you bring home to his family, left in distress, all the horrors of a war which he is endeavoring to avert from the rest of the country. To all which must be added, that the loss of such a citizen, when he falls, is far greater (generally speaking) than that of one of your regular troops, who are, for the most part, insulated beings, without family connections, or helpless children, depending on their exertions. Add to all these, that which is beyond all calculations, the moral considerations connected with this subject, and you have a mass of evils, attending this system of defence, which wants but one feature to complete it—which is supplied by the addition of a long and onerous list of pensions. Now, take the other plan of defence—the plan by fortifications—and compare the expense of a six months campaign. In the first place, you will want five thousand regular troops to guard your forts: in addition to which you must draw out the requisite portion of militia; and the calculations in the report will shew that the cost of these will be five millions. The cost on the other plan, was seventeen millions; leaving a difference, in six months, of twelve millions, to build forts with; so that the additional expense of a single campaign's defence, will defray the cost of the entire line of fortifications proposed by the engineers, and then, it must be remembered, that your forts, when once built, are permanent; but your army must be renewed. Nor must it be forgotten, that the disbursements for the erection of forts, are made in a time of peace, when the country is prosperous, and your Treasury comparatively full: but armies must, for the most part, be raised in time of war, when the commerce of the country is deranged and its Treasury drained—when every dollar that is expended is raised by loan. Can gentlemen forget the loans of the late war? To all this must be added the fact, that this mode of defence transfers the war from the land to the ocean. Though the enemy's fleets may be thundering at your ports, the country, in the interior, is at comparative repose: the war is scarcely felt at the home of the husbandman—he neither sees a foreign soldier nor is he oppressed by a load of taxation from his own Government. Your roads and canals proceed without interruption, and the labors of the plough and of the loom go on as happily as if no war was raging.

I, therefore, take it for granted, Mr. Speaker, that the House will not abandon this system; that it will not cast away all that is useful, all that is great, all that is sublime in the national policy—all that is calculated to give us safety at home, and glory abroad. You will not, with sacrilegious hand, prostrate and destroy all that you ought to prize as citizens, and cherish as statesmen.

If, then, we are now in this system, and cannot stop, the question recurs, at what rate shall we proceed? The committee ask for seven hundred and ninety-five thousand

dollars. Is it enough? is it too little? is it too much? Sir, how can we tell? We must go to the estimates that have been furnished us; these are the data, and the only data, from which we can form a judgment. If gentlemen can impeach these estimates, let them do so. But if they cannot prove that these estimates are falsely made, then we must receive them as our guide, in making this appropriation. The officers of Government tell us, that this sum will be required to proceed with these works in the best and most economical manner. Let us remember that it will complete these fortifications, and that it will put the system into entire operation over one portion of the country, and fully cover it with the mantle of protection. But, if gentlemen are unwilling now to commence the work at Bienvenue, they can reduce the appropriation to seven hundred thousand dollars.

A gentleman from Pennsylvania, whom I have now in my eye, (Mr. BUCHANAN) says that you must add an unexpended balance from the last year, which will, in fact, make your this year's expenditure amount to a million of dollars. That gentleman is usually extremely accurate in fact, and sound in argument; but he appears, on this occasion, to have taken a strange view of this subject. I remember that a gentleman in this House once favored us with an explanation of what was meant by unexpended balances of appropriations; from which he would have us to understand, that it means, in fact, a sum of money in the Treasury which has never been appropriated at all. But the gentleman from Pennsylvania has fallen into an error still greater than that; for he makes a balance of appropriation for 1825, to mean the same thing as an appropriation for 1826! This is the amount of his argument. If it does not amount to this, there is nothing in the argument. He says there is an unexpended balance of 1825, and that, if we appropriate seven hundred and ninety-five thousand dollars now, it will be in fact, an appropriation of one million of dollars for this year—but how can this be, unless the balance of an appropriation for 1825, is the same thing as an appropriation for 1826? The gentleman says there was a balance unexpended. Yes, sir, there was a balance unexpended; but does not the gentleman understand that, though that balance might not actually have been paid out in 1825, yet, that it was under contract and engagement for works done in 1825, and that it cannot, by law, be applied to any other objects than those belonging to the year 1825: and that, if it is not expended on those objects, it goes, by law, to the surplus fund, and can, by no process, be brought into the expenditures of 1826? The Department made its contracts for the year 1825; the appropriation of that year was made to meet these contracts; it can go to nothing else; and though at the end of 1825, the contractors might not have demanded and received their money, yet, if the gentleman will inquire, I will venture to ensure him that he will find all those moneys both demanded and paid in the first quarter of 1826. But the gentleman asks, are we to appropriate more for fortifications than for the Navy? Sir, the gentleman has looked only at the unexpended balance for fortifications. If the gentleman had looked farther, he would have found there was a still larger unexpended balance of the appropriation for the Navy. He would have found, also, that, instead of five hundred thousand dollars, more than a million of dollars was last year appropriated for the increase of the Navy, viz: Five hundred thousand for the regular annual sum, and five hundred thousand more for building ten sloops of war. It was true that, formerly, only five hundred and twenty-five thousand dollars was asked for the annual appropriation for fortifications, and that it has grown, in successive years, until it has now reached seven hundred and ninety-five thousand dollars. Do gentlemen ask how it is that this increase has happened? The answer is easy. Whenever Congress authorizes a new work, the first year's appropriation is for materials only; and, during the succeeding years, the work is generally heavy, and proceeds, and must proceed, very slowly. But, as the fortification rises from its foundations, and comes up into view, the work to be performed is of a lighter kind, and more labor can be performed in the same time. This, alone, would produce an increase in the appropriation; but to this is, in general, to be added another sum for the commencement of another new work. This is the regular course of things; it is the proper course of things; and it cannot be avoided until our system of defence shall have been completed.

But, while gentlemen complain of an increase in the expense of this particular branch of the military service, they should not forget that there are other branches of that service. I hold in my hand a comparative statement of the entire military expenditure for the years 1825-26, and, by comparing the two, it will be perceived that the expense of the military service of this country for the present year, is eighty-five thousand dollars less than it was last year; and that after giving the seven hundred and ninety-five thousand dollars which is now asked for fortifications. The gentleman, therefore, need not be alarmed for the safety of the Treasury. The gentleman from Pennsylvania, to whom I last alluded, tells us that we should not go farther in granting money for fortifications, than we do for the Navy. This argument is not a sound one, and facts will shew that it is entirely inconclusive. A ship does not take the same time to build it as a fort, and you may, in a very few years, build and equip a fleet, while it will take forty years to erect the works proper for its protection. What is the fact on this subject? Did we last year appropriate only five hundred thousand dollars for the Navy? Or did we not, in addition to that sum, give five hundred thousand dollars more to build sloops of war? But the gentleman from Pennsylvania does not do justice to the comparison. He does not include in it all the sums appropriated for dock yards, for naval stations, for repairs—these, sir, are stated expenses—they are incurred for the gradual increase of the Navy; yet they are not paid out of the gradual increase fund. I do not regret that the Navy receives this appropriation. Sir, do I hear the gentleman from Pennsylvania deny the correctness of this statement?

Mr. BUCHANAN said, he was very glad the gentleman had asked him the question, for he did not like to interrupt gentlemen, when speaking, in order to explain. But he thought the gentleman had not done him justice entirely, in that and some other particulars. I do not mean, said Mr. B. to be drawn in as an enemy to fortifications. I never have been, and never will be, opposed to the system. My object, on Friday last, was to procure a postponement of the bill, and not to defeat it. Mr. B. made some observations explanatory of the alleged unexpended balance, and then said, that, with regard to a comparison between the Navy and fortifications, he had stated but one sentiment; which was, that, in 1820, the appropriation for fortifications had been fixed at five hundred thousand dollars, in analogy to the annual appropriation of like amount, for the increase of the Navy; and that he was not willing to go further now, until he had seen the report of the Committee of Ways and Means. He had not said that he would not go farther—he did not say so yet. Mr. B. concluded by thanking the gentleman for the compliment he had paid him, and could sincerely return to the gentleman, in the words of a celebrated author, "*Laus est a te laudari.*"

Mr. McLANE resumed. The gentleman is surely mistaken. Sir, I have not mistaken or misstated his argument. [Here Mr. McL. quoted from the published Speech of Mr BUCHANAN.]

Now, I say, sir, that not one cent of moneys appropriated for the year 1825, can go to any new objects or purposes of the year 1826, and therefore that balance is not to be added to this calculation. I shall not, sir, at this time,

into the argument of the gentleman in relation to the public debt. I will give the gentleman the data from which I have made the calculation, that the war debt will be paid in 1829. The debt amounts to forty millions, (six per cents.) It is only necessary to pay the interest which remains on this sum, and you extinguish the debt, by the necessary operation of the Sinking Fund. The estimate of the Secretary of the Treasury informs you that there is an annual surplus of five millions. Supposing, then, that we leave two millions in the Treasury every year to meet the current expenses, you will have annually a disposable balance of three millions, which, in four years, will amount to twelve millions, the sum necessary to extinguish this debt. But, Mr. Speaker, although I have asked you, as it was my duty to do, to appropriate $795,000 this year for fortifications, yet, if any gentleman thinks that the rate at which we are proceeding is too rapid, I am willing to go with him, at least, into an inquiry, which shall have for its object the limiting of the appropriations to this object hereafter. But I cannot consent to limit it now contracts have been made in part for these works, and authority has been given by the Department to make other contracts for their completion. It is the habit of the Department to make their contracts in advance. They do right. It is their duty to look not only to the present, but to the coming year. In doing this, they are governed by the estimates; and I again repeat, that, if the estimates are wrong, let gentlemen impeach their accuracy, and prove them to be wrong. But until the opposers of the bill can furnish us with estimates, of a more correct character, we are bound by those we have got. We are bound by them on the principle of confidence. I do not mean a slavish confidence, but I mean that sort of confidence which admits the use of reason, but which resists suspicion and insinuation. I mean, said Mr. McL., that liberal confidence which is reposed by a frank and upright mind in those whom we know to possess both skill and integrity. I mean, sir, such a sort of confidence as the constituents of the honorable gentleman from Pennsylvania feel, that he will perform his duty on this floor, with that ability and uprightness with which he does perform it. It is a confidence that those who have been employed by the Government on account of their high and justly merited reputation for skill and integrity, will not wilfully violate their duty. Sir, the individual who is at the head of that Board, from his high station and long course of military achievement, is entitled to receive it. So is every man, who, by a course of useful and virtuous action, has obtained the regard of his fellow-citizens. This confidence is his reward: it belongs to his place, and you injure him if you refuse it. When he has been elevated by his fellow-citizens to an exalted situation in his country's service, if you assail him with suspicion, and without reason withhold from him your confidence, you contract the sphere of virtuous ambition.

No man of virtuous sensibility will either seek or accept the high stations of the State, if, as soon as he arrives here, he is to be assailed by surmises and suspicion on every side. By such a course, you leave the avenues to the most important stations in the country open to a set of men who are insensible to the value of reputation, and lead to the opinion of their countrymen.

A gentleman from Tennessee has said, that, throughout his bill, whenever two sums are mentioned, he will always vote for the smallest. But why, Mr. Speaker, will the gentleman pledge himself to vote for the smallest sum? Is it because he knows that the smallest sum will always be the best? How can he know this, but from the estimates? And once more I say, if you refuse to trust these estimates, show that they are wrong.

But, sir, permit me to ask, if the members of this House really do believe that the finances of the country will seriously suffer by granting 795,000 dollars for these works of defence, or will be materially benefitted by withholding the 95,000 dollars. Mr. Speaker, the alarm on this subject is altogether unnecessary. For myself, I am never afraid of liberally expending the public money, provided it is expended on useful objects, and you are obliged to resort to no taxation to get it. Sir, it refreshes the country like the rain upon the pastures. It stimulates industry and multiplies domestic happiness. If gentlemen will take twenty-four millions from our imposts, and spend it among the citizens of the twenty-four States, they will confer on them a blessing, and not an injury. There is no fear of our liberty's being endangered by liberal appropriations for the public defence.

Look at the condition of the country, said Mr. McL. Eleven years ago, we came out of the war without a dollar in our Treasury, and an immense debt on our hands. We have almost got clear of the debt during the interval: besides, we have created a considerable Navy; we have carried on internal improvements; we have purchased Florida; yet the Treasury is full—every man is happy, and the country is prosperous. This great nation is on its march, which will not, and ought not, to be interrupted. Does any man suppose, whilst the nation is thus improving, under a wise administration, building up its defences, and developing its resources, that it is to be impeded by a dispute about a few thousand dollars, more or less, to be expended, within a given time, on fortifications?

Mr. McL. repeated that he had nothing at stake in this bill, but his share in the public interest. He professed himself to be the advocate of the great national system, which combined the Navy, Army, Fortifications, Internal Improvements, and the Militia. The men who steer by that chart, (said he) are my men, because those measures are my measures; and I will sustain any Administration that will take hold and cherish those measures; and I will sustain none that will not. Nothing but public considerations had induced him to occupy so much of the time of the House to-day. The performance of the duty which he discharged, was not sought for by him, but devolved upon him by the selection of others. He had discharged his duty, and submitted the bill to the pleasure of the House. He put himself, for a defence of the bill, on the merits of the system; and he stated, from authority, that the Department could not well get along with its engagements for the current year, with a less amount of appropriation than the Committee of Ways and Means had proposed.

Mr. FORSYTH rose, after Mr. McLANE concluded, to disclaim the hostility to the system of fortifications, imputed to him, in common with others, who desired a postponement of this bill. The question of postponement involved no such consideration as hostility to that system. Whatever might be the motives or objects of other gentlemen, Mr. F. said, his object had been distinctly announced, and it remained for gentlemen to do him the justice to believe his explicit declarations, or not. The gentleman from Delaware had distinguished between the object of the motion and the motive of the mover: the Parliamentary or Congressional usage allowing him to question the one, but not the other. The observation which he was about to make, was, therefore, not directed to what had fallen from the gentleman from Delaware, but to what passed outside of, and around this House. I have been denounced, by venal presses, for making what is called a factious opposition to this bill; and the arguments which have been addressed to the House in debate, not only this day, but on other days, go far to sustain this denunciation. An attempt to arrest the discussion, a simple motion to postpone it until information is received, is an attempt to break down the defences of the country! These, sir, are chimeras of the imaginations of gentlemen in this House, and infamous fabrications of persons out of it. Mr. F. said, he was animated by the same motives as other gentlemen,

and equally with them in favor f the prosecution of a system of public defence. But how had this discussion come about? A resolution had passed, calling on the Executive for certain information, relative to certain fortifications. He, Mr. F., had suggested the propriety of suspending a decision on this bill, until it was received—to compel the production of information which had been hitherto asked for in vain. In reply to this suggestion, it had been stated that the information could not be had in time, and that, if here, it could not be used in reference to this bill. In answer, Mr. F. said, he had aimed to shew that it was such information as ought to be had, and could be applied: and in this, he trusted, he had succeeded. And then came this tumult of argument about the propriety of national defence! Who doubts it? said Mr. F. No one. But, because we all agree on this general principle, does it follow that we are to take any system, and every system? The question is, whether the present system is, or is not, the proper system; whether it be capable of amendment or not. How can we ascertain this without information? But the House had been told, that the information required, had been heretofore laid before it; but was considered so important in its disclosures, that it was not ordered to be printed. Where was it, then? If there was any such document, it was not to be found on the files of this House. If the papers have been returned to the Department of War, why had they not been sent again, when repeatedly called for? Gentlemen appeared to be extremely confiding in the Departments of the Government; and, to a certain extent, this confidence was proper: but, Mr. F. maintained, that this confidence might be carried too far; and he could not see any thing in the nature of the information called for by his colleague, to justify the delay of it, for two years, upon a former call, and until now, &c.

But, the House had been told, this system had been wisely adopted. It had been adopted, Mr. F. said, by an appropriation law: it had been altered by an appropriation law: and may it not again be altered by means of an appropriation law? If any gentleman wished an alteration in it, it should be proposed upon the appropriation bill. Information was wanted on the subject by his colleague, who was not satisfied with the system as it is. Since this investigation had been going on, Mr. F. said, he had seen enough to satisfy any unprejudiced mind, that this system, as it was called, had not been adopted on mature consideration; and that, in fact, the Engineers, when they made their report, had not information to enable them to present a system. Mr. F. here entered into an examination of the report, with a view to shew that some of the information presented was indefinite, and the estimates conjectural—estimates being, in some cases, presented for work at places which had, in fact, never been examined by the Board of Engineers, &c. &c. After having thus reviewed the report of the Board of Engineers, Mr. F. asked, now, have we not a right to ask for some information on this subject? And what changes have taken place since 1821, in the frontiers of the United States? A vast extent of sea-coast, on the whole Peninsula of Florida, have been added to the United States. Is no provision to be made for the defence of that exposed and extensive coast?

Mr. F. said, he thought he had demonstrated, from the face of the documents, that there was a want of accurate information on the subject of this system of fortifications. He did not pledge himself to use it when received. All he meant to shew was, that it ought to be before the House, and might be applicable to the bill now pending. So far as regarded the amount of appropriation proposed for special objects, Mr. F. said, he never did, and never would, vote to reduce the amount of an appropriation on the bare suggestion of any member, that it was proper to lessen it. He made no objection to the amount of appropriations proposed by this bill; but he wished to see whether they were proper or not, &c.

Whilst the gentleman from Delaware had paid a just and merited compliment to a distinguished friend of his, now no longer in public life; and whilst Mr. F. subscribed to his eulogium, and was satisfied that that honorable gentleman and his friends did suffer in their political count. he begged leave to refer to the causes of it. It was, Mr. F. said, because the anxious desire of that gentleman and his friends to introduce economy into the public service was misrepresented—just as now a desire to examine was denounced as a desire to destroy—just as now a desire to discharge one's duty, was denounced as treachery to the best interests of the country. Such always would be the case: examination always would be resisted. Neither was it possible for a man to avoid having his motives impeached. Those who love him, will attribute good motives to him—those who hate him, bad ones. But, as the majority generally neither hate nor love a man, he has some chance of justice—justice would be done to him, but for the arts of malignant calumniators and detractors. But a man may, if he has the good fortune to live long enough, live down the vilest and basest calumny.

When Mr. F. concluded, the question was taken on postponing the bill to Monday, and decided in the negative—101 to 81; and then

The House adjourned.

TUESDAY, JANUARY 31, 1826.

CONGRESS OF PANAMA.

The resolution offered yesterday by Mr. METCALFE, calling on the President of the United States for the correspondence inviting this Government to take part in the Congress of Panama, was taken up.

Mr. FORSYTH asked, whether this resolution was strictly in order; inasmuch as it appeared to be the same in substance with one which had been offered some days ago, on this subject, by the honorable gentleman from South Carolina.

The SPEAKER said, he could not decide, until the other resolution should be read.

The resolution of Mr. HAMILTON was then read together with that of Mr. METCALFE.

Mr. HAMILTON'S resolution is as follows:

"*Resolved*, That the President of the United States be requested to transmit to this House, copies of all such documents, or parts of correspondence, (not incompatible with the public interest to be communicated,) relating to an invitation which has been extended to the Government of this country "by the Republics of Colombia, of Mexico, and of Central America, to join in the deliberations of the Congress, to be held at the Isthmus of Panama," and which has induced him to signify to this House that "Ministers on the part of the United States will be commissioned to join in those deliberations."

The CHAIR decided that the two resolutions were, in substance, the same.

Mr. METCALFE then observed, that he had not been aware that his resolution, from its similarity, would be out of order. He had, however, no partiality to the particular form, provided the subject were brought before the attention of the House. He, therefore, moved to take up the resolution of Mr. HAMILTON: and the question of consideration being put, it was decided in the affirmative.

Mr. MITCHELL, of Tennessee, said, that he had risen for the purpose of objecting to the resolution, merely to obtain information. He wished to know what end the mover proposed to attain. He understood that this subject was now before the Senate: [Mr. M. was called to order by the Chair, it being contrary to rule to refer to business pending in the other branch of the Le-

lature.] He wanted to know of what use this information would, at present, be to the House? If, at a subsequent period, we shall be called upon to make any appropriations for this mission, it may be proper enough to ask for this correspondence; but, at present, he could see no use in it. He hoped the honorable gentleman would give him some light.

Mr. HAMILTON said, that he certainly had no right to find fault with the gentleman from Kentucky, for transferring his affections from his own bantling in favor of his. He owed it to the House, after all that had been said, and after the special reference to himself yesterday, briefly to explain the reasons why he had not, before this time, called up the consideration of this resolution. And here he must be permitted to remark, that, when he read, or heard read, in the President's message, that he proposed to send Commissioners to join in the deliberations of the Congress of Panama, he was led to conclude, from the character of our Government, that a measure so new, (he would not call it a startling novelty, as he did not intend to commit himself, at least at this time, by any expression of opinion,) that a proposition so portentously interesting to the foreign relations of the country, would have been cotemporaneously communicated to this House with the message which was sent to the Senate, because it was rather to be considered as a national, than an Executive measure; and as it might involve, ultimately, the most important considerations. When, however, he found this was not to be the course of the Executive, he had submitted the resolution, under an impression that the sooner the information could be had the better. On the day on which its consideration was in order, the Chairman of the Committee of Foreign Relations was so kind as to seek him, in order to state that he had communicated with the Secretary of State, and that the information desired would come here at the proper time, and in due season.

The gentleman from Georgia, the Chairman of the Committee of Foreign Relations, advised him not to press the consideration of the resolution, as it might be regarded as a violation of a proper feeling of delicacy to the President. Convinced of the kindness of the counsel of the gentleman, he was induced to suspend the call; and he was not displeased to find, that, among gentlemen supposed to enjoy the confidence of the Executive, the suspension was approved of; and that they considered it, above all things, especially injurious, as seriously violating precedent and practice, to call up a consideration of this kind, while an Executive measure was pending in—another building, which shall be nameless—not, however, more than three hundred feet distant from this. He, accordingly, gave notice that the consideration of the resolution was suspended, and that he would probably call it up at some future period. He found, however, some change of sentiment, after the lapse of three weeks. Some of those individuals, having the confidence of the Administration, who had at first supposed that it might be violating the rules of decorum, to the President, to press it at that time, *now* thought that it might be acted upon with safety: that the measure was now right and proper: that we ought to have this information at once. Intimations of this sort he had, in conversation, received from some of those gentlemen, whom he had reason to believe enjoyed, in an especial manner, the confidence and regard of the administration; and it was not a little singular that they were communicated to him precisely at that time when the Gazettes of this City had ventured to inform the public that this splendid project had *elsewhere* encountered serious embarrassment. He appealed to this as a piece of contemporary history, as he would to any fact in Hume, or any other historian, and hoped he would not be considered as violating any rule of order on the subject. To those gentlemen, whose scruples in regard to that comity which is due to the Executive, had been so shortly repressed, he could not but reply, that, if the objection was originally sound, that the passage of the resolution would violate a proper decorum towards the Executive, it came now with redoubled force when the subject was before a co-ordinate branch of the Legislature, under auspices to which it was not his province now to refer; but which would, nevertheless, be fully understood by the House: and that, by getting up a popular discussion at this time, in this House, on a subject pending *elsewhere*, might wear the appearance of our intending to act and re-act, through public opinion, on the deliberations of another body.

These were the reasons which he had avowed in declining to act on suggestions which were unexpected, at least in the quarter from which they came.

Mr. H. said, in making this explanation in regard to the cause of the uninterrupted slumber of his resolution, he candidly confessed he felt indifferent what direction the House might give to it, as they had been pleased to take the resolution out of his own hands. He would not be responsible for it any longer, as the discussion of it at this time was not of his seeking.

Mr. WEBSTER would trouble the House with but a single word. He hoped that this resolution would pass. So far as he knew, the gentleman from South Carolina might have stated very correctly what occurred, but he appeared to him to have given very little explanation of the delay which had taken place; and he now thought, after the lapse of so much time, that the House might, without any imputation of disrespect, ask to be informed in relation to a great public measure, that might make it essential for this House to perform some important act of legislation. An honorable member from Pennsylvania, (Mr. MINER) had laid on the table an affirmative resolution, expressive of the opinion of this House in relation to the policy that ought to be pursued toward the South American States; and particularly as to the contemplated mission to Panama. It was true, that the subject of our foreign relations had a more close connection with the other branch of the Legislature than with this House; but, in all matters which related to expense growing out of those relations, the House has important duties to perform. It does not, at present, know the facts of this case; and, therefore, without the least reference to what had been done, or was doing, elsewhere, he thought that this House, as well as the public, might choose to be informed of the true state of facts with regard to this correspondence.

At the request of Mr. POWELL, the resolutions of Mr. MINER were then read, as follows:

"*Resolved*, That the People of the United States have viewed, with deep and anxious solicitude, the exertions of the People of the several States in the Southern part of this continent, to secure the inestimable privileges of independence and self government: that they have seen the proofs exhibited of their fortitude, patriotism, and valor, with admiration, and beheld the success with which a gracious Providence hath crowned their arms, with gratitude and delight.

"*Resolved*, That, as it accords alike with the generous and spontaneous wishes of this People, and the soundest maxims of policy, that the most perfect harmony of feeling and intercourse should be cherished among all the American nations, the principles of whose Governments are founded in an acknowledgment of the equal rights of man, the appointment of Ministers to the proposed Congress of Panama, is a measure dictated by wisdom and propriety; and provision ought to be made, by law, to defray any expenses that may result therefrom."

Mr. FORSYTH, (the Chairman of the Committee on Foreign Relations,) rose to address a few observations to the Chair on this resolution. By the adoption of a resolution of this sort, it would be ascertained, certainly, that the information called for is believed by the House to be of a character which the public interest requires to be be-

fore it. But, Mr. F. said, a resolution of this sort implies something more than that. Such a resolution is either founded on the belief that the President of the United States does not intend to furnish this information, or on the belief that it is unnecessarily delayed by the President. Apply these observations to the resolution now before us. Gentlemen would recollect the statement that I had the honor to make the other day, that the President of the United States intends to send this information to the House. Do the honorable gentlemen, then, who are pressing this resolution on the House, mean to say that this information has been improperly delayed? Do they mean to say to the People of the United States, we cannot wait for the decision of the question by the Executive, as to the propriety of the time at which this information ought to be laid before the House? The obligations of official courtesy, said Mr. F., require that we should not present ourselves in this aspect to the People of the United States, calling in question the disposition of the President of the United States to lay before this House information which he has declared his intention to lay before them. Still, Mr. F. said, if this resolution was pressed, he should vote for it; because he would not, on the ground of courtesy to the Chief Magistrate, vote against a call for any information which members of this House might think necessary to enable them to discharge their public duties. But he trusted that, in this case, the House would do no such thing as to make the call. The information proposed to be called for, is to bear on the great question of an appropriation for Ministers to Panama. Is such an appropriation asked of us? said Mr. F. Will it be? Suppose the information be received and discussed, and we resolve to make an appropriation for Ministers—does this effect the object of appointing such Ministers? That depends on another Department of the Government. The information to be elicited by this resolution may have an indirect influence—it may operate on public opinion, and, through it, on the other branches of the Government. It can be of use in no other way. Now, Mr. F. said, no Commissioners have been appointed: none can be, without the concurrence of another branch of the Executive, and another branch of the Legislature. Why discuss the propriety of an appropriation for this purpose, when no persons had been appointed for whom the appropriation could be intended? Mr. F. said he had made these observations from a sense of duty. Yet, he said, the pressing this resolution at this time, placed him and the House in an awkward situation. He could hardly suppose that the gentlemen from Kentucky or Massachusetts wished to do any thing uncourteous towards the Administration of the country. Believing they had no such wish, he could not vote upon this resolution, without first ascertaining whether it was the sense of the House that it should be pressed to a decision at this time. Wishing to allow to every gentleman an opportunity to express freely his views of the question, he should not now make the motion to try that question, but would do so before a final vote was taken on the resolution.

Mr. MALLARY then observed, that he did not know what policy was likely to be injured by passing the resolution. He was not aware that it would betray a want of the proper decorum which ought always to regulate the acts of co-ordinate branches of the Government towards each other. The President, at the commencement of the session, had stated, in his message to the House, that he had received an invitation to send Ministers to the Congress at Panama. Mr. M. thought that the information now desired was called for by various considerations. None could think that the asking of it would wound the feelings of the Executive. All admitted that the information was of great importance; and much inquiry had been excited among the members of the House, why the gentleman from South Carolina had not called up his resolution. Every body was anxious to see the correspondence to which it related. What ulterior measures were to grow out of it, none could, at this moment, so much as prophecy: nor was it certain that the House would act upon it in any way whatever. The gentleman from South Carolina had said that it was to lay the foundation for an appropriation of money for the sending out of a Minister. For his own part, he knew nothing of this: but if the information was important, he wished the House to have it; and, he presumed, if they agreed to this call, that they would get it: unless the President should exert that power which is given him by the Constitution to withhold the communication. But ought this House to sit still, and wait till the President shall choose, of his own mere motion, to send them this correspondence? Unless the House expresses its desire to possess it sooner, the President will wait until Executive duty requires him to communicate it. Without, therefore, any regard to what may be going on elsewhere, he should vote for this call, because he believed the information interesting to the country, and that it would be useful to this House as an independent body.

Mr. DWIGHT said, that he should be the last person who would seek to pierce that vail of secrecy which the Constitution has thrown around the President and the Senate, when engaged in Executive business. But was the slightest wish to violate that privacy betrayed by this resolution? The President has expressly told us that he has been invited to a great and weighty measure. We ask for information, for the purpose of enlightening our minds with relation to it. With our present knowledge we are not competent to form any correct judgment on the subject. The resolution of the gentleman from Pennsylvania commits the House and the Nation to an expression of feeling, in relation to this measure: a measure intertwined with some of the best feelings of the American People. We merely ask the President to communicate to us now, that which he has promised to communicate at some time; yet we do not take away from him the exercise of that discretion which the Constitution has wisely reserved to the Executive Magistrate.

Mr. CAMBRELENG agreed, entirely, with the gentleman from Massachusetts. He thought the House ought to get all the information on so important a measure, which can be obtained; and when it should be received, he was willing and ready to go as far as any member of this House, in relation to South America. He considered this message as presenting a great question; and whether they should be called on to decide on the resolution of the gentleman from Pennsylvania, or to pass an appropriation bill, it was equally important that they should possess the knowledge in question. He had risen for the purpose of suggesting to the gentleman from South Carolina to strike out that part of the resolution, with which it concludes, in the usual words, "if not incompatible with the public welfare." He thought that, on a question of such vital importance, and one which might possibly involve the future destiny of this country, it was requisite that this House should be put in possession of the *whole* of the facts on this subject, even to the *instructions that might be given to our Commissioner*.

Mr. HAMILTON said, before he replied, he wished to know whether the resolution now really belonged to him or to the putative father of it? He consented, however, to the modification proposed by the gentleman from New York, if he had the control of it: and the words were then stricken from the resolution by the Clerk.

Mr. WEBSTER then moved that the words be restored. He said that, in all calls for information which are in the possession of the President, it was usual and proper to limit the call, in the first instance, by the insertion of this clause: and it was very obvious that when such a limitation was introduced, the call ought to be made at as early a period in the session as is practicable: and there

able calculation. Two of the fortifications that were amongst the original number are finished—Forts Delaware and Washington; and why was it that, after these two Forts were finished, the sum to be taken from the Treasury was to be increased? It would require certainly very strong arguments to induce this House to rely on the estimates, and to place the confidence demanded. This doctrine of unlimited confidence was the doctrine of 1797 and 1798: he need not say to what consequences it led. It was known to every member of this House. The present system, if persisted in, would introduce a standing army. While these fortifications are in progress, those persons who are employed in the erection of them will always take care of them; but the moment they are completed, there must be a force sufficient to man them and preserve them: otherwise every appropriation that had been made would go for nothing, and they would fall to ruin. Would it be amiss, asked Mr. C., to turn the attention of the Committee for a moment to the fortifications that had been completed, and to ascertain how many had become useless; how many had been abandoned; and how many there now were in this chain of maritime defence? At New York there were not less than three or four which were built at a great expense, which are now useless. The site of one of them, (Castle Clinton) this House is now told, has been re-conveyed to the State of New York, and is now converted into a public pleasure garden. Were they to go on thus, placing implicit confidence in the estimates which were not made by the Engineer Department? It was impossible it could be the fact. They must have derived their information from subordinate officers on the spot; and it was from their information, and not from personal observation, that the estimate was made. Could they tell how many perches of stone were required for the fort at New Orleans? or how many brick would be necessary at Mobile? It could not be expected of them that they should: and, Mr. C. said, he believed that, if the information were asked of them, they would say at once that they had founded their estimates on information sent in by the subordinate officers. He recollected that, at Mobile Point, there was a subordinate officer placed to superintend the work, who contracted in such a manner that this House withheld the whole or a part of the appropriation.

One work was begun at Dauphin Island, and large sums were expended there; since that time, immense damages had been paid by this House to the contractors: and when they came to ascertain the depth of water, it was found that vessels, drawing more than sixteen feet, could not come nearer than four miles; and, after getting over the outer bar, could not come within a mile and a half of this fortification. Yet, said Mr. C., we are called on to place implicit confidence in such calculations. Was it come to this, that whenever a difference of opinion should be expressed with regard to the measures of this Government, or on a proposition submitted to the House for consideration, it was to be denounced and treated with the utmost disrespect? Whenever this state of things existed, freedom of debate would be destroyed; and, Mr. C said, he would venture to say, that the gentleman who was most tenacious of saving time and public money, in debate, had expended as much in discussion as any other member on that floor—none more so, according to his recollection.

One of the fortifications at New York, to which he had alluded a few minutes ago, was Castle Williams. It had been completed at a great expense, and he had been told that one of the American frigates, that passed by, to try its strength, fired a shot at it, which had liked to have demolished it. Yet this fort was built on the scientific plan, by scientific men, expressly selected to build it. There was also another fort, which had been built at a great expense, and the first cannon that was fired in it, rent it from top to bottom. This, too, was built on the scientific plan: and, with these evidences before them, ought they not to pause and consider whether they would go on appropriating money—a million of dollars on fortifications, when there were so many demands on the Treasury? This would be to establish "a magnificent Government" he knew: it would be very splendid, indeed. We should have a whole chain of fortifications, extending upwards of three thousand miles; but if we turned our attention to the People, we should find them poor and "miserable" indeed; and this was the "misery," Mr. C. said, he wished to avoid.

They had been told, during the discussion, that this sum must be appropriated for completing existing contracts. That was a position, Mr. C. said, it was impossible he could ever subscribe to. Where did the officers of this Government derive their authority to make contracts which should bind this Government? When a sum of money is appropriated and placed in his hands, he is authorized to make a contract, and to expend it according to the object for which it was appropriated; but, whenever it was admitted that an officer could exceed the appropriation, and could make whatever contracts he thought proper, which should be binding on the Government, that article in the Constitution would be useless, which provides that no money shall be drawn from the Treasury but in consequence of appropriations made by law. He admitted the dollars could not be taken out of the Treasury; but if this House were compelled to make the appropriations, where would be the benefits to be derived by the People from this clause? There would be none: it would be a blank, and mean nothing. This, Mr. C. said, he had always viewed as one of the most salutary provisions in the Constitution, and it was necessary to have some rule to go by to keep our officers within bounds.

Mr. C. said, he admitted, from some expressions which had dropped from one of the members of the Committee of Ways and Means, in the course of this argument, that they had one other authority to rely upon, besides that of the estimates. That Committee had told them, *they* had examined these estimates and had given *their* approbation to the appropriation. Yet, the gentleman who had denounced his proposition as "a miserable saving," now comes out and says frankly, "I know nothing about it—I dont know what sum is necessary—I am quite ignorant—as ignorant as the gentleman from Tennessee." This, Mr. C. said, was a "most miserable" doctrine to rely upon; and he should conceive himself placed in a "miserable" condition were he to follow that example. They derived their information from the Committee, and when the Committee were called on, they knew nothing of the matter, and the House must pin their faith on the sleeve of the Engineers, and be governed by their calculations.

Mr. C. said, his proposition had been denounced as a "most miserable" production, with an assurance that it would produce more expense to Government than all the savings that could possibly be made by it. He had, therefore, thought proper to make a calculation. The expense of all the members is, one thousand seven hundred and twenty-eight dollars a day: he would allow three hundred dollars more for contingent expenses—thus making an expense of about two thousand dollars a day. The sum intended to be saved, if the motion succeeded to strike it from this appropriation, would be thirty-five thousand dollars. Here was a "most miserable" calculation, and a "miserable" mistake founded on that calculation.

But, said Mr. C. are we to be trammelled in debate, in the free expression of opinion in this House? Are we to be denounced as making "miserable" motions, and "miserable" savings? Are we to be prevented from investigating the estimates of this immaculate corps of Engineers, because it has passed the Committee of Ways and Means, one of whom tells us he is ignorant whether they are founded on correct or incorrect principles? Mr. C.

dence, and have fixed their eyes on the Nations of the Southern Continent? Will they shut their eyes to what is done at Panama? Sir, I should like much to know, whether an Ambassador is to be received there from the Republic of Hayti? Is this one of the objects in view? Is this Congress to tell the gentleman from South Carolina, and all of us from the Southern States, that "all men are free and equal;" and if you join us to command the Emperor of Brazil to descend from his throne, we shall then turn round to you, and say to the United States, "Every man is free; and if you refuse to make them so, we will bring seven Republics, in full march, to compel you, in the same manner that, on the other Continent, the Holy Alliance sent their combined armies to march against Naples!"

Sir, I repeat it, I feel as much enthusiasm in the cause of South American liberty, as any man on this floor feels, or can feel: but when I think on the peace and happiness of my own country, I stop short. I would deal out to them the blessing of liberty, and all the other blessings which follow in its train, with a liberal hand—but I am as unwilling that these People should have the control of our interests, as that the King of England should; a gentleman to whom I am not thought to bear any very particular affection. (I bear toward him, however, as much good will as toward the others; and am glad to perceive that, after sixty years of misrule, that Government is beginning to get right in its course of policy.)

Formerly, sir, when a negotiation was proposed by the President of the United States, he first came to this House and ascertained whether the requisite funds would be granted; and then he made the treaty: so Washington did. But, since that day, the treaty-making power has prostrated the Constitution; and now, they first make treaties, and then ask us to appropriate the money that is to carry them into effect. Sir, I can see nothing around us but dark, lowering, portentous storms. I am opposed to this whole matter of Panama. But, if we *must* take the draught, bitter as it is, let us, at least, have light to swallow it; let us have all the information that can be given upon the subject. But, no; we are to go to the President's door, and say, "give us, if you please, what *you think* it is proper we should have." Sir, are we not fit to be trusted? The language of all these resolutions is the same; and, when I heard the resolution of the gentleman from Pennsylvania, (Mr. MINER,) read the other day at the Clerk's table, (I was not in the House when it was offered,) it sounded to me like the voice of an old acquaintance. Sir, I have not altered any of my sentiments on the subject of American liberty, and I suppose I may make this open exposition of those sentiments, without being exposed to any particular charge of arraying myself against "the administration!" The opinions I oppose, are the squalid and deformed offspring of European politics—let us not adopt them as our children.

Mr. WEBSTER said, he hoped the House would discuss this subject in a manner which became the subject. He was unwilling, in this stage of it, to commit himself on the question of the propriety of this mission. If, indeed, he reasoned, as the gentleman from Virginia, who had just taken his seat, appeared to reason, it was very possible he might be led to the same conclusion with him. The gentleman *assumes* the ground, and then draws his inferences: but this did not appear to him a very conclusive mode of reasoning. It was because he wished to be informed of what the gentleman takes for granted, that he was in favor of the present call for information. The gentleman says there is to be an alliance, offensive and defensive, between all the nations who are to be represented at Panama, and he wishes to know whether we are to be committed to any such alliance? Sir, I wish to know the same thing; and, if it is so, it will be a most material fact as to the judgment I am to form on the whole subject. So the gentleman wishes to know, whether the Congress will acknowledge the Republic of Hayti? I wish to know the same thing; and, therefore, it is that I ask for this information.

As to Hayti, however, I have no hesitation in saying, that I hardly think it can be called independent; nor shall I think so, as long as its present commercial connexion with the mother country continues. Sir, the great difference between the gentleman and myself, lies in this: he takes it for granted that these things will happen: I wish to know whether they will happen or not. I feel some doubt on the general question; but it is a question which, after all that has passed, must come before us to be discussed; and I am desirous, that, when we discuss it, we shall have as complete a knowledge of facts as circumstances will allow.

Mr. HAMILTON said, that nothing could exemplify more strongly the singular relation in which he now stood to the resolution under consideration, than the fact of the gentleman from Virginia, (Mr. FLOYD,) supposing that, in originally offering the resolution, he was impressed with very favorable pre-existing regards for this mission to Panama. He could tell that gentleman that, when he presented the resolution, very different sentiments were imputed to him; and, without committing himself in the slightest degree, he would venture also to tell him that he was as little in love, at first sight, with this proposition as he was. He would moreover tell him, that, in regard to the peculiar interests, to which he had referred, of that portion of the Union which they represented in common, they would always elicit from him a sensibility and fearless vindication which should not be second even to his own.

That he might not be any longer misunderstood, and his resolution be used by others as an instrument for their own purposes, if it was in order, he would ask leave to withdraw it.

Mr. DRAYTON observed, that he thought the House should take views of this subject, which were entirely distinct from each other. The first is, what is the object of the resolution? and the next is, what is the time when we are to obtain the information? He should not now undertake to investigate what was the nature, or what were likely to be the effects of the mission to Panama. It was a mission pregnant with important and novel consequences, and unprecedented, as he believed, in the annals of the United States. He did not mean to say, that it was therefore, an improper mission: he was not inclined to hazard what little reputation he possessed, by asserting at this time, to say that it was proper or improper, if was without the necessary information, and he could feel his way in the dark. When he should be able to obtain the requisite knowledge, he should feel himself in circumstances to form a better judgment. The mission, so far as he knew, was without a precedent in the history of this country. Heretofore, Ministers had been sent abroad to settle questions of war, of peace, of navigation, of commerce, or of boundaries and jurisdiction, which had relation to ourselves and the contracting party. But in this case, from what means we have of determining what is likely to be the consequences of this mission, it may involve us in an alliance in which the United States of North America, and the United Republics of South America, are to be arrayed against the Holy Alliance in Europe. It seems we are expected to interpose in a great contest for Liberty against Despotism, and that, if we consent to the mission, our doing so will be interpreted into a willingness to sound the tocsin, and declare ourselves prepared to enter the lists against a combined world.

I do not say that these consequences will necessarily result; but I say, when we consider the language of the resolution, which declares that we ought to send Ministers to Panama, it appears probable that some such scene

o meet them. Now, any gentleman who knows any thing f this subject, (I do not say, who is skilled in the science f Engineering, but who is, in the least degree, acquaint-d with this subject,) cannot but know that the contracts nade for these fortifications must be continuous, or the progress of the works must stop. The contracts are usually nade in the last part of March and April. Must the work top till this appropriation bill has passed? If the Depart-nent do not anticipate that bill, there must be an inter-uption every year. The Department, therefore, does nticipate it, and acts upon the just presumption, that it vill be equal in amount to what it was in the preceding ear. Sir, they have a right thus to presume. If our sys-em of fortifications is to proceed, this must be the case. This is the constant practice of the Engineer Department, nd it is indispensable to the progress of this system of he national defence.

Mr. Chairman, a great deal has been said on the subject f "confidence"—a word I unfortunately happened to se, when speaking on this subject. Sir, I do not know ny reason why gentlemen should ascribe to *me* a disposi-ion to repose undue confidence in the Executive Depart-nent of the Government. I believe there is nothing in ny situation which particularly calls for it; nor am I dis-osed to give to the members of the Engineer Corps, or o the Head of the War Department, any other, or any reater confidence than, in the same situation, I should xpect from others.

Every Department of the Government owes it to every ther Department, to presume that it will do its duty. And I would reply to the gentleman, on this subject, that *his* constituents never sent him here to discharge the duty which pertains to the Executive Department. They did ot send him to do the duty of an Engineer: they id not appoint him to make estimates for the War Depart-nent. That, sir, is not the duty of a member of Congress: whenever he attempts it, he travels out of his sphere, and s sure to do wrong. Now, sir, as to the question of mount: the Board of Engineers have given us their esti-nates, on which the sum in the bill has been reported, nd by which I still think we ought to be governed. The entleman from Tennessee has done me the honor to say, nd he quotes my own authority for the assertion, that I now nothing at all of the subject. Now, sir, I did not ay that I knew nothing of the subject—I said I derived ny knowledge of it from the estimates rendered. Sir, is true that, without these estimates, I should know othing of the amount of appropriation required; and will take the liberty to add, that I presume the hon-rable gentleman, himself, except from these estimates, nows no more of the subject than I do. The sum the bill is founded on the estimates, and we are re-uired by the gentleman from Tennessee to reduce them. ut on what evidence? Does the gentleman produce ny proof that the estimates are incorrect? Not at all. as he any thing by which to correct them? He has othing. Does he furnish us with any other estimates? o, sir, we have nothing; not even the estimate of the entleman himself. He does not pretend to say that ighty thousand dollars will complete these works. Yet, e says, we must appropriate eighty thousand dollars, and ot one hundred and fifteen thousand dollars. We are equired to discard a sum founded on knowledge, and take nother sum founded on no knowledge at all. For that, ir, is, in truth, the basis of the motion of the gentleman rom Tennessee.

But the gentleman is afraid that this alarming doctrine f confidence, will bring upon the nation all the evils of ormer days. Sir, I am sorry to see this association of for-ner days, so often brought into our present debates. Those evils, surely, have nothing to do with this appro-riation. The former parties which existed in this coun-ry, are not concerned on the present occasion. This is a proposition for the national defence; and whatever have been, or may be our contests, I trust in God there never has been, and never will be, a party in this Republic against the defence of the country.

The question was then taken on appropriating one hundred and fifteen thousand dollars, (the larger of the two sums mentioned, for carrying on the works at Fortress Monroe) and decided in the affirmative.

The residue of the bill having been gone through—

Mr. BARTLETT moved an appropriation of two thousand five hundred dollars for repairs of Fort Constitution, at Portsmouth, in New Hampshire; and accompanied his remarks in support of the motion, by reading an extract from the official returns of Colonel Wool, the Inspector General.

On this motion a desultory debate arose, in which Messrs. LETCHER, McLANE, VANCE, FORSYTH, BARTLETT, BURLEIGH, and WHIPPLE, took part; when the question being put, the motion of Mr. BARTLETT prevailed.

Mr. CAMBRELENG then moved to add the following:

"For the purchase of land, and a right of way, at Throg's Neck, on Long Island Sound, seventeen thousand dollars."

In support of this motion, Mr. CAMBRELENG made some statements of fact, which he concluded by calling for the reading of two letters: one from the Secretary of War, and the other from the Board of Engineers, in relation to this subject.

Mr. POWELL wishing for further information, moved that the Committee rise.

The Committee then rose, and having obtained leave to sit again,

The House adjourned.

WEDNESDAY, FEBRUARY 1, 1826.

CONGRESS OF PANAMA.

The resolution calling upon the Executive for information respecting the Congress of Panama, again came up for consideration.

Mr. LIVINGSTON said, that he had, when the resolution was first called up, thought that it was premature, and that the call for information might be delayed until the appointment of Ministers rendered the appropriation necessary; but a short reflection had convinced him that it was proper to act, and to act promptly.

The information required by the resolution might be applied, 1st, either to enable the House to judge of the expediency of making appropriation for the mission, should the Ministers be commissioned; or, 2dly, to enable them to form a just opinion on the propriety of the measure, and to express it, whether the appointment were concurred in or not.

It was as applicable to the first point alone, that it appeared to him any doubts of the propriety of now passing the resolution, could be entertained. That they would vanish, when it was considered that if, after having the whole information before us, we should think the mission a proper measure; that we ought to suppose the co-ordinate branches of the Government would do what is right; and that, having the information before us, we might then be enabled to act promptly, by making the necessary appropriations.

But, said Mr. L., it is chiefly in the second application of the information that I think the call for it important—an object more interesting has rarely occupied the attention of any assembly—an interest of the most pleasing kind! Not connected with present danger, future embarrassment, or disagreeable retrospect; containing every thing to encourage, nothing to dishearten or deter. Fortunately, no scruples arising from doubts of the constitutional power

Such a mission, in his opinion, ought not to be rejected, unless this House should concur, in the rejection. It was a measure involving great questions of public interest, which might influence the destines of this country for ages to come, and was, therefore, one of the cases in which a high responsibility would rest upon both Houses of Congress as well as upon the Executive. He thought there was much more danger to be apprehended from a refusal, than an acceptance of the invitation to meet our Sister Republics in the Congress of Panama.

Mr. DRAYTON now renewed his motion, to lay the resolution on the table: and, on this question, Mr. METCALFE asked for the Yeas and Nays; but, before they were taken, Mr. DRAYTON again withdrew his motion, at the request of Mr. BUCHANAN.

When Mr. ALLEN, of Mass. demanded that the House should proceed to the orders of the day.

The SPEAKER replied, that the hour being elapsed for the presentation of resolutions, it was in order for any member to demand the orders of the day; and the further discussion of Mr. HAMILTON'S call, was accordingly, for the present, suspended.

APPROPRIATIONS FOR FORTIFICATIONS.

On motion of Mr. McLANE, of Delaware, the House then went into Committee of the Whole, Mr. CONDICT in the Chair, on the bill making further appropriation for certain fortifications of the United States, for the year 1826; and the question being on Mr. COCKE'S amendment, reducing the appropriation for fortress Monroe from 115,000 dollars to 80,000 dollars—

Mr. COCKE rose and said, that, when this subject was under discussion before, some remarks had been made in regard to his motion, which he thought called for some reply. The object he had in view in making the motion was, only that we should not progress in completing the fortifications that have been commenced, with the rapidity which is proposed.

Mr. C. said it never was his intention to oppose, nor had he ever opposed carrying on these fortifications in regular progression, according to what was his understanding of the views of Government in regard to them; but when he looked at the small amount which had been appropriated in former years, and when he discovered that the sum demanded was increasing in regular, and he might say alarming progression, he did call the attention of the Committee to the point, whether they were to go on and complete them immediately, or whether a longer time than was contemplated by the present bill should be fixed for accomplishing this object.

Previous to the year 1821, there was an appropriation in gross, placed at the disposal of the Executive. It was then thought proper that a sufficient sum should be applied for each specific object. By referring to the appropriation for the years from that time, including the year 1821, he found that in 1821, the sum of $302,000 was all that was thought necessary for expenditure on these works. In 1822 the demand was increased, and the sum then demanded and appropriated was $370,000. In 1823, the sum of $508,000, was appropriated, of which $8,000 was required for repairs and contingencies. About this time they were told, that a fortification in the neighborhood of this place would be completed if this $508,000 were appropriated. He alluded to Fort Delaware. The estimate was returned to this House, showing that, if the sum then demanded should be given, the Government would, in the course of that year, complete this fortification. It was given accordingly, and, in 1824, there was another estimate sent in to complete this same Fort Delaware. The sum that was first admitted was founded on the estimates of the corps of Engineers, and was found to be insufficient and here Mr. C. said he would remark, that, with the fact before them, they were called on to rely implicitly on the estimates of this Department, and it was thought next to treason for a member on this floor even to request information as to whether the calculations were correct or not. And what was the result? Although this fortification was almost in the neighborhood, where he presumed the Engineers (for some of whom he professed high respect, on account of their talents, of others he knew nothing,) would come to view the other works and what did they discover? Why, with all their skill and vigilance, they found the fort was spoiled.

[Mr. McDUFFIE here called Mr. COCKE to order.]

The Chairman requested the gentleman to state the point of order which had been violated.

Mr. McDUFFIE replied, that the only subject of discussion before the House was the amount of an appropriation for fortress Monroe, and that the observations of Mr. COCKE, had no reference to that subject.

The Chair decided that the member from Tennessee was in order. The subject was one which necessarily admitted of a wide range of discussion—some gentlemen objecting to the appropriation on one ground and other gentlemen on another. Some would refuse the sum in the bill because they disapprove of the system of fortifications altogether, some oppose it on the ground of the situation of the public finances—others because it is not in proportion to sums for other works, &c. He therefore conceived that the gentleman who now had the floor was not exercising any greater latitude than had been permitted to others.]

Mr. C. resumed. The decision of the Chair would justify him in the course he proposed to take, as he should proceed to the object he had in view in recapitulating what had been the case heretofore with what he now urged, and should endeavor to show the Committee that the demand made upon them was not founded on such unerring principles, as that it was not to be inquired into. He would remark, then, that when the sum demanded was appropriated in 1824, there was an estimate made by the same Department, on which they were then called on to rely with the most implicit confidence; and when they went to see how it had been applied they discovered, although the fort was in the immediate vicinity of this place, it had been entrusted to a subaltern officer, and that it was spoiled. The history of the times shewed, Mr. C. said, that the officer was arrested; that a Court martial was called; and that, after great labor and patience, the Court found that the officer had not sufficient capacity to be trusted, and had disobeyed his orders, and had adopted a plan his own. Mr. C. said, he would ask gentlemen to pause and reflect for one moment, and determine what they were willing, with no more information than had, to place in these estimates the confidence that was demanded of them. In the year 1824, the sum demanded was $620,000, and two sites for fortifications were authorized to be purchased by it; in the year 1825, the sum was still increasing to $730,000, and this year, with the unexpended balance of the appropriation of last year, the sum now asked to be expended on the fortifications, is near a million of dollars. When this House saw the demand increasing, was it not sufficient to induce them to pause and ask why this is so? Surely, Mr. C. said, this was an evil; and yet, if a member of this House makes an application to reduce the appropriation to what it was before, it is denounced as "a miserable saving." It is a miserable saving, founded on miserable calculations, on which they were called upon to rely. He had also been told, that the sum intended to be expended would be consumed in one day's debate. This, said Mr. C. was a most miserable mistake, founded on a most

able calculation. Two of the fortifications that were amongst the original number are finished—Forts Delaware and Washington; and why was it that, after these two Forts were finished, the sum to be taken from the Treasury was to be increased? It would require certainly very strong arguments to induce this House to rely on the estimates, and to place the confidence demanded. This doctrine of unlimited confidence was the doctrine of 1797 and 1798: he need not say to what consequences it led. It was known to every member of this House. The present system, if persisted in, would introduce a standing army. While these fortifications are in progress, those persons who are employed in the erection of them will always take care of them; but the moment they are completed, there must be a force sufficient to man them and preserve them: otherwise every appropriation that had been made would go for nothing, and they would fall to ruin. Would it be amiss, asked Mr. C., to turn the attention of the Committee for a moment to the fortifications that had been completed, and to ascertain how many had become useless; how many had been abandoned; and how many there now were in this chain of maritime defence? At New York there were not less than three or four which were built at a great expense, which are now useless. The site of one of them, (Castle Clinton) this House is now told, has been re-conveyed to the State of New York, and is now converted into a public pleasure garden. Were they to go on thus, placing implicit confidence in the estimates which were not made by the Engineer Department? It was impossible it could be the fact. They must have derived their information from subordinate officers on the spot; and it was from their information, and not from personal observation, that the estimate was made. Could they tell how many perches of stone were required for the fort at New Orleans? or how many brick would be necessary at Mobile? It could not be expected of them that they should: and, Mr. C. said, he believed that, if the information were asked of them, they would say at once that they had founded their estimates on information sent in by the subordinate officers. He recollected that, at Mobile Point, there was a subordinate officer placed to superintend the work, who contracted in such a manner that this House withheld the whole or a part of the appropriation.

One work was begun at Dauphin Island, and large sums were expended there; since that time, immense damages had been paid by this House to the contractors: and when they came to ascertain the depth of water, it was found that vessels, drawing more than sixteen feet, could not come nearer than four miles; and, after getting over the outer bar, could not come within a mile and a half of this fortification. Yet, said Mr. C., we are called on to place implicit confidence in such calculations. Was it come to this, that whenever a difference of opinion should be expressed with regard to the measures of this Government, or on a proposition submitted to the House for consideration, it was to be denounced and treated with the utmost disrespect? Whenever this state of things existed, freedom of debate would be destroyed; and, Mr. C said, he would venture to say, that the gentleman who was most tenacious of saving time and public money, in debate, had expended as much in discussion as any other member on that floor—none more so, according to his recollection.

One of the fortifications at New York, to which he had alluded a few minutes ago, was Castle Williams. It had been completed at a great expense, and he had been told that one of the American frigates, that passed by, to try its strength, fired a shot at it, which had liked to have demolished it. Yet this fort was built on the scientific plan, by scientific men, expressly selected to build it. There was also another fort, which had been built at a great expense, and the first cannon that was fired in it, rent it from top to bottom. This, too, was built on the scientific plan: and, with these evidences before them, ought they not to pause and consider whether they would go on appropriating money—a million of dollars on fortifications, when there were so many demands on the Treasury? This would be to establish "a magnificent Government" he knew: it would be very splendid, indeed. We should have a whole chain of fortifications, extending upwards of three thousand miles; but if we turned our attention to the People, we should find them poor and "miserable" indeed; and this was the "misery," Mr. C. said, he wished to avoid.

They had been told, during the discussion, that this sum must be appropriated for completing existing contracts. That was a position, Mr. C. said, it was impossible he could ever subscribe to. Where did the officers of this Government derive their authority to make contracts which should bind this Government? When a sum of money is appropriated and placed in his hands, he is authorized to make a contract, and to expend it according to the object for which it was appropriated; but, whenever it was admitted that an officer could exceed the appropriation, and could make whatever contracts he thought proper, which should be binding on the Government, that article in the Constitution would be useless, which provides that no money shall be drawn from the Treasury but in consequence of appropriations made by law. He admitted the dollars could not be taken out of the Treasury; but if this House were compelled to make the appropriations, where would be the benefits to be derived by the People from this clause? There would be none: it would be a blank, and mean nothing. This, Mr. C. said, he had always viewed as one of the most salutary provisions in the Constitution, and it was necessary to have some rule to go by to keep our officers within bounds.

Mr. C. said, he admitted, from some expressions which had dropped from one of the members of the Committee of Ways and Means, in the course of this argument, that they had one other authority to rely upon, besides that of the estimates. That Committee had told them, *they* had examined these estimates and had given *their* approbation to the appropriation. Yet, the gentleman who had denounced his proposition as "a miserable saving," now comes out and says frankly, "I know nothing about it—I dont know what sum is necessary—I am quite ignorant—as ignorant as the gentleman from Tennessee." This, Mr. C. said, was a "most miserable" doctrine to rely upon; and he should conceive himself placed in a "miserable" condition were he to follow that example. They derived their information from the Committee, and when the Committee were called on, they knew nothing of the matter, and the House must pin their faith on the sleeve of the Engineers, and be governed by their calculations.

Mr. C. said, his proposition had been denounced as a "most miserable" production, with an assurance that it would produce more expense to Government than all the savings that could possibly be made by it. He had, therefore, thought proper to make a calculation. The expense of all the members is, one thousand seven hundred and twenty-eight dollars a day: he would allow three hundred dollars more for contingent expenses—thus making an expense of about two thousand dollars a day. The sum intended to be saved, if the motion succeeded to strike it from this appropriation, would be thirty-five thousand dollars. Here was a "most miserable" calculation, and a "miserable" mistake founded on that calculation.

But, said Mr. C. are we to be trammelled in debate, in the free expression of opinion in this House? Are we to be denounced as making "miserable" motions, and "miserable" savings? Are we to be prevented from investigating the estimates of this immaculate corps of Engineers, because it has passed the Committee of Ways and Means, one of whom tells us he is ignorant whether they are founded on correct or incorrect principles? Mr. C.

said, he supposed that the gentlemen who meant to pursue this course, would be able to account to those who sent them here: and why, asked Mr. C., were they sent here? Was it not to guard the rights of the People? and how could they guard them more substantially than by seeing that the money that was taken from the People was not only applied to proper purposes, but to see that a strict examination of the accounts was made.

But the gentleman had told them that we ought to have the utmost *confidence* in the public officers; and, Mr. C. said, he should infer, from the violence of his gestures, coupled with the particular emphasis with which he had delivered his sentiments, it would be high treason against the Government to question the calculation or the conduct of the officers, or even to require a strict account of them.

As to the fortifications, Mr. C. said, he thought a portion of them were correct. He had no doubt but some of the great inlets ought to be fortified. He had always given his support to them: but when they entered into a general system, where were they to stop? The gentleman had told them yesterday, that these new fortifications could not strictly be considered as new fortifications: they were connected with the general plan, which plan had been adopted by Government.

[Mr. McLANE explained: he only alluded to the fort at Bayou Bienvenue.]

Mr. C. resumed. The gentleman says he did not say so; but that one of the fortifications on the Mississippi could not be considered as a new fortification, because it was connected with the general plan of defence at New Orleans. If this argument was correct, are not all the fortifications that have been recommended, to be considered as standing on the same footing, only on a more extended scale: are they not connected with the general plan of defence of the maritime frontier?

The proper defences of our country were, as we had been told by the gentleman from Massachusetts, (Mr. BAYLIES) "stout hearts, and strong bayonets:" on these we ought to rely. If we have all the fortifications that are contemplated, without these, they would be useless: and, from the experience we have had, from the defence at New Orleans, where the breastwork was thrown up in one night, and behind which these stout hearts were placed, was able to resist the foe sent, flushed with victory, from Europe; and who, incited by the hope of "beauty and booty," made the most daring approach, were we to learn nothing from that? Were we to place our confidence in fortifications?

During the late war, Mr. C. said, the militia sustained the utmost injury, and were left deprived of almost every thing, for the purpose of defending a few fortifications: the regular force could not be spared for that purpose: for it was employed elsewhere. Look to the defence of Norfolk, which had been called the burying ground of Virginia, where the militia suffered more loss and greater privations than human beings ever did sustain before!

The doctrine he had been advancing, Mr. C. said, he supposed would not be acceptable in the neighborhood of Bladensburg. But this was a doctrine that he dare advance any where—that this Government would derive benefit from its People, by using the materials mentioned by the gentleman from Massachusetts, and which it had been proved to the world could be relied on. With regard to the particular sum appropriated, if this House thought proper to make grants, and take every dollar from the Treasury, he considered he had done his duty, and nothing more than his duty, when he asked to reduce the sum, and allow the fortifications to progress at a less rapid rate of advance than was now proposed.

Mr. McDUFFIE rose in reply. He did not intend to say much at this time; and what little he did say, was only with a view to repel some of the remarks of the gentleman from Tennessee, which he understood to have been directed more especially to himself. It seems to me, said Mr. McD., that the gentleman has put a construction of harshness upon what I submitted, when I addressed the Committee on Thursday, which is altogether unnecessary and gratuitous. Sir, I do not know that I placed myself in the attitude of denouncing any member on this floor. I certainly feel too much respect for myself, if not to others, to put myself willingly in an attitude so obnoxious. Have I not the liberty of differing in opinion from the honorable gentleman, and may I not express that difference? Has not the gentleman, himself, just given us a specimen of the freedom of debate? He appears strangely sensitive, though I only endeavored to prove the absurdity of his proposition: for such I will call it now, though before I contented myself with only proving it to be so. Sir, what were the remarks which seem to have called forth so much of the feeling of the gentleman? I stated, sir, that the savings he endeavored to introduce, were miserable savings. I still think them miserable savings; but the term related, of course, only to the amount of those savings, and not as to any other character which they might have possessed. The gentleman, however, is at liberty to put on my words whatever interpretation he pleases. I did but risk a conjecture as to the total amount of them, and now, after three days incubation, the gentleman comes here, and, in a spirit, I will not say of acrimony, but certainly of some excitement, undertakes to criticise the expressions I used.

Sir, I take the merits of this case to lie within a very narrow compass. The gentleman from Tennessee has alluded to the fact, that, during the three or four last years, the expenditure on fortifications has been constantly increasing. But the gentleman ought, in fairness, to have looked at the original plan on which they were begun, and at the causes which have led to this increase.

At the close of the last war, the country, as we all remember, was in a state of the most disastrous embarrassment. An immense national debt was pressing on the nation; all its commercial resources were dried up; the Treasury was drained; and our whole pecuniary means in a state of the most extreme exhaustion. Yet, sir, under such a pressure, our very first appropriation for these fortifications was eight hundred thousand dollars; and, for a long time, this continued to be the regular annual appropriation. This sum was appropriated in gross, and placed as to its application, at the discretion of the Executive. And how, sir, did it occur, that the amount of appropriation was reduced? Was it because the nation decried the policy of this system? Did they think we were going too fast? Or did they disapprove this system of expenditure? No, sir, the reduction was occasioned by causes like this. It took place because this department of public expenditure shared in the common embarrassment of the finances which prevailed throughout this country in 1821: an embarrassment which shook the commercial interests of the community to their foundations, and by which all our institutions were put to hazard. It was with great reluctance that the reduction was made; and, now, sir, when the appropriation is getting up towards its original amount, but has not reached that amount, gentlemen affect the greatest alarm as to our ability to defray it. No, sir, as this is a mere question of finance, (on which subject I do profess to know a little, though not much,) I undertake to say, that the financial ability of this country is, at this time, ten times as great as it was when we appropriated, annually, eight hundred thousand dollars to these objects. Yet, now the gentleman complains of the formidable sum in the bill, and anticipates the most disastrous results.

But the gentleman has said something as to the obligation of existing contracts, and protests against the doctrine, that this House is bound to make any appropriation

meet them. Now, any gentleman who knows any thing this subject, (I do not say, who is skilled in the science Engineering, but who is, in the least degree, acquaint-l with this subject,) cannot but know that the contracts ade for these fortifications must be continuous, or the ogress of the works must stop. The contracts are usually ade in the last part of March and April. Must the work op till this appropriation bill has passed? If the Depart-ent do not anticipate that bill, there must be an inter-ption every year. The Department, therefore, does ticipate it, and acts upon the just presumption, that it ill be equal in amount to what it was in the preceding ar. Sir, they have a right thus to presume. If our sys-m of fortifications is to proceed, this must be the case. his is the constant practice of the Engineer Department, d it is indispensable to the progress of this system of e national defence.

Mr. Chairman, a great deal has been said on the subject " confidence"—a word I unfortunately happened to se, when speaking on this subject. Sir, I do not know y reason why gentlemen should ascribe to *me* a disposi-on to repose undue confidence in the Executive Depart-ent of the Government. I believe there is nothing in y situation which particularly calls for it; nor am I dis-osed to give to the members of the Engineer Corps, or the Head of the War Department, any other, or any reater confidence than, in the same situation, I should xpect from others.

Every Department of the Government owes it to every ther Department, to presume that it will do its duty. nd I would reply to the gentleman, on this subject, that *is* constituents never sent him here to discharge the duty hich pertains to the Executive Department. They did ot send him to do the duty of an Engineer: they id not appoint him to make estimates for the War Depart-ent. That, sir, is not the duty of a member of Congress: henever he attempts it, he travels out of his sphere, and sure to do wrong. Now, sir, as to the question of mount: the Board of Engineers have given us their esti-ates, on which the sum in the bill has been reported, nd by which I still think we ought to be governed. The entleman from Tennessee has done me the honor to say, nd he quotes my own authority for the assertion, that I now nothing at all of the subject. Now, sir, I did not y that I knew nothing of the subject—I said I derived y knowledge of it from the estimates rendered. Sir, is true that, without these estimates, I should know othing of the amount of appropriation required; and will take the liberty to add, that I presume the hon-rable gentleman, himself, except from these estimates, nows no more of the subject than I do. The sum the bill is founded on the estimates, and we are re-uired by the gentleman from Tennessee to reduce them. But on what evidence? Does the gentleman produce ny proof that the estimates are incorrect? Not at all. Has he any thing by which to correct them? He has othing. Does he furnish us with any other estimates? No, sir, we have nothing; not even the estimate of the gentleman himself. He does not pretend to say that eighty thousand dollars will complete these works. Yet, e says, we must appropriate eighty thousand dollars, and not one hundred and fifteen thousand dollars. We are required to discard a sum founded on knowledge, and take another sum founded on no knowledge at all. For that, ir, is, in truth, the basis of the motion of the gentleman rom Tennessee.

But the gentleman is afraid that this alarming doctrine of confidence, will bring upon the nation all the evils of former days. Sir, I am sorry to see this association of for-mer days, so often brought into our present debates. Those evils, surely, have nothing to do with this appro-priation. The former parties which existed in this coun-try, are not concerned on the present occasion. This is a proposition for the national defence; and whatever have been, or may be our contests, I trust in God there never has been, and never will be, a party in this Republic against the defence of the country.

The question was then taken on appropriating one hun-dred and fifteen thousand dollars, (the larger of the two sums mentioned, for carrying on the works at Fortress Monroe) and decided in the affirmative.

The residue of the bill having been gone through—

Mr. BARTLETT moved an appropriation of two thou-sand five hundred dollars for repairs of Fort Constitution, at Portsmouth, in New Hampshire; and accompanied his remarks in support of the motion, by reading an extract from the official returns of Colonel Wool, the Inspector General.

On this motion a desultory debate arose, in which Messrs. LETCHER, McLANE, VANCE, FORSYTH, BARTLETT, BURLEIGH, and WHIPPLE, took part; when the question being put, the motion of Mr. BART-LETT prevailed.

Mr. CAMBRELENG then moved to add the following:

"For the purchase of land, and a right of way, at Throg's Neck, on Long Island Sound, seventeen thousand dollars."

In support of this motion, Mr. CAMBRELENG made some statements of fact, which he concluded by calling for the reading of two letters: one from the Secretary of War, and the other from the Board of Engineers, in rela-tion to this subject.

Mr. POWELL wishing for further information, moved that the Committee rise.

The Committee then rose, and having obtained leave to sit again,

The House adjourned.

WEDNESDAY, FEBRUARY 1, 1826.

CONGRESS OF PANAMA.

The resolution calling upon the Executive for informa-tion respecting the Congress of Panama, again came up for consideration.

Mr. LIVINGSTON said, that he had, when the reso-lution was first called up, thought that it was premature, and that the call for information might be delayed until the appointment of Ministers rendered the appropriation necessary; but a short reflection had convinced him that it was proper to act, and to act promptly.

The information required by the resolution might be applied, 1st, either to enable the House to judge of the ex-pediency of making appropriation for the mission, should the Ministers be commissioned; or, 2dly, to enable them to form a just opinion on the propriety of the measure, and to express it, whether the appointment were concur-red in or not.

It was as applicable to the first point alone, that it ap-peared to him any doubts of the propriety of now passing the resolution, could be entertained. That they would vanish, when it was considered that if, after having the whole information before us, we should think the mission a proper measure; that we ought to suppose the co-ordi-nate branches of the Government would do what is right; and that, having the information before us, we might then be enabled to act promptly, by making the necessary ap-propriations.

But, said Mr. L., it is chiefly in the second application of the information that I think the call for it important—an object more interesting has rarely occupied the atten-tion of any assembly—an interest of the most pleasing kind! Not connected with present danger, future embarrassment, or disagreeable retrospect; containing every thing to en-courage, nothing to dishearten or deter. Fortunately, no scruples arising from doubts of the constitutional power

of the House to asking information, and to act on it when received, can now be reasonably entertained. That question was settled thirty years ago, by a solemn resolution, passed after the fullest debate that perhaps any question under our Government received; and it asserts not only the right to refuse the co-operation of this House in carrying treaties into effect, but to call for information without assigning any reasons for that call. Having co-operated in procuring the passage of this resolution, and in the interval, since its passage, have had no reason to doubt its correctness, or seen it called in question by any legislative act, I have a right to consider the question of constitutional power as at rest. On that of expediency, there is, as might be reasonably expected, a difference of opinion.

The gentleman from Virginia, who favored the House with his opinions yesterday, with great propriety considered what would be the probable objects of this mission; and what would be the consequences of effecting them. What those objects really are, neither that gentleman nor myself can know. We may, however, both conjecture: he has stated his anticipations—they are of the most gloomy kind. Mine are the very reverse. He thinks that the first object to be effected, is a coalition of the American Republics to counteract the coalition of Kings in the Holy Alliance; that, as that is to be supported by twelve hundred thousand bayonets in Europe, an equal number are to be unsheathed to enforce the adoption of Republican principles in America; to destroy the Imperial Government of Brazil, and root out every trace of monarchy on our soil; that we are, of necessity, to become a party to this coalition, and are to be involved in all the expense and difficulty of its execution. I believe, sir, we need entertain no apprehension that the President intends to involve us in the execution of so Quixotic a plan.

Such an interference with foreign Governments is contrary to every principle we have professed, and ought not, without some evidence, to be supposed to exist: having no such evidence, and believing it impracticable, as well as unwise and unjust, I cannot think that it forms any part of the contemplated mission. But if the objection had been, that, in its effect, it would form a counterpoise to the principles of the Holy Alliance, I should at once acknowledge its truth; not as forming an objection, but as one of the inevitable and beneficial consequences of the measure. That alliance is a coalition of Kings, formed for the purpose of supporting legitimate power; by which they mean the support of half a dozen families in the Government of as many Kingdoms or Empires of Europe. The means by which this is to be effected, are, not only the employment of the bayonets which have been mentioned, but by arresting the progress of the understanding; depriving men of the advantages of education; debasing the human intellect; and bringing mankind back to the ignorance, bigotry, and slavery, of the dark period that existed four hundred years ago. Now, sir, the counteraction of the Congress of Panama is to proceed, not from physical, but from moral force; not by alliances or coalitions, or bayonets, to be employed in their defence, but by the force of truth: for, can it be doubted that the spectacle of an assembly of free Republics, which have just entered into political existence, meeting for the purpose of discussing those principles of liberty and equality of rights on which they are all founded, and debating in what manner, and by what means, those rights can be best preserved; consulting, on this occasion, with the Representatives of that nation, which shewed the way to independence, and reaping the benefits of her experience; promoting free commerce; spreading the blessings of education; and diffusing the lights of science; ennobling the debased, with a sense of their dignity, as citizens of a free State; pursuing, in short, the very reverse, in all things, of the retrograde march of the monarchs of Europe: can it be doubted, I say, that this spectacle must have an important effect in counteracting the policy of the Holy Alliance? And what is there to alarm us in this? Who will regret that we have assisted to throw this counterpoise to the degradation and slavery of man into the scale? Not the honorable gentleman from Virginia. No member in this House: no man in this country.

But we are also told that this mission will involve us in entangling alliances, involving the conquest of Cuba, and the acknowledgment of Hayti; and that the consequences are to be war, insurrection, desolation, and ruin! Sir, I agree with the gentleman, that if we are imprudent enough to form alliances for such purposes, that they may be attended with some of the consequences he has predicted; but I cannot, with him, believe, that any thing of this kind is intended.

If these consequences are so apparent as to raise the apprehensions of the gentleman who predicts them, may we not believe, ought we not, in common candor, to allow, that they will not have escaped the attention of the Executive? and it requires no extraordinary opinion of the ability of the President, or any stretch of confidence in his good intentions, to believe that he must see, and will certainly avoid, consequences so fatal to the country, so ruinous to himself. But, admit, no matter how improbable, that this opinion is ill-founded, this confidence misplaced, we hold the remedy in our hands, and this resolution enables us to apply it. By the papers submitted to us, we shall see whether any such mischievous measures are contemplated; and we can withhold the appropriations: or, if we should be deceived, and a treaty, contrary to our interest, should be formed, we have still the remedy in our hands—we can refuse the supplies necessary for its execution. Besides, what reason can we have for supposing that such measures are contemplated? None, from the nature of the measure. None, from any motive that could be imputed to the Executive. His interest, in all proper measures is ours; he has none that are distinct. As we are now arguing on supposed objects, we ought not to conjecture any that are unwise or injurious, without some ground of motive or interest.

A gentleman from South Carolina made, yesterday, some very pertinent remarks, which I should have listened to with greater pleasure, if he had not been influenced, in my opinion, with the same gloomy anticipations that clouded those of the member from Virginia. He first objects to the mission because it is unprecedented. It is, sir; but is it the worse for that? The argument might have some force if similar circumstances had before presented themselves, and the wisdom of Congress had refused to interfere. But the circumstances are new, and our mode of action, in regard to them, must, therefore, necessarily be of the first impression also. I go further than the gentleman from South Carolina. I think the case not only unprecedented, but that it will long, if not forever, remain without a parallel. When have we ever seen, when shall we ever again see, a whole continent, by a simultaneous movement, bursting their chains, starting at once into existence, as separate Republics; framing those Republics on the truest principles of civil liberty, and applying to us for the aid of our experience, for the benefit of our own institutions, and inviting us to exchange with them their dearest political interests? And, because the spectacle is new, shall we reject the honor that is offered of figuring as the founders of those principles? Shall we neglect to fill the dignified station that is offered? Shall we refuse to occupy the bright page of history which is opened for us? The same gentleman repeats the fear of our being involved in entangling alliances: of what nature these are, that are to hold out so many motives to induce us to forget our safety, our interest, and the wise advice of the great man from whose legacy the term is taken, we are not told. No motive is alleged, to make

robable that they will be formed; and again, therefore, repeat, I do not apprehend that it is intended to involve s in their difficulties: again, I answer, if such be the int, the remedy is in our own hand. If the design is ommunicated, we stop the mission. If it should be concealed, we stop the execution of the treaty. We have the afety valve under our control: the tremendous explosion vith which we are threatened is avoided, and nothing of is heard but the hissing noise of derision against its conrivers, as its force is innocently scattered in the air. The entleman from South Carolina also thinks that this will e an improper interference with the duties of other ranches of the Government; but if we do no more than xercise our legal power, there can be no interference.

Having stated my reasons for believing the conjectures that have been offered to the House, as to the obect of the mission, to be ill-founded, it is necessary to do nore, in order to shew that the call is proper: for if no bject can be assigned to the measure that can produce dvantage to the country, we had better abandon it here, nd not call for information that can be used to no benefiial purpose. From the time I first heard of the invitaion given to us to attend this Congress, I considered that our acceptance would produce not only honorable distinction, but solid advantage: and few passages in the President's message gave me so much satisfaction as that in which he announces his intention to name Ministers to represent us; and I will, with permission of the House, detail those points from which I believed that advantages were to arise.

First. We must form a clear idea of the nature of the body in whose deliberations we are invited to take a part. It is a Congress of Deputies from several Independent Republics, recently emancipated from subjection to the same power, called together for the purpose of consulting on objects of common concern, and desirous of the benefit of our counsel and co-operation in all things not affecting our duties to other nations. We are, as I understand it, to form part of the Congress; but the manner in which that body is to be organized, is a matter of the greatest moment; if, as a representative body, in which the will of the majority is to bind the other members, I should not think any of the apprehensions that have been formed of it to be too great. It would bind us to we know not what; and neither our Constitution nor our interest would warrant it. I should, if such should prove to be the intent, decidedly vote against the measure, and forego all the advantages, on another view of the subject, I should expect from it. But there is, in my mind, an easy and an obvious remedy. If the powers given to our Ministers are entirely diplomatic, and authorize them to appear as Ministers to sign such stipulations only as we shall find it our interest to make with all, or any of the Powers, this evil vanishes; and as I can see no motive for preferring the other course, fraught with so many evils, I cannot believe that it will be preferred. But, if we find it is preferred, we hold the remedy, and no member will be more ready than Ishall to apply it. Meeting, then, on this independent footing, bound by no opinions but their own, and the instructions they may receive, our Ministers appear in a Congress in which they not only have the benefit of debating themselves, but of hearing the interests of all the other Republics discussed; in which proposals and modifications of all the interests which connect them with each other, with us, and with the rest of the world, will be made and debated, and where the presence of all the parties interested, will give a decided advantage to this mode of negotiation over that by separate missions. What are the objects that can arise, in the course of their conference, in which we have an interest?

The first object that will naturally engage the attention of the Congress, I should suppose, would be the regulation of commerce between each other and the rest of the world; and this subject surely is one in which the abilities of our Ministers may be exerted to the greatest advantage. Our policy is not, I conceive, any exclusive benefit, but to leave the field clear for fair competition. Is it no advantage, then, to have a seat and the right of free debate in a body, where these points are to be discussed? How many restrictions, how many monopolies, may we avoid by enforcing, with eloquence and truth, the mutual advantages of free commerce, and a liberal exchange of superfluities? This argument particularly applies to the principles which it is our interest, as well as our duty to enforce, with respect to the restrictions on the carrying trade, which a mistaken view of their true operation, might induce our neighbors to adopt.

Again, there are certain principles which we have long endeavored to establish, in the maritime code of nations—principles calculated to alleviate the miseries of war; and, perhaps, if persevered in, to make them less frequent. This maritime law is sometimes founded on positive stipulation, so general and so often repeated, as to have the force of law, although arbitrary, and not founded on the great principles of justice and equity. Other parts rest solely on the basis of those principles; but which, from the conflicting interests of nations, have been subjects of dispute and cavil. Of this nature, is the maxim that free ships make free goods; of this nature, is the restriction of contraband to articles strictly of a warlike nature; the right of blockade. In all these questions, we have a special and a vital interest. We have contended for their establishment from the commencement of our political existence; and, as a nation whose policy is eminently pacific, interest as well as principle, points out to us the necessity of procuring their acknowledgment. For this, a representation in the Congress would give us facilities that we should be inexcusable not to avail ourselves of. Another object connected with this, is the placing private property on the Ocean, in time of war, in the same safety that it is on land. No good reason can be given why, when a maritime town is taken by an enemy's force, private property should be respected in stores, when the same property, moved into a ship, would be good prize—why the husbandman may pursue his calling, and the sailor, following an equally peaceful business, should be liable to capture and imprisonment. How honorable to ourselves, how important to humanity, could stipulations to effect these objects, and to abolish the disgraceful and unprofitable practice of privateering, be, by our agency, introduced into the code of nations. And if their utility and justice should not cause them to be considered as part of the European laws of nations, but were made binding on the American States alone, the advantage would be incalculable; the reputation of having introduced them, would be permanent and splendid.

Again, sir, our neighboring Republics, although founded on the most correct principles of political liberty, yet are almost all of them wanting in the great object of religious toleration. Might it not, without extravagance, be hoped, that a free discussion of this subject among the assembled Deputies, and full development, by our Ministers, of the principles so universally acknowledged by the rest of the world, would lead to a relaxation of those rigid laws, now so generally in force in those countries.

Our late President proclaimed to the world, and he was justified in the declaration by a large majority of our constituents, that we should not see, with indifference, any European power attempting to establish a new colony in America. The whole continent, along both Oceans, from our Northern limits, to those of the Russian colonies, is now, with some trifling exceptions, in the hands of independent Powers. A similar declaration, made separately by each of them, would give force to the principle, and render its infraction less probable, because more hazardous. A negotiation, to produce this expression of senti-

ment, is another object that may, without danger, be made the duty of our Ministers.

The place at which the Congress assemble, will naturally, as well as the importance of the object, draw their attention to the magnificent project of joining the two Oceans by a ship canal. A free participation in the advantages of this enterprise, should it be found practicable, might also well be considered; be innocently and safely discussed; and, perhaps, secured to us.

I now approach a topic of the highest importance—the political situation of Cuba. I agree with the gentleman from Virginia, that this subject must, from the nature of things, come under the early discussion of that body. I agree with him, that the decision on that subject may have the most injurious, perhaps, fatal, effects on our peace and prosperity; and it is because I deeply apprehend those effects, which not even the energetic language of the gentleman from Virginia could paint too strongly—it is because I feel these apprehensions, (particularly in one result) for the country I represent: It is, therefore, that I think the mission all important: it is, therefore, that I feel we have delayed too long: it is, therefore, that I wish to bring the opinion of this House, and, by its means, the weight of public sentiment, to bear against any objections, any obstacles, that may, in other Departments, operate against it.

Cuba, sir, must not fall into the hands of any other European Power than that which now possesses it. Cuba must not be thrown into the power of a certain part of her population. Had I the power, I should think it well exercised in encountering every danger, and incurring every expense, that would avoid either of those results. The first would be fatal to the commerce, and, perhaps, to the Union of these States. The last would bring with it indescribable horrors to the whole population of that Island, and inevitably extend them to the Southern States. Now, sir, I put it to the House, whether an attempt by negotiation, under the most favorable circumstances, to avoid these difficulties, is not an attempt worth making. We know that the Confederated States have contemplated an invasion. We know that their forces are even now collecting for that purpose. Should this invasion be attempted, either with a reliance on insurrection to aid it, or with a force inadequate to suppress insurrection, all the evils we apprehend will have happened.

Able men will, undoubtedly, be sent on this mission. Will it be a difficult task for them to dissuade our friends from a hazardous expedition, so pregnant with evil to us? Can they not represent, with force, that this would be offensive, not defensive, war; and that Powers, hitherto neutral, might not see with indifference, schemes of aggrandizement and conquest? Might not other cogent reasons be urged? It may, sir, be already too late; and while we are debating, worse consequences than those we have heard predicted from the mission, may be caused by its failure or delay.

I think it also probable that the independence of Hayti may be discussed in this Congress; but because it will be discussed, I wish our Envoys to be there. The reasons so ably urged by the member from Massachusetts, against the recognition of that Power, may there be urged, and must have its effect, however independent it might have been before the advantages given to France, in the convention, reduced it to a colonial state.

These, sir, have struck me as topics which might be confided to the mission of Panama. I may, and probably am, mistaken in many of them; but they have been detailed to shew, that innocent and useful purposes may be answered by the mission. This detail is confined to direct advantages—advantages which could not be secured—some of them not at all, others not in the same degree, by ordinary separate missions; and I have endeavored to impress on the House the prudence of availing ourselves of the advantage of an assemblage of all the parties with whom we are to treat, and of treating with them as members of the same body.

But there are indirect advantages to be reaped from this mission, which we ought not to neglect. The invitation appears to have been kindly and cordially given. A refusal, in whatever terms it may be couched, must appear uncourteous, and must lessen that feeling of amity and good will that now prevails towards us; whereas, a frank acceptance will fortify and increase it, even if it were for no other purpose than to aid them with our advice, when it was applied for: to give them, in doubtful cases, the aid of our experience; to extend to them our useful institutions; to strengthen them in the love of liberty, and to assume, in fine, the honorable station which, by common consent, they have assigned to us, of their precursor in the noble career they have begun, and the prototype from which they copy their constitutional and legal forms.

Those who deny the existence of this national feeling, or undervalue its effect, must shut their eyes to the lights of experience. To deny its existence in nations, is to deny it in individuals, of which nations are composed. Let such, if any such there are, consider how long that gratitude and national feeling in favor of France continued, and, perhaps, in some minds still continues, in spite of the insults and injuries which were offered us by her Rulers. Feelings of enmity are equally powerful. The first should be cultivated by all fair means, and it may be by accepting this invitation: the last should be equally avoided, but the seeds of it may be planted by an ungracious refusal.

Here, sir, are an end of my conjectures, in opposition to those formed by other members. The House will weigh which are best founded. But I cannot conclude, without joining earnestly in the exhortation of the gentleman from Maryland, that, "if it is to be done, it should be done quickly." The gentleman from Virginia has, by the course of his reasoning—not, it is true, in direct words—given the true reading of the quotation: "If it were done when it were done, then it were well if it were done quickly." The gentleman from Virginia thinks it will not be well when it is done; he thinks the train of evils, he apprehends, will be but begun. Thinking thus, he is right to oppose the mission: thinking differently, I approve it.

After Mr. LIVINGSTON had closed his remarks the CHAIR declared the time allotted, by rule, for the discussion of resolutions, had elapsed, and the House passed to the Orders of the Day.

APPROPRIATIONS FOR FORTIFICATIONS

On motion of Mr. McLANE, of Delaware, the House went into Committee of the Whole on the bill "making further appropriations for certain fortifications of the United States;" Mr. CONDICT in the Chair.

And the question being on Mr. CAMBRELENG's motion to amend the bill, by inserting an appropriation of seventeen thousand dollars for the erection of a fortification on Throg's Point, in Long Island Sound,

Mr. CAMBRELENG spoke in favor of the amendment, and quoted passages from the report of the Engineers in 1821, from the letter of the present Secretary of War, and other documents, in support of it.

Mr. WOOD followed, in support of the motion. The subject had been before two committees of this House. In 1819, it was proposed to build a light-house on the Point; and, in 1821 and '22, appropriations were asked for that object, but were unexpended, in consequence of Government being unable to procure the land from the owner. This Point was afterwards selected by the Engineers, as a point on which to erect a fortification. After some further explanation by Mr. Wood, of the facts in this case,

Mr. POWELL opposed the motion, on the ground that it was improper to appropriate for a fortification

the propriety of which, the House had not the report of any committee. A report in favor of a light-house was a different matter from a report in favor of a fortification. It appeared to him strange, that this work should require fifty-two acres of ground. He had no hostility to the object, but only wished it duly examined, &c.

Mr. TOMLINSON spoke at large in favor of the amendment, and shewed that this point was described in the report of 1821, amongst the first class of points to be fortified. He described its situation, and demonstrated the advantages that would ensue from it, as protecting the Eastern approach to the City of New York—stating, with precision and perspicuity, the advantages of the position.

The question was then taken on agreeing to the amendment, and it was decided in the affirmative, Ayes 78—Noes 58.

Mr. FORSYTH moved to amend the bill, by inserting an appropriation of ten thousand dollars, for the erection of fortifications at Savannah, in Georgia.

The motion was advocated, at considerable length, and with much ability and earnestness, by Mr. FORSYTH; and forcibly opposed by Messrs. DWIGHT and STEWART: when, on the question being taken on the motion, it was decided in the negative.

Mr. STEWART then moved to amend the bill, by striking out the sum of twenty-five thousand dollars, "for Bogue Point, in North Carolina."

Mr. BRYAN addressed the Chair. The honorable gentleman from Pennsylvania, said Mr. B., after repeated demonstrations of hostility to the fortifications in North Carolina, has, at length, boldly advanced, and attempted to take them by storm. It might have been expected, that, before this gentleman called upon this House to retrace their steps—to act with such childish inconsistency, as to prostrate what they themselves had erected, he would also have attempted to allege some reason for so extraordinary a course. These fortifications have been called by the Chairman of the Committee of Ways and Means, the *children* of this House, and with peculiar propriety. It is true that they are not designated, in the report of the Board of Engineers, as works of the *first* class; but they are, nevertheless, recommended as works of utility, and of *national* utility. The principal reason alleged for their postponement, seems to be based upon the supposition of inconvenience to the Treasury, and the want of an Engineer to superintend their construction. The Chairman of the Committee of Ways and Means, who is the legitimate and responsible organ of this House, tells us that the appropriation asked can be conveniently spared, and there is now on the spot an Engineer, as I understand, of high promise in his profession. These difficulties are, therefore, obviated. Under the appropriation made last year, these works have been commenced. Materials have been collected, contracts have been made, and are making; the State has ceded all the territory that was asked; and authorized and pointed out a compulsory mode, (if necessary) for obtaining it at a fair valuation. And now, sir, are they to be abandoned? Is no respect to be paid to the feelings and wishes of a State thus excited by your own act? The gentleman from Pennsylvania, who seems to consider himself as the *elect* champion of Internal Improvements, wants the money, I suppose, for the Cumberland road; and says, or seems to think, that we want no outlet to the Ocean—that he will make a thoroughfare along our Sounds, which will answer our purposes. Sir, does he think that we will tamely submit to be shut out from the common highway of nations? No, sir; rather than submit to such degradation, we would navigate it in a canoe. We would not receive his Internal Improvements upon such *humiliating conditions*. When this subject, (the improvement of the Sounds) properly comes before the House, I shall endeavor to discuss it, and point out its great utility: and, sir, if effected, it does not require any wonderful penetration to convince the gentleman from Pennsylvania, that the necessity for these fortifications would be greatly increased. They would be essentially demanded for its protection. As the gentleman, sir, has shewn a lamentable ignorance upon this subject, I will endeavor to disclose to the Committee such facts, as I believe will place the matter in a juster point of view.

The entrance into what may be termed Beaufort Harbor, is called Old Topsail Inlet, and is situated about twelve miles W. N. W. of Cape Look Out. I understand the depth, on the bar, at low water, is 13 or 14 feet; and 17 or 18 at high water. The channel, (of the Inlet) is only from a quarter to half a mile wide, so that a vessel entering would be exposed to a point-blank shot from the fort. It is, perhaps, a mile and a half, or two miles, from the bar to the town. A vessel can get into this harbor with a wind at N. E. S. E.—E. S. W. and S. and all the points between; and after getting in, there is an anchorage of about four fathoms, or more, where one thousand sail can lie in safety. A vessel was never known to be lost in this harbor, in the severest gales. It is beautifully land-locked, by the main land; by Shackelford's Banks on the N. E. and Bogue Banks on the S. W. Its proximity to Cape Look Out, and its shoals, exempt it, in time of war, from blockade, as no enemy could risk a *blockading* squadron in such a dangerous neighborhood. This circumstance makes this harbor a port of refuge to privateers, letters of marque, and their prizes, and thus operates as a kind of natural defence. The experience of the last war conclusively establishes its great utility and convenience in this point of view.

When the Chesapeake and Northern ports were rigorously blockaded, this port could not be; and many active and daring privateers, and many valuable prizes, were thus saved, which must otherwise have fallen into the hands of the enemy. Upon these prizes, duties, to a considerable amount, were secured to the Government. I obtained, from the Treasury Department, this morning, an abstract, from which it appears, that, in 1813, the nett revenue from this port, amounted to upwards of one hundred thousand dollars: in 1814, to nearly one hundred thousand dollars. The nett revenue, from Wilmington, on Cape Fear, in 1813, was about one hundred and eighty-four thousand dollars: in 1814, one hundred and eighty-two thousand dollars: in 1815, two hundred and fifty-six thousand dollars. I omit fractions. It will, or should be recollected, Mr. Chairman, that your Treasury was thus recruited, when it was almost paralyzed by the exhausting efforts of war.

But, sir, it will be remembered that North Carolina pays, annually, a large amount in taxes upon consumption; that we are not so much an importing as a consuming State: and, although the revenue derived from the customs, &c. in New York, &c. may be pompously displayed, yet, the merest sciolist in political economy, knows that these duties are always paid, and that, too, with interest, by the *consumers*. How many millions, sir, have flowed into your Treasury from North Carolina since the adoption of the Constitution, and how many *hundreds* have returned? There is no member of this Union more loyal, more disinterestedly devoted to the true principles of the Federal compact, than the State of North Carolina. It must be so, Mr. Chairman: for her attachment has remained unshaken, unimpaired by political changes of every hue and character. I feel, sir, that my native State has been treated with cold neglect: I feel, Mr. Chairman, that the Carolinas and Georgia are the Ireland of *this* Union. I would scorn to appear here now, sir, as a mendicant for bounty. No, sir; I rely on the justice of this House. And now, sir, when a small appropriation is asked, the murmuring sound of opposition is heard. An honorable gentleman from Tennessee, "et tu Brute?" says that Providence has protected us: the nature of our

coast is a sufficient protection. Sir, it is not denied that our coast is unfriendly to an enemy; that it has its peculiarities. But the only fair operation o. this argument is found in the fact, that we, therefore, require less protection from the Government; and not that we should be entirely neglected—not that injury should be added to misfortune. While nearly two millions are to be expended for the defence of the Chesapeake, and upwards of three millions for the defence of New York and Narragansett Bay, we have a few thousands doled out to us, and then every dollar counted. It has been said, upon the general principle of this fortification bill, that the breasts of freemen are the best defence. In a certain sense, sir, this is true—most gloriously true. I shall not stay here to discuss the utility of fortifications for *interior* defence; and one reason is, Mr. Chairman, because I have not sufficient knowledge on that subject. But, sir, the experience of all ages and all nations proves, that a sea-coast—the bays and inlets—the watery high ways of a country, can *only* be defended by fortifications. I imagine, sir, that the breasts or *arms* of unsheltered freemen would not long resist the broadside of a seventy-four. When do we read, in modern history, of a nation's being protected who did not use their own resources? This argument, Mr. Chairman, has been answered, ever since the days of Æsop, by his fable of Hercules and the wagoner. It is difficult, sir, to conceive why these little forts should have been so much cannonaded, unless it was expected that they would have been found defenceless.

Gentlemen have *prudently* passed by the Chesapeake and Northern forts, and have borne down most gallantly upon these little embryo fortifications; eager to grasp the laurels of victory, without the pain of sweat and dust, much less any more serious grievance.

Gentlemen mistake, most egregiously, the true field of argument, when they suppose that it is the town alone they are called upon to defend: it is the *station*—it is the *inlet*. But, sir, humble as this town may be, the time may come, when, by a judicious system of internal improvement, it may rear its head with honest pride. A canal will, probably, be very shortly completed, connecting the waters of this harbor with those of the Neuse river, which will give it great facilities for internal trade: the improvements in the Sounds would also be productive of great advantages. And humble as it is, when compared with the proud emporium of the Western world, its citizens are alert when their country calls, and generous in time of need. I will not, Mr. Chairman, fatigue this Committee with more details. I am truly grateful for the indulgent attention with which I have been heard at this late hour, and beg pardon for the length of time which I have consumed.

Mr. STEWART, in rising, said, he regretted the necessity imposed on him by the remarks of the gentleman from North Carolina, (Mr. BRYAN) of detaining the Committee, at so late an hour, with a few remarks in reply. In making the motion, he had stated that his object was to ascertain the sense of the Committee on the propriety of continuing, in this bill, the new works which had been introduced at the last session, against the express remonstrance of the War Department. He had not intended to offer any argument on the subject; but, since the gentleman had demanded his reasons for the motion, he should give some of them, at least, and as briefly as possible. The gentleman was mistaken in supposing the motion had originated in a spirit of hostility to his particular district of country. Not so. He, Mr. S., would give a much larger amount to any useful purpose in North Carolina, but he was decidedly opposed to wasting the public money on useless objects, whilst those, vastly more important, were neglected and postponed for want of funds to prosecute them.

For what purpose is a fort required at Bogue Point? What is it to defend? Here is to be found no City; no wealth; no river; no naval depot; no public property, or public works whatever; nothing to tempt an enemy to come there, even were it practicable to do so. But the gentleman says, it is recommended by the Engineers True! and for what purpose? This, the gentleman with all his information, it seems, has not discovered. It was for the purpose, as stated by the Engineers themselves, of defending the inland navigation, the canal, which they recommended as a part of the system of defence along the sea-board, and which the gentleman, (Mr. BRYAN) so much deprecated. This was the object which this fort was intended to defend, as appeared by the report of the Engineers; but this object has no existence. this internal communication has never yet been created; and, if the gentleman's anti-improvement doctrines are to prevail, never can exist. Then we are called on to erect a fort without an object, unless it be to expend the public money in North Carolina. This, Mr. S. said, he was willing to do to create the object indicated, and then erect the fort, if necessary to defend it.

But the gentleman says, there is a fine harbor at Bogue Point, perfectly secure during the whole of the late war and for the best reason in the world, according to the gentleman's own shewing—because the enemy's vessels could not get to it. The gentleman, himself, has stated, that, at the entrance, there is only thirteen or fourteen feet water: now, every body knows that even sloops draw sixteen feet water; and, of course, could not enter the harbor, except at Spring tides, much less could they navigate the shallow sounds which run North and South of Bogue Point, for sixty or seventy miles, having, generally, not more than four or five feet water. Thus we are required to erect this fortress, to prevent the enemy's vessels from getting into a bog, where, if they got in, they could never get out again.

Mr. S. repeated, that he was willing to erect fortifications where they were necessary; he was willing to discuss the public money along the sea-board, with a liberality for any useful purpose, but he protested against the policies of legislation which looked to the accommodation of a district, and not to the utility of the object to be attained by the expenditure. This fort, he understood, had been introduced out of its order in the system; promoted over the heads of others, having precedence; forced forward from a second or third class, into the first, to accommodate North Carolina, who insisted on her share of the expenditures. Thus, it would seem, if he were correctly informed, that this fort was commenced, not to stop an inlet into Bogue Sound, but to stop the outlet to another sound—the sound of opposition from North Carolina. He was willing to appropriate liberally to stop the mouths of our bays and rivers, but was opposed to this plan of stopping the mouths of members here or elsewhere.

On the general question, Mr. S. said, he was in favor of prosecuting the great system of national defence as rapidly as it could be done, with due regard to other great objects. But he would prosecute the *whole system*, and not one branch of it, to the exclusion of others more important. What was it that general system recommended? It consisted, first, of a navy; 2d, standing army and fortifications; 3d, internal communications by land and water; and, 4th, a well regulated militia. Upon the first two branches we are expending five or six millions every year, while almost nothing had been done for the two other branches of the system; which he regarded as the most important, especially in a country like this, which must depend for its defence, after all, on the militia, and on the facilities afforded by good roads and canals for their concentration, and rapid movement to every point of our extensive frontier, wherever their presence might be required to repel the enemy. In time of peace, fortifications were burthensome, requiring a standing army to pre-

them from dilapidation; but not so with the system of canals recommended: they were alike useful in peace and in war. No standing army was required to protect them. Instead of a burden of expense, they might be made a source of revenue by tolls; and, at the same time, affording the most important commercial facilities, alike beneficial to agriculture, manufactures, and commerce. He did not wish to see this interesting branch of the system of defence recommended, altogether neglected, and every cent of the surplus revenue devoted to the other more burthensome and less important parts of the plan. These were briefly his views on the general question. He had submitted this motion from a sense of duty. This work had found its way, he thought, improperly into this bill, and contrary to the wishes of the War Department. To prosecute the works commenced and in progress, would require about half a million a year: this he was willing to grant in this bill, and the other three hundred thousand dollars he would give to promote all the other parts of the system, to the militia, and the construction of the inland navigations along the sea-board. This would be a fair and beneficial appropriation; but if the Committee thought we had gone too far with these works to retrace our steps, he would cheerfully acquiesce in their decision.

The question being then taken on agreeing to the amendment proposed by Mr. STEWART, it was decided in the negative, without a count.

On motion of Mr. McLANE, the Committee then rose, reported progress, and had leave to sit again.

And the House adjourned.

THURSDAY, FEBRUARY 2, 1826.

CONGRESS OF PANAMA.

The House resumed the consideration of the resolution submitted by Mr. HAMILTON, on the 16th December, calling on the President of the United States for copies of the invitations given to this Government to send Ministers to the Congress at Panama; when

Mr. WOOD, of New York, observed, that he wished to say one word on this subject. The object of the resolution is to call on the President of the United States to communicate to this House such correspondence as he may have received from any of the South American States inviting this Government to a co-operation at the Congress to be held at Panama. When it was introduced into the House, he had supposed that there could be but one sentiment on the matter. He took it for granted that the House would instantaneously accord to the proposition; and he was never more astonished than at the course of his debate. A gentleman from South Carolina, (Mr. HAYNE) has told us that the measure was unprecedented: but how unprecedented? Was it a thing without a precedent that the feelings of the American People should respond to the hopes, and rejoice in the opening prospects of a People struggling to obtain the blessings of civil liberty? If that was the gentleman's meaning, he denied the fact. He would refer that gentleman to the resolution introduced into this House in 1818, and unanimously adopted in 1820. He would refer him to the acts of this Government in 1816, '17, and '18, when we sent messengers to these nations of South America, without any communication having been addressed to this House by the Executive. A gentleman who preceded these commissioners, was called upon for a statement of the facts, within his knowledge, in respect to the condition of the Southern Continent, and made one of the most valuable communications which has ever been presented on that subject. He referred to the gentleman who is now our worthy and honorable representative to the Mexican Government. The feelings of this House were then in accordance with those of our Southern brethren, from the Gulf of Mexico to Cape Horn; and the pulse of this nation has beat in sympathy with their hopes and fears, their sufferings and successes, from the year 1795 to the present day. The first moment the germ of liberty fructified in that hemisphere, we sent Commissioners, not to interfere with our neutral relations, or to dictate to these infant Republics what was the course they ought to pursue, but to inquire into their actual condition: to make themselves acquainted with the political state of the country; to learn what were their wishes, and what their prospects of success: and on their return, and on the ground of their report, this House, in 1822, appropriated one hundred thousand dollars, not because Ministers had been sent and must be paid, but to enable the President to fulfil the wishes of the country, by sending them. They were to be sent, however, to such only of these Provinces as were in actual possession of Independence; they were sent where their presence and influence might be a means of fostering principles allied to our own. The measure now in prospect, was, therefore, not an unprecedented measure, but a measure in perfect accordance with all the rest of our transactions with relation to the South American States. When the resolution for acknowledging their Independence was first introduced into this House, I, said Mr. W., was one of those who were opposed to it. I feared the state of society in that country was not ripe for such a measure—that it would be premature: but, in 1820, I became convinced that their condition was sufficiently mature—that they understood, and were prepared to appreciate, the value of liberty; and, in fact, were free. I adopted, and acted on, the principles of a gentleman whom I call the Hortensius of the West, and whose argument, in this House, upon the South American question, eclipsed all the displays of eloquence I ever witnessed; and was read, as I have been informed, to his immortal honor, at the head of the armies of Peru.

The gentleman from South Carolina tells us, we have no right to examine into the propriety of this mission to Panama, because it is entrusted, by the Constitution, to another department of the Government. What, sir, is this House, whose very organization was for the purpose that it should contain and express the sentiments and feelings of the American People—shall this House be restrained from the expression of that feeling in relation to a great political measure involving the most important interests of this nation? The President has informed us, in his official communication to both Houses, that he has received an invitation to send messengers to attend in this Congress to consult with these young and free nations on arrangements to be entered into for mutual accommodation and advantage. Sir, what is to restrain us from asking for the facts of the case, and expressing our opinions on the proper course which ought to be pursued? The Constitution says that the President shall have power to appoint Ambassadors, by and with the consent of the Senate. But, sir, I deny that the Senate has any *priori* power. Their right is to concur in the appointments that are made. Is it the Senate who are to prescribe instructions to Foreign Ministers? No, sir; that is contrary to the Constitution. The President, and none but the President, is the organ of communication with Foreign Powers. He plans the treaties; he nominates the men who are to negotiate them; and the only right of the Senate on the subject is to refuse to consent to their appointment on the ground of unfitness, for want of the requisite qualifications.

[Here Mr. WOOD was called to order by the SPEAKER, on the ground of his taking too great a latitude of debate.

Mr. WOOD replied, that he had never yet wilfully violated any of the rules of this House: that he had not conceived that he could be out of order, since he confined himself to a path that had been trodden bare in the progress of this debate.

The SPEAKER replied, that the gentleman's last observations had not applied to the subject before the House.

Mr. WOOD said, he would thank the Chair to state what was the subject before the House.

The Clerk was ordered to read the resolution.]

Mr. WOOD then resumed. The object of this resolution is to obtain certain information to which it refers. Can any gentleman tell me what this information is? Can any one inform me what will be the answer to this resolution? I do not know, but I have a right to conjecture.

We are told by the gentleman from Virginia, (Mr. Floyd) that the most tremendous consequences are to grow out of this mission: that the object of the Congress is to form an alliance of Republics to counteract the Holy Alliance of Kings; that freedom is to be arrayed against tyranny, and the cause of representative government against the arbitrary sway of legitimacy. Admit that this will be the fact, and is it an objection to our embarking in such a cause? Sir, I must have some stronger reason than this before I can believe this mission to be unwise. Are we not Americans? Are not the principles of the South American States conformable to ours? Is it unworthy of us to join with this group of Republics and band ourselves against the tyranny of the world? Have we not presented to the eyes of mankind a fit model for their political reformation? But admit, sir, all that the gentleman fears, as to the intention of those who have called this Congress; admit that Cuba and Porto Rico are to be conquered; the independence of Hayti to be acknowledged; and some new Peter the Hermit to preach a crusade against monarchy—ought we not, on the gentleman's own principles, to send Ministers to this Congress, to warn our brethren against such an undertaking? Shall we not give to these young nations the fruits of our experience, and the benefit of our counsel? We know what the gem of liberty is; they do not so well know. They are yet in their infancy—we are advancing rapidly to manhood. We know that the great principles of liberty consist in an equality of rights and privileges, and a full enjoyment of religious toleration. Suppose they have formed some such Quixotic project as the gentleman from Virginia has hinted at—shall they not be indebted to our principles for a wiser course? They need our counsel. They have solicited it. They will feel indebted to our Ministers for communicating it. Shall we not tell them to beware of forming any such schemes? Shall we not advise them to turn their attention to their own internal prosperity; to the enacting of wise and wholesome laws; to the introduction of the trial by jury; to the erection of seminaries of learning; and to the securing, by wise and liberal institutions, the eternal principles of liberty? In their present state they cannot be free; it is vain to think of it. I challenge all history to produce a single instance of a nation attaining the possession of civil liberty who are under the dominion of priests; yet that is now their condition. The priests hold the land; two-thirds of the People are but tenants to the monasteries. Their property must be liberated from this thraldom. Hitherto they have had nothing there but the civil law. They must be taught to introduce the free and manly spirit of the common law, and the use of the trial by jury. They have had, indeed, the image of a Constitution, but it has been an image of iron and lead—of silver and gold—of brass and clay: it is full of heterogeneous and discordant parts. They must be taught to substitute for this, a system of equal rights, and of sober and rational freedom.

They need the presence of our Ministers to warn and to instruct them, and to persuade them, if possible, to secure the blessing of liberty to themselves before they attempt to push the conquest of others. The dangers, therefore, which the gentleman from Virginia has presented in such striking colors, present only an argument of ten-fold more power in favor of the mission. Why did we send Ministers in 1818, and in 1822, and from that time to this? It was for purposes like those I have mentioned.

[Mr. MITCHELL, of South Carolina, called Mr. Wood to order, on the ground that his remarks were taking too wide a range.

The SPEAKER said, that, when he had interrupted the gentleman from New York, in the former part of his speech, it had been to suggest to him the inexpediency of discussing the relative powers of this House and of the Senate. He had not expressly pronounced him out of order. The Chair regretted the latitude which the debate had taken, and thought that the whole debate was, in some degree, out of place; though it could not be pronounced, strictly speaking, to be out of order. The gentlemen who opposed this call for information, had endeavored to shew that no good consequences could arise from the mission, and that, therefore, it was inexpedient to make the call; the gentleman from New York was now taking the other side, and endeavoring to shew what *good might* arise from that mission as an inducement to *make the call*. The pertinancy of an argument was one thing, its weight was another. His own opinion was, that it would be much better that the whole debate should be deferred to a different occasion. But, as the point of order had been made, the Chair pronounced the gentleman from New York not to be out of order.]

Mr. WOOD resumed. He had, he said, now stated some of the inducements which he thought ought to prevail with the Executive to send Ministers to this Congress. The gentleman from Louisiana had enumerated many inducements. He had endeavored to increase the enumeration. The gentleman from Louisiana had adverted to the benefits which might arise from securing a reciprocity of commercial advantages. It is said, however, that, in our treaty with Colombia, this reciprocity had not been provided for. There certainly could never occur a finer opportunity of securing this valuable object. These South American States contain twenty millions of freemen: they will require the supply of manufactured goods to the amount of one hundred millions of dollars. This country can, at present, supply them with but five millions. Where must they go for the other ninety-five? It is evident they must receive this from other countries. If this Government had given protecting duties to the amount of one hundred per cent., they would not have given such a stimulus to the manufacturing industry and enterprise of this country. This is the great field which we ought to cultivate: it opens a door beyond the utmost ken of our sight. To Great Britain it is greater than India: to this country it is greater than the world. And there is no gentleman on this floor who feels for his country; who is impressed, as he ought to be, with the importance of giving a proper direction to its capital, but must long ardently to see some arrangement made with these South American Nations. On this ground alone, the President would be justified in sending out these Ministers.

Mr. MITCHELL, of Tennessee, here interposed, and called Mr. Wood to order, on the same ground as has been done by Mr. Mitchell, of South Carolina. The Chair decided that the member was in order: from which decision Mr. MITCHELL appealed.

The SPEAKER having again stated the grounds of his decision, the question was taken, and the decision of the Speaker was affirmed, ayes 109.

Mr. CONDICT now rose to address the Chair, but was called to order by Mr. FORSYTH, on the ground that Mr. Wood was entitled to the floor.

Mr. WOOD declared, that he relinquished his right to the floor, as he never desired to speak if the House appeared unwilling to hear him.

Mr. CONDICT moved to lay the resolution on the table; and, on this question,

Mr. TRIMBLE called for the yeas and nays. They were taken, and were, yeas 60, nays 115.

So the House refused to lay the resolution on the table.

Mr. WOOD now asked, whether it would be in order for him to speak to the resolution?

The SPEAKER decided that it would not be in order, as the hour allotted to resolutions was past.

Mr. MALLARY then moved that the rule of the House, which lays this restriction, should be suspended.

The SPEAKER replied, that no rule of the House could be suspended, unless the proposal to do so remained on the table one day for consideration.

The SPEAKER then announced the orders of the day.

Mr. WEBSTER moved to postpone the orders of the day, until to-morrow; observing that, since this discussion had been entered into, it would be better that the House should proceed with it at once, and bring it to some issue, instead of thus taking it by *instalments*.

The question being put on Mr. WEBSTER'S motion, it was decided in the affirmative—ayes 103, noes 49.

So the discussion of the subject proceeded.

Mr. WICKLIFFE observed, that he did not rise to debate this question; but, as the House had now, by a large majority, virtually decided that this call for information should be made, he rose to entreat both the friends and foes of the resolution to desist from further debate, and to take the question at once.

Mr. McDUFFIE now offered the following, to be added, by way of amendment, to the resolution: "And further to communicate to this House, all the information in the possession of the Executive Department, relative to the objects which the Republics of the South propose to accomplish by the Congress of Panama, *and the nature and substance of the instructions proposed to be given to the Ministers of the United States to that Congress.*"

Mr. WEBSTER observed, that the amendment certainly proposed an unusual interference with the Executive power. He believed it was a thing altogether without precedent to call for the instructions proposed to be given by the Executive to a Minister to a Foreign Power.

Mr. McDUFFIE agreed with the gentleman from Massachusetts, that the terms of his proposed amendment were unprecedented; but they were so because such a case had never occurred before, as that presented by the proposed Mission to Panama. He undertook to say, that the whole of the information sought by the resolution, would be wholly unimportant, without the provision of the amendment, to which exception had been taken by the gentleman from Massachusetts. What is the inquiry for this House to make? What do we want to know? Not the moving cause of the determination to nominate Ministers to Panama; not the mere copies of the invitations from the Southern Republics—but the true character of the convention at Panama, and the attitude which our Ministers are to assume there. In what character are we to send Ministers there? As members of an Amphictyonic council; to be bound ourselves, through our Representatives, by the decisions to be made there? What are they to do there? How are they to participate in the deliberations of that Congress? I understand the objects of that Congress of Nations to be, first, to regulate their own internal political affairs: secondly, to resist, effectually, the Spanish Monarchy: and, thirdly, perhaps, to accomplish some other vague and indefinite object. I wish to know, then, said Mr. McD., what instructions our Ministers are to take with them? Are they to participate in the deliberations of the Convention, as to the proposed Federative system? Are they to participate in its deliberations, as to resisting the Spanish Monarchy? How are we to know, without being apprised of the nature and substance of the instructions to be given to them, how they are to go, what they are to do, what character they are to go in? This was the material information, without which all the other information called for would be wholly unimportant

Mr. WEBSTER said, he thought a little reflection would satisfy the gentleman from South Carolina that, in his motion, he was leaping before he got to the stile. It was only by means of information which this resolution proposes to call for, that information could be obtained of the terms and conditions upon which this country has been invited to send Ministers to Panama, and upon which the Executive has accepted the invitation. A cardinal principle of this mission, the President had, in his message, informed the House, was, that our Ministers are to do nothing, and settle nothing which can compromit the neutrality of the United States. The call for the instructions proposed to be given to those Ministers appeared to Mr. W. to be a most extraordinary one. As to the idea of an Amphictyonic council, it could not be within the reach of possibility that the Convention of Panama could be an Amphictyonic council. It would be like other meetings of diplomatic agents, where each one acted independently of the other, according to the instructions of his own government. It could not have entered into any body's contemplation to send Ministers from this country to that Congress, on any other footing. Among other things to be transacted there, it had been suggested that commercial treaties were to be formed; and it was now gravely proposed to call for the instructions to our Ministers relative to the formation of such treaties. Was it ever before heard of, that the graduated instructions to a Minister abroad were called for, previous to their being acted upon, so as to make public, before hand, what he was required to claim, and what he was authorized to grant or accept? This reminded him of the case of a Minister to a foreign Power, having graduated instructions, who exhibited to the opposite party, at once, all his instructions. If we are to send Ministers to Panama, with public despatches, we defeat every object which such a mission could have in view. Instructions given to Foreign Ministers are always private, and necessarily so, until they are fulfilled, at least.

We are informed by the President, (said Mr. W.) that an invitation has been given to us to send Ministers to the Congress of Panama. Does any one suppose the terms of the invitation will not disclose the object of it? We are told, also, that the invitation has been accepted. Does any one suppose we shall not know, from the terms of that acceptance, the purpose for which our Ministers are going? To ask for the instructions proposed to be given to those Ministers, is aking more than has ever been asked before. If ever a case can arise when such a call would be expedient, or justifiable, that case certainly does not now exist.

Mr. McDUFFIE said, he should be sorry to have the vanity to suppose that he could foresee any thing that could not be foreseen by the gentleman from Massachusetts; but he apprehended the terms of the call proposed by the resolution, merely relating to the circumstances which induced the acceptance of the invitation from the Republics of South America, were not sufficiently comprehensive to elicit all the information which it was important for the House to have on this subject—and he therefore wished to have the call made specific to the point on which he considered the information most important. The gentleman from Massachusetts seemed to suppose that the whole matter communicated was of course to be published to the world; but that did not necessarily follow. We are called to act, (said Mr. McD.) upon a measure, respecting which it is necessary that we should have all the information which can be obtained. *We* are to decide the question, as well as the Executive.

The measure proposed is one which ought not to be adopted without the consent of that body in whose hands is the question of peace or war. I have given no opinion, sir, as to what may be the character of this Convention. That is a question to be determined by the information which we may receive respecting it. But, if we are to determine here a delicate question concerning our relations with foreign Powers, and which may, in it consequences, involve the question of peace or war, it is necessary that we should have before us all the information bearing on the case. When the gentleman compared the proposition contained in the amendment with the case of a Minister who disclosed at once his graduated instructions, did the gentleman regard this House, in its relation to the Executive, as a foreign power? When we call upon the Executive for information, is he to deal with us as he would in negotiating with a foreign power? If it is important that the proposed instructions should not go to the foreign world, let them be sent here confidentially. The information ought to be so sent, and so used by this House, as not to prejudice the public interest. This much Mr. McD. ventured to say—that, whatever might be the sagacity of the gentleman from Massachusetts, or of any other member, he would defy any member of this House to decide this measure with the wisdom which its importance demanded, without the information required by his amendment. He did not hesitate to say, that he, for one, would never vote for any measure committing the peace of the United States, such as this Mission to Panama, without an entire knowledge of the character which our Ministers were to bear in it. He referred to the articles of the Treaty between Colombia and Mexico, in which this mission was indicated. One of the objects of it, there stated, was to "form a solemn compact," by which the States composing the Congress "will be bound"—to do what? "To unite in prosecuting war against the common enemy, Old Spain," &c. Now, said Mr. McD. I want to know, specifically, what are the objects of this Congress—I want to know *all* the objects of it. Some of them, it is perfectly clear, are of such a character as we cannot participate in, without committing the *peace* of this nation. I wish to know from the Executive whatever he has ascertained of the objects in view, and specifically what is the intention of the Executive in proposing to send Ministers to Panama.

Mr. HAMILTON said, that if he was to be still considered as exercising a control over the resolution, he begged leave to signify to the House, that he accepted, with great and entire satisfaction, the amendment of his friend and colleague, which he thought altogether pertinent, and calculated to give the House that sort of information which might be required. Before he took his seat he would take occasion to say, that he thought his friend from South Carolina had been peculiarly fortunate in calling the Congress of Panama an Amphictyonic League; and the gentleman from Massachusetts very *unfortunate* in excepting to such an appellation, as it happened that this was the title and designation given to it by the parties in interest—the parties to this Congress. He had read, a few weeks since, a Proclamation put forth (by some public functionary he presumed) in Mexico, calling the Assembly precisely by this name, and invoking its members by the title of Amphictyons of the new world. His friend, therefore, had the best right to infer, that this new Assembly would be governed by a similar polity, and by rules of conduct, in the transaction of business, of analogous import with those of that celebrated League of Antiquity.

The resolution of Mr. HAMILTON, as modified, was then read, as follows:

"*Resolved*, That the President of the United States be requested to transmit to this House, copies of all such documents, or parts of correspondence, (not incompatible with the public interest to be communicated,) relating to an invitation which has been extended to the Government of this country "by the Republics of Colombia, of Mexico, and of Central America, to join in the deliberations of the Congress, to be held at the Isthmus of Panama," and which has induced him to signify to this House, that "Ministers on the part of the United States, will be commissioned to join in those deliberations;" and further to communicate to this House, all the information in the possession of the Executive Department, relative to the objects which the Republics of the South propose to accomplish by the Congress of Panama, *and the nature and substance of the instructions proposed to be given to the Ministers of the United States, to that Congress.*"

Mr. POWELL asked if it was in order for the mover to accept this amendment as a modification, after his resolution had been amended.

The CHAIR decided that, as it was, it did not affect the part of the resolution which had not been modified.

Mr. MALLARY now moved to strike out the following words: "and the nature and substance of the instructions proposed to be given to the Ministers of the United States, to that Congress."

Mr. FORSYTH observed, that the only question of difficulty in his mind, had been as to the time when the resolution should be acted on. The same reasons which had at first induced him to dissuade the gentleman from South Carolina, (Mr. HAMILTON) from calling up his resolution, did not now prevail. The House has determined not to regard those reasons. Sir, I am satisfied all I wish is that gentlemen should know, that I perfectly understand in what situation the House is placed, and how I myself now stand. The question now, is not whether we shall ask for this information, but in what manner we shall ask for it. Gentlemen seem to think that our proceeding in this case, is to be regulated by ordinary rules: as though the case was one of ordinary occurrence. But is this placing the matter on its true footing? It appears to me it is not. And why not?

Gentlemen are not to suppose, said Mr. F. that we know nothing about the Congress of Panama. The subject has occupied the attention of politicians in all parts of the world for several years. The proposition originated as long ago as in the year 1822; was reduced to form in October, 1823; and has been gradually matured until the Congress itself is now in session. The idea originated with that illustrious military man, who possessed also vast political sagacity, (BOLIVAR) who presided over the Powers of South America, and it first took an official shape in the Treaty between Colombia and Mexico. If gentlemen would look at that treaty, they would see the original object of the Convention at Panama, without waiting for information from the Executive. The object of it, as disclosed by the treaty, was a combination against Spain; to induce other Powers to enter into an alliance offensive and defensive, with Colombia and Mexico against Spain, and all the other Powers of the world taking part with her against them. The Congress of Panama was to be held with a view to this object for ever. With this object we surely have nothing to do—we could not have, without violating our duty to the People of the United States, and those interests we have sworn to support.

Looking to the Treaty, however, Mr. F. said, another object was proposed to be taken into view, after the parties to the Congress have met, and concerted all their plans in regard to the first and main object. The other Stat[es] of America were then to meet, as one of the articles of the Treaty distinctly stated, to consult on great matters of common interest; to establish a point of union in common danger; to erect a Council for settling the meaning of words (in treaties)—Mr. F. stated the substance, not the letter, of the Treaty, it not being at hand—and [he]

the conciliation of differences which might, in the course of time, arise between any of these nations. These were the subjects which were expected to engage the attention of the Congress, so far as it was to be directed to any thing beyond the common defence. We have been invited, said he, to attend this Congress; the invitation has been accepted, and we are to go there. All we know of the objects of this Congress is from this Treaty. If we go, we go as a party to the Council of Panama, to settle questions hereafter to arise, and to conciliate differences, among the nations of North and South America: we become, in fact, a part of this Amphictyonic League. This statement of the fact must show to the House that this is not an ordinary matter of diplomatic intercourse, to be regulated by ordinary means, and in the ordinary manner. The gentleman from South Carolina had, therefore, very justly said, that this House could not act intelligibly in reference to this question, without seeing the substance of the instructions proposed to be given to our Ministers to that Congress—though Mr. F. did not like that phrase, preferring to call for the "extent of the powers" proposed to be given to them, rather than for the instructions. It had been obected, to calling for this information, that we go to Panama to form commercial treaties, and that no such thing had ever been heard of as publishing the instructions given to Ministers in such cases.

Whatever may be the object or the intention of going there, said Mr. F., it is perfectly obvious, from what I have stated, that commercial treaties will not be formed here. Besides, if I have any knowledge of facts on this subject, treaties have been already formed by us with most of those Powers. Why should we, then, not have the extent of the powers, or the substance of the instructions, to those Ministers, communicated to us? Do we go there to drive bargains with the Governments of the South—presenting them, first, all we wish to gain, and keeping back what we should be satisfied to receive? Certainly not. Our policy towards those Governments has always been an open one—it has been publicly avowed, and I hope never will be departed from. What is it? We say to them, we ask nothing from you—treat us as you treat all the world—we ask no favor from you, and will accept none.

Mr. F. said he did not intend, at present, to trespass further on the attention of the House. It was certain that the House could not decide on the expediency of the measure of the Mission to Panama, without knowing precisely all that is intended by it: the character in which our Ministers are to appear there; the part to be taken by them in the deliberations of the Congress, &c. To enable the House to ascertain these particulars, the information proposed by the resolution, as it had been modified, was indispensable, &c.

Mr. MALLARY observed, that the gentleman from Georgia enjoyed much better opportunity of obtaining information on the subject than he did, and had told the House what is to be the character of this Congress that is to be held at Panama, deriving it from the stipulations of a Treaty between two of those Powers, Colombia and Mexico; but, I would ask, said Mr. M., whether that Treaty expresses the understanding or agreement of the other Provinces; and does the gentleman undertake to say that this is all the information we must have?

The argument which the gentleman from Georgia had drawn from the provisions of the Treaty, to which he had referred, was the strongest one that could be used to induce the House to call for that information, and not take it by inference from a Treaty between two of the parties, and infer the great objects from that—but rather go to the sources of information which present themselves, and see what is the object. Could there not be an object regulated between two of the Powers, and also other objects for the decision of the Congress, with which they have no concern?

As respects the question immediately before the House, and the motion just made, it proposed to call on the President for information as to the instructions he intends to give. I should suppose, said Mr. M., it would be proper, when you call on the President for that information, you ought to know that Ministers have been appointed, to whom these instructions are to be confided. It seems to me that the call is of such a character as has never before been made. It is said, this is an extraordinary case; and that, having a knowledge of what the object of the Convention is to be, we have a right, in an extraordinary case, and for extraordinary purposes, to insist on the President's communicating the instructions he intends to give to these Ministers. By what authority are the Ministers appointed? Is it not derived from the same source as that by which the President appoints Ministers to France and England—by virtue of the Constitution of the United States, which confers on him the power of appointing, and to the Senate the power of confirming the appointment? Is there any difference in the source from whence he derives this authority, and that which he exercises on any ordinary occasion? It is the same; and if he is resolved to make the appointment, why should you apply a different rule to this case, from that which is applied in all others?

If, when Ministers are sent abroad, this House has a right to inspect the instructions given to them by the President, it shows a power of interference incompatible with the treaty-making power. If we may say, we will inspect your instructions, and interfere in these instructions, we can, with the same propriety, give instructions ourselves, and demand of the President that he shall give the instructions you prescribe. It is a direct violation of the treaty-making power itself; it is an invasion of the privilege conferred on that power by the Constitution. That instrument expressly confers the power on the President of the United States. He sends the instructions, and gives his directions; and, when these negotiations are terminated, whatever has been the result, that is to be submitted to the Senate, for their inspection, and they are to decide on it; and then we have a right, if the President has violated the Constitution, or if he has acted corruptly—*we* have a right to investigate the subject. But while the negotiations are going on, it seems to me that we have no more right to interfere with the instructions he is to give, or to require information as to what they are, than we have to impose instructions on him.

Mr. EVERETT said, he felt himself called upon to make a remark or two, in consequence of what had dropped from the gentleman from Georgia, (Mr. FORSYTH.) That gentleman, both to-day and on a former occasion, had expressed himself as standing in an embarrassed position, in reference to this resolution, in consequence of a statement which he had made in his official relation to the House, that is, (as he understood him to mean) his situation as the Chairman of the Committee of Foreign Affairs. He has informed the House, said Mr. E., that, in that capacity, he has already waited on the proper Department, and received the information that the papers called for will, in due time, be sent, and that he therefore feels embarrassed in calling for them. As a very humble and subordinate member of the same committee, I feel myself called on to offer the House an explanation of this matter, that they may know precisely how it stands. I have, I believe, sir, attended every meeting of the Committee of Foreign Affairs, and been present at nearly every moment when business has been transacted in that committee. I feel, therefore, able to say, that this call for papers on the Panama mission has never been before that committee; that the honorable Chairman has never been instructed to have any special communication with the Department of State on the subject; that he has brought back to the committee no report of the result of

such an interview; and, consequently, has been instructed by the committee to make no report on the subject to any individual or to this House. I, therefore, respectfully protest against its being understood, that any such official information, on this subject, is in the possession of the House, or of any member of it. Sir, I need not say that I do not make this remark in the least to impugn the correctness of the statement of my friend from Georgia, the Chairman of the Committee of Foreign Affairs. I was apprized of his interview with the Department of State by himself, very shortly after it took place. I thought I understood its nature; I did understand that it amounted to this: that, without a call, the papers would be sent, and that when a co-ordinate branch of the Government should have acted on the measure. This, I take it, was the full extent of the intimation made to the gentleman at the Department of State; at least, so I understood it from himself, six or seven weeks ago. But I did not conceive, nor had I any idea, that it was to be understood as the wish or intention of the Department that these papers should, under no other circumstances whatever, be communicated; or that the House was to be bound, in courtesy, to suspend its action, under any and every aspect of things, on that informal or semi-official hint. So far from it, sir, that, had I not supposed that, from day to day, and from week to week, the contingency on which this communication is suspended, would cease to delay it, I would myself, in the Committee of Foreign Affairs, have proposed to instruct the Chairman to move this House to call for the papers.

Before I sit down, sir, allow me also a word of reply to the gentleman from South Carolina, (Mr. HAMILTON) the original mover of this resolution—a remark I should have made the other day, could I have conquered my diffidence at taking this floor. He alluded to a supposed change of opinion and policy, with respect to it, on the part of those whom he calls the confidential friends of the Administration. He did not tell us who he understood by that name. I hope, in the definition given of "confidence," by his honorable colleague (Mr. McDUFFIE) yesterday, that the number of the confidential friends of the Administration is not small. Sir, when my friend from South Carolina (for such I am proud to be permitted to call him) first moved this resolution, I thought it premature. Not, I assure him, for the reason he intimated, that it was to re-act on another branch of the Government: for I declare to you, Mr. Speaker, that idea never entered my head, till suggested by another honorable friend. But I did think there was an urgency in the call, at so early a period of the session, that might as well be avoided. I also thought that a point of the phraseology might, perhaps, be mended; as I have no doubt it would have been by my friend, at my request. I did, therefore, sir, come to the House determined, when the resolution should be called up, to ask to have it lie awhile upon the table. The gentleman anticipated me by his own act, in stating the result of a communication which he had with the honorable Chairman of the Committee of Foreign Relations, already alluded to; in consequence of which he had determined to delay his resolution, reserving to himself the right, if the papers did not come in due season, to call it up again. Sir, he did not tell the House what he understood by *due season*. A short time after, sir, two or three weeks, (for I have, of course, kept no memorandum of these small statistics) my friend did announce to the House, that, on the next following day, he should call up this resolution. But the House, on the following day, was pre-occupied with the great Judiciary question; and this, I thought, was the sole reason why my friend from South Carolina did not fulfil his avowed purpose. If this was the reason, then my friend must admit that the time has not only now come to have the papers, but had come a month ago. If there was any further reason, then, in his candor he will grant, that the friends of this mission (if there is any party of the House which ought now to be called by that name) did not set the example, however they may have followed it, of a change of opinion as to the time when these papers ought to be called for.

As to this call, sir, I think the time has come. I will not now discuss the question, nor attempt to prove the expediency of the measure, although I am, even now, very favorably prepossessed in regard to it. But I want more information. I have not been an inattentive observer of what is passing in the new States to the South of us; on the contrary, I have read every thing that has come within my reach from them; but I feel my want of farther light: for several things have, in this discussion, been stated by honorable gentlemen as facts, which were not known to me as such, and which I, even now, have difficulty in admitting. When the information comes, sir, if my impressions remain as they now are, *I will* seek an opportunity of expressing my views to the House on this great question. Meantime, sir, I think the information ought to be here before us, the People, or at least standing in the place of the People, so that, when we are called to act, we may do it with a full understanding of this important subject.

Mr ALEXANDER, of Virginia, then addressed the Chair in some observations, the first part of which were delivered in so low a tone of voice as not to be distinctly heard by our Reporter. When he was heard, we understood him to say, that his objection to the present resolution respected the time and manner of this application. The subject was still before the originating power of the Government, and he thought that considerations of delicacy ought to induce the House to refrain from calling for this information, while the subject remained where it was now understood to be. It might well be conceived that a case might occur in which the other two branches of the Government should be divided in opinion. The Administration might possibly think that one branch of the Legislature was too slow in its movements, and might have resort to the other for the purpose of stimulating them to greater activity. He thought this precedent a most dangerous one. It had been said that the House had two precedents before it to sustain this call, under parallel circumstances, to shew that this department of the Government has been appealed to on extraordinary occasions, as being supposed to speak the voice of the nation. What are these precedents? The first was an occasion when two of the Departments of the Government were at issue about the execution of the law of the land, and when the whole burden was thrown on the shoulders of this House. This, however, was but arraying one portion of the Government against the other. The other precedent related to recognizing the independence of the South American Republics. The Administration was then considered as slow, and this House was called on to place the support of the nation to that measure. The resolution, however, in that case, passed by a bare majority. At the next session, the Administration had set forth the reasons for the delay, and they were unanimously approved. Mr. A. said, he was opposed to acting on the principle of these precedents, and did not wish to add to them. He presumed that, when this subject had gone through its proper course elsewhere, it would be laid before this House. Until which time he was not disposed to act upon it.

Mr. RIVES said, it seemed to him indispensably necessary, to enlighten the judgment of this House, in deciding on the propriety of this mission to Panama, to have some information as to the objects and reasons for visiting it on the part of the Executive of the United States, as well as the information called for by the former part of the resolution, as to the objects contemplated by the Republics of South America. It must, he thought, be ad-

parent to every gentleman, that they would proceed to the consideration of the subject with very defective lights, if they should content themselves with information merely as to the objects of the *South American Republics* in organizing this Congress. Some of these objects, Mr. R. said, were not *legitimate* objects *for us*, but were such, as it was conceded on all hands, it would not be proper for the Government of the United States to accede to in any manner whatever. One of these objects, it had been suggested, was to form a treaty of alliance, for the purpose of defending the independence of South America against attempts of the Spanish monarchy, and against external aggression from any other quarter. As it regarded *this object*, no gentleman, he thought, would contend, that the United States should send Ministers to Panama to co-operate with the South American States; but there might be *other* objects, there might be *motives of policy*, (upon which, however, he gave no opinion,) which might render it proper and expedient, on the part of the United States, to be represented in that Congress. He wished, therefore, for himself, and he thought the information would be desirable to others, to know not only what were the objects contemplated by the Republics of South America, which he supposed would be disclosed by the correspondence which had passed between them and this Government, but, also, what were the views of our own Government in proposing this mission. As to the particular form in which these views were to be disclosed to the House, there existed, if not difficulty, at least some delicacy. It would not, he thought, comport so well with the nature of the relations subsisting between this branch of the Government and the Executive, to call for the *instructions* proposed to be given to these Ministers, either in substance or in form. These instructions were an *ulterior* matter; it could not be supposed, in the present stage of the business, that the Government of the United States had made up its mind as to the specific nature of the instructions themselves; that was to be decided on after the mission had received the necessary sanctions. But it must be presumed that an opinion has been formed as to the objects of policy which, in the estimation of the Executive, render this mission, on the part of the United States, expedient.

If the President came before this House, asking an appropriation to defray the expenses of this mission—for it was only in this point of view that any inquiry into the matter was allowed them—it was not sufficient for the House to know that the mission was thought by *him* to be desirable, but it was their right and their duty to call on him for an explicit disclosure of his views in instituting it, and the ends which were sought to be attained by it. In relation to all other objects which rendered an appropriation of money necessary to carry them into effect, it was the ordinary practice of the Executive Department of the Government, whenever the suggestion of such a measure originated with that Department, not only to indicate the object to which the appropriation was to be applied, but also to state the considerations and motives which rendered that object a proper one for the patronage of the Department which had the control of the public money. It would not, he thought, be any violation of personal or constitutional decorum towards the Executive, nor would it embarrass the negotiations in the Congress of Panama, as suggested by the gentleman from Massachusetts, (Mr. WEBSTER) to call on that Department, as a preliminary to our sanction of this mission, for a general, if not specific, disclosure of the objects sought to be accomplished, and the arrangements intended to be entered into, by sending Ministers to this Congress. Believing information of this nature to be absolutely necessary to guide this House in its ultimate decision on the subject, he thought the form in which he now proposed to ask for it, would not be liable to either of the objections suggested from other quarters of the House.

Mr. R. concluded his observations by moving to amend the resolution, by striking out the following words: "and further to communicate to this House all the information in the possession of the Executive Department, relative to the objects which the Republics of the South propose to accomplish by the Congress of Panama, and the nature and substance of the instructions proposed to be given to the Ministers of the United States to that Congress," (the same clause as was moved to be stricken out by Mr. MALLARY,) and to insert, in lieu thereof, the following: "*and the objects proposed to be attained by the Executive in sending Ministers to that Congress.*"

Mr. McDUFFIE said, that he thanked the gentleman from Georgia, (Mr. FORSYTH) for having indicated the word which he ought to have used instead of "instructions." He therefore suggested to the gentleman from Virginia (Mr. RIVES) that he should insert, in lieu of his amendment, the following: "*And the powers proposed to be given to the Commissioners or Ministers of the United States to that Congress, and the objects to which they are to be directed.*"

Mr. RIVES accepted the modification.

Mr. WRIGHT said, it appeared to him the proposition of the gentleman from Vermont (Mr. MALLARY) ought to be agreed to, and that of the gentleman from South Carolina (Mr. McDUFFIE) ought not to be. If I understand the Constitution, said Mr. W., the treaty-making power in this Government is vested in the President, who is to act by and with the advice and consent of the Senate. This House has no original power to make treaties; in their incipient statges this House cannot act, nor can we interfere in the initiatory steps of a foreign mission. I am confident no gentleman wishes to invade the powers of any other branch of the Government. No, sir, we are all desirous of keeping within the lines prescribed for us in the Constitution. Doubting, as I do, the power of the House to determine, in any way, the character of any mission to treat upon our foreign affairs, I am unable to see what is to be effected by a call for the instructions.

[Here Mr. McDUFFIE called the gentleman to order. The proposition now before the House is to change the call for instructions to a call for powers.

Mr. WRIGHT replied, that he was about to show that there was no material difference between the two terms.

The CHAIR decided that Mr. W. was in order.]

Mr. WRIGHT then resumed. I cannot perceive the difference between these terms. I consider the *demand* of the *instructions* to be given to our foreign Ministers, as an attempt to invade the *powers* the Constitution has confided to the Executive; and in asking for the *powers* of those Ministers, shall we not, in substance, do the same thing? What are the powers of a Minister, but his instructions? And what are his instructions but his powers to enter upon and to prosecute his negotiations? Even if you seek the general objects of the mission, you may require disclosures tending to defeat those very objects, and highly detrimental and embarrassing to the public service. It would be indecorous in us towards the Executive to call for the powers or instructions intended to be given to our Ministers. The proposition is new and unprecedented. I repeat, the House cannot interfere in forming any treaty. It has no right to do so. Its right to judge of treaties is an incidental one. When called on to appropriate money, or to do any other act to carry a treaty into effect, or to comply with its stipulations, then it can judge, then it must judge for itself, and has a right to grant or refuse the funds asked as necessary, or to pay or to do any act stipulated for. I know, sir, we may refuse to appropriate money for the salary and allowance of Ministers, where the appropriation is asked for in anticipa-

tion of a mission; but I hope the day is far distant when this House shall feel itself constrained to interfere in this, or in any other manner, to embarrass, impede, or restrain the Executive in the fair exercise of his constitutional functions. Such a course would be beneath the dignity of the House. I will not enter into any discussion of the merits of a mission to the Congress at Panama. In that I will not follow the example of other gentlemen. When those merits come before us it will be time enough to discuss them. Sir, I hope this proposition to insert will not be agreed to.

Mr. HAMILTON observed, that, as he was desirous to give his resolution a wholesome castigation, he would accept the amendment of the gentleman from Virginia, as a modification of his motion.

[This superseded Mr. MALLARY's motion; as the words he moved to strike out were thus stricken out by Mr. HAMILTON, without the aid of the House; but the words proposed by Mr. McDUFFIE were, by the same act, inserted in lieu of them.]

Mr. WRIGHT then moved to strike out the words proposed by Mr. McDUFFIE, which Mr. HAMILTON had accepted, and incorporated with the resolution.

Mr. McLANE, of Delaware, said, that, after what had taken place to-day, he was in favor of making this call; but his object was to make it as general as propriety would allow. He did not, however, wish to embarrass any Department of the Government. He thought that it was comparatively of small moment whether the House should call for the instructions or for the powers of the Ministers, inasmuch as the call in the latter part of the resolution would be modified and controlled by the previous clause, which leaves it discretionary with the President to judge how much shall be communicated to the House. We call on him only for so much as, in his opinion, may be compatible with the public interest to disclose. The amendment can do no harm, because, if the President deems it improper to communicate the powers given to these Ministers, he will, of course, withhold the communication; if not, he will make it. For himself, he had formed no definite opinion of the propriety of the general measure; on that subject he held himself in reserve; he need not say what would be his predilections concerning it. What he wished particularly to observe, was, that he presumed it would be agreeable to the Executive to make the communication. But for what he had heard in the course of this debate, he should not have thought that the President was anxious to do so; because, if he had wished it, he might have sent this correspondence to the House long ago. But, from what he saw and heard, Mr. McL. concluded the call would not be disagreeable to the President: and he took it for granted that he would send all that would be consistent with the public good. He would not say that the debate in this House was intended to re-act on the President or the Senate; but all must know that it will re-act somewhere: its re-action will be directed to those very powers who are to meet at Panama. We do not take a step in this affair which they do not observe. Now, sir, I think it one of the soundest maxims of policy, that whenever this Government presents itself to that of another country, it should show an undivided front; that we should not come forward in a crippled and divided state, with one branch of the Government for a measure and another branch against it; but that we should move in a solid body, and show to others that we are agreed amongst ourselves. As to the call, if this House is to deliberate and to decide on the general propriety of the mission, it seemed to him very obvious that this House should know whatever the Executive knows, that has an important bearing on that measure: if not, the House may come to one decision and the President and the Senate to another. It does not, however, follow, that we are to adopt this measure.

He thought the House would not adopt it unless it should be clearly shown to be most conducive to the public good. As to the amendment of the gentleman from South Carolina, calling for the "powers" of these Ministers, if I supposed, said Mr. McL., that their powers meant the same thing as their instructions, I should be disinclined to adopt it; but it does not strike me so. A call for their powers appears to me to mean no more than this: whether they are to go to the Congress as spectators, or as agents, or as representatives? Whether they are to take a part in the deliberations, or whether they are merely to aid them by counsel or friendly supervision? If larger powers are given, and are indiscreetly exercised, they may, by possibility, compromit the neutrality and peace of this country; and as at present instructed, I should not be in favor of granting these powers. The whole resolution, however, is subject to the first clause, and leaves to the President the full exercise of his discretion.

The resolution, as modified, was then read, as follows:

"*Resolved*, That the President of the United States be requested to transmit to this House copies of all such documents, or parts of correspondence, not incompatible with the public interest to be communicated, relating to an invitation which has been extended to the Government of this country "by the Republics of Colombia, of Mexico, and Central America, to join in the deliberations of a Congress to be held at the Isthmus of Panama," and which induced him to signify to this House "that Ministers, on the part of the United States, will be commissioned to join in those deliberations;" and further to communicate to this House all the information in the possession of the Executive Department, relative to the objects which the Republics of the South propose to accomplish by the Congress of Panama; and the powers proposed to be given to the Commissioners or Ministers of the United States to that Congress; and the objects to which they are to be directed."

Mr. FORSYTH rose for the purpose of expressing his dissent from the opinion of the gentleman from Delaware, as to the operation of the first clause of the resolution. The first part of the call relates to the correspondence with foreign Powers, and the restrictive clause refers only to this correspondence; but the last part of the call asks for the powers of our Ministers. This, said Mr. F., I cannot vote to leave to the President's discretion. I vote the whole. But, if the restrictive clause is to cover the powers of the Ministers as well as the correspondence, what follows? The President may think that the public good requires this mission, and he may also think that if he communicates these powers, the House may defeat the mission, and, in that case, he will, of course, think that it is "incompatible with the public good" that these powers should "be communicated." For myself, said Mr. F., I cannot imagine how a knowledge of these powers is to injure, or any way affect, the public good. We have in this matter nothing to conceal. Our Ministers are to stipulate—but with whom, and to what extent? When we send a Minister abroad, it may often be incompatible with the public good to disclose our correspondence with him, because a publication of that correspondence may put other nations in possession of information respecting our plans and purposes, which ought to be concealed: but no such reason holds in respect to the Congress of these South American States. Whilst he was up, Mr. F. begged to say a few words in reply to what had fallen from an honorable member from Massachusetts, (Mr. EVERETT) one of the most attentive, and he had no doubt would prove to be one of the most useful members of the Committee on Foreign Relations. I do not undertake to say, (observed Mr. F.) in obtaining and in communicating to the gentleman from South Carolina the information to which he alluded, and which induced him

postpone the calling up of his resolution, that I acted by the authority of that committee, because the subject had not been before that committee; I acted, in doing so, as the humble organ of this House, with a desire to enable myself to state to the House, as became proper in the position in which I am placed in reference to the House, whether any evil would be likely to arise or not from delay in the call; whether the Department knew of any motive which might make it advisable not to call for any part of the papers, and whether it was contemplated by the Executive to present the information to the House. I thought, as Chairman of that Committee, that, if I could obtain this information, it was my duty to present it. I was distinctly told that the information would be presented in time, if an appropriation should be wanted; and my understanding was, that, if no appropriation should be wanted, the papers would not be communicated. In this situation the affair lay for three weeks. I still do not know whether any appropriation will be wanted. The affair remains, so far as I am concerned, precisely as it was. I did vote against acting at all on the subject; but I am entirely willing the information should be had, and that all the information shall be had which is desirable.

Mr. WEBSTER said, that the question now was, whether the House should take the course calculated to effect its own object. The present resolution had been introduced by a gentleman from South Carolina, who seemed to stand in a very convenient relation to it. He repudiates or adopts it, as it suits his purpose. When any proposition is made to amend it, by those who are entirely opposed to the call, the resolution is then his, and he adopts the amendment as a modification. At other times, he has no particular interest in it. Mr. W. thought it was better that the House should dismiss this state of things. It would be better to have a resolution which could be amended by all, and not by those only who are opposed to the motion altogether. As to all the information which can, without impropriety, be disclosed on this subject, I am as anxious to have it as any gentleman. Why should not be? I am not one of those who can make up my mind, before I have any knowledge of the facts on which is to be made up; and in the present case, I am still in the dark. I do not pledge myself either to support or to oppose the general measure. And, in making the call, my phraseology, within the usual limits, will meet my approbation. But I object to any call that is without the discretionary clause. Sir, the House tried the experiment when General Washington was President. They applied for the instructions which had been given to Mr. Jay, and they received for answer, that that was a matter which pertained to the treaty-making power. I have prepared, and now beg leave to offer, as an amendment, a substitute for this whole resolution. It is drawn in liberal terms, and will procure, as I believe, all that we have right to ask for.

The SPEAKER said that this amendment would not be in order while the present motion was pending.

Mr. WRIGHT then withdrew his motion, and the amendment of Mr. WEBSTER was read, as follows:

To strike out all after the word "*Resolved*," and insert the following:

"That the President be requested to cause to be laid before this House so much of the correspondence between the Government of the United States and the new States of America, or their Ministers, respecting the proposed Congress, or meeting of Diplomatic Agents at Panama, and such information respecting the general character of what expected Congress, as may be in his possession, and may, in his opinion, be communicated without prejudice to the public interest; and also to inform the House, how far as, in his opinion, the public interest may allow, in regard to what objects the Agents of the United States are expected to take part, in the deliberations of that Congress."

The amendment of Mr. WEBSTER was agreed to.

Mr. McDUFFIE rose to congratulate the gentleman from Massachusetts on his conversion; as the proposition he now offered was precisely the same in substance with his own.

Mr. HOUSTON then rose, and said, he should make some observations on the proposition now before the House, such as he thought he was in duty bound to make, having the misfortune not to concur in opinion with some of the gentlemen who had spoken on this subject. That this House should be in possession of the information required, was, he thought, very desirable. For his own part, he had no objection to receive it at the proper time, when they could receive it either by the voluntary act of the Executive, or when this House should deem it proper, without reference to any particular state of affairs, to call on the Executive for it.

There was, Mr. H. said, something peculiar connected with the history of this resolution. It was introduced at a time when the information was thought desirable to some gentlemen, but, owing to peculiar circumstances, or to suggestions made to the mover of it, it was thought inexpedient at that time to urge it on. Affairs since then had assumed a different aspect. One of the co-ordinate departments of this Government, they were told, and he trusted he did not violate any rule of this House in saying so, had acted, as far as they had power to act, with reference to this subject. Another department of the Government, they were informed, had not acted upon it. When the co-ordinate departments should have acted, and presented the subject to this House, then he thought would be the proper time to call for this information. It seemed to be presumed that, when it came before them in a proper shape and character, they would have to pass upon an appropriation for this object; and if such should be the fact, they would certainly require all the information which it was proper for the Executive to submit. They would require all the information connected with this subject: for, as it was to form a new crisis in the politics of this country, it would be certainly proper to have all the premises before them, that they might act understandingly on it. Mr. H said he would, in such a contingency, urge to have all the information laid before them; but he could not perceive, from the attitude which the subject at present assumed, that any information was necessary at this particular time, for this House, more than it was at the commencement of the present session. If it was necessary now, why was it not so at the commencement of the session? He could not see that the passage of this resolution was necessary now, unless this House was to be called upon to express an opinion on a subject not officially or properly before it.

Desirable as this information was, Mr. H. said, they had the privilege of conjecturing what it might be. He had no rays of light on this subject but such as were disseminated to all the members of the House. The arguments of some of the gentlemen had appeared to him to be hypothetically urged, presenting the subject in such an enlarged view as indicated a superior knowledge to what he possessed; and, as he did not wish to be inferior in knowledge on the subject of this mission, he was not less anxious than other gentlemen to be in possession of all the information in possession of the Executive on the subject. But he wished it to be presented in a proper form, and to come when it was necessary. If it was not necessary on an earlier day, we have now no call for the performance of official duty, that we had not then. When that call was made, then he would himself press the call for the information which had not been submitted to them, and which was necessary on the subject.

The gentleman from Louisiana, (Mr LIVINGSTON) had said, let us determine now, if such is our disposition, that we will make no appropriation when this subject comes before us. Mr. H. was not prepared to say that he would

make no appropriation: he was not, he thought, called on at this time for the expression of any such sentiment. There had been no call on this House for an appropriation. And, when that call was made, then would be the proper time to determine whether they would grant it or not. But he did not consider the question now essentially involved. When the application for an appropriation was made, it would then be their duty to act: it was not so now; and, inasmuch as it was not, he did not, at this time, feel disposed to vote for a call for information till he found that call necessary. Convince him of the necessity of that call, and he would unite, with much pleasure, in demanding it; but, if they were to have the information, let them have all that was connected with the subject, that they might know what grounds they were to act upon. The subject could not, he thought, be properly determined by this House without other data than what they now possessed.

We have been told, said Mr. H., that an invitation had been given to us, by the South American Republics, to send Ministers to the Congress of Panama, and that an assurance had been returned that Ministers would be sent. This was a gratuitous assurance, and must have been predicated on the belief that the concurrence of the co-ordinate branches of the Government would be certain: for he could not think that the President alone had any right to send these Commissioners, without the concurrence of the Senate. Could gentlemen think that the Senate would have nothing to do but confirm? That the President was the organ by which the whole nation was to speak; that what he said must be abided by; and that the Senate had no power to determine whether or no they would concur in this nomination? This subject he thought one of vast national importance, and ought to be well weighed by each Department of Government having cognizance of it.

We have been told, said Mr. H., that this is no new project. It was denied by the gentleman from New York, in reply to the gentleman from South Carolina, that it was a new project. That gentleman had referred to various cases to prove that it was not new; he had said that appropriations had been made in 1818, '19, and almost down to the present time, for similar commissions, and that they formed a precedent to be applied on the present occasion. Mr. H. said, if he understood the subject rightly, (though it might be his misfortune not to do so,) the appropriations referred to were made to send Commissioners to South America, to ascertain what was the state of the Continent; to inquire into the capacity of the People of that country to receive freedom and cherish it; and to determine how far it was expedient for this Government to recognize their Independence, and to form treaties of amity, commerce, and navigation, with them.

This was the object of sending Ministers, Mr. H. said, according to his understanding of the matter. But now we are called on to send Ministers, not to make treaties separately with these Powers, but to meet deputies from each of the Republics of South America, to determine in what relation we are in future to stand in regard to them; whether we will join in alliances offensive and defensive with them, or in reference to any other subject that may be presented to that body. Have we not, asked Mr. H., already Ministers in South America, to negotiate treaties with those different Republics? Are they not authorized to negotiate treaties? And is not that the customary way in which the United States act as regards other nations? We do not meet them in assemblies of Representatives to negotiate treaties. We send our Ministers to the Courts of the different Governments, and they there negotiate our treaties, so far as is conducive to our interests. We have adopted this plan, and steadily pursued it. It is the correct one. And why should we act differently with the Powers of South America? But, if we are called on to meet them in Congress at Panama, what is the consequence? Whether this Congress is intended to counteract the influence of the Holy Alliance in Europe, Mr. H. said, was not a question now to be determined. But, if that is the object, it would be reasonable to suppose that propositions would be submitted. We have our Representatives there. The Representatives of other Powers all act in accordance; those of the United States stand aloof; we do not choose to concur in their resolutions—and what is the consequence? We have sent our Commissioners, Agents, or Ministers, to negotiate a treaty, on the presumption of establishing an alliance with those People: for they expect nothing less from us. Should we decline acceding to their propositions, what would be the consequence? They would say, the Republic of the United States do not cherish for us those feelings we anticipated from her. The United States will not accede to our propositions; they endeavor to stand alone; they have withdrawn from our assembly, and have set up for themselves. Is not this, said Mr. H., better calculated to exasperate these People than if we were not to send Ministers at all? He regarded this invitation, on the part of Bolivar, as an act of courtesy, affording us the opportunity of acceding to or declining the proposition. We could have declined it with courtesy; we could have established with each of these Governments an understanding so as to secure all the advantages we wished, with these People, and every object to be attained by this Government would have been gained. The position we now occupy is different: a pledge has been given; but, said Mr. H., is the nation bound to redeem that pledge? It might have been judiciously given, but we are not sure of that. We have not the information to satisfy us on this point. The House was not yet called on to act upon and redeem that pledge. At this time, therefore, Mr. H. said, the information was not necessary which this resolution proposed to call for. The House had been told that Ministers were to be sent to Panama for the purpose of disseminating our principles amongst the People of the Southern Republics, and of making them acquainted with our institutions; that we are to go there to infuse into them certain principles, and that we are to be the model by which they are to act. Could gentlemen suppose, Mr. H. said, that the deputies from the different Republics of South America would take it as a compliment to be told they were incapable of self-government; that they had not sufficient capacity; that they were not sufficiently enlightened; and that, therefore, the United States had sent their Ministers as special teachers of their doctrines, to give them light on the subject of self-government? Were our Ministers, Mr. H. asked, to be the teachers of politics to them? Did we send them there to enlighten the South Americans—that People who had been lauded and justly lauded, throughout the world, for throwing off the galling yoke of a despicable tyranny, and for claiming to the world that they would be free, in imitation of the United States? Shall we send teachers abroad, *them* to infuse our doctrines, and inculcate our political principles amongst them? This, Mr. H. said, was the way for South America to be free. Unless she was to be free she never can be so. We might send our treaties to every city, and every village, and establish political colleges throughout South America; but she cannot be free unless she wills it. If she can derive any advantage from the example we set her, let her do so; our ports are open, our houses, our towns, and our assemblies, are all open. Let her citizens come here, and if we disseminate light amongst them, let them return to their fellow citizens—let them describe the institutions we have in our country, and tell them, "Go ye and do likewise." This is the way, Mr. H. said, that South America is to be benefitted by the United States. This will benefit her institutions: if she sends her enlightened citizens amongst us, if she will have our Constitution and our laws transcribed

postpone the calling up of his resolution, that I acted by the authority of that committee, because the subject had not been before that committee; I acted, in doing so, as the humble organ of this House, with a desire to enable myself to state to the House, as became proper in the position in which I am placed in reference to the House, whether any evil would be likely to arise or not from delay in the call; whether the Department knew of any motive which might make it advisable not to call for any part of the papers, and whether it was contemplated by the Executive to present the information to the House. I thought, as Chairman of that Committee, that, if I could obtain this information, it was my duty to present it. I was distinctly told that the information would be presented in time, if an appropriation should be wanted; and my understanding was, that, if no appropriation should be wanted, the papers would not be communicated. In this situation the affair lay for three weeks. I still do not know whether any appropriation will be wanted. The affair remains, so far as I am concerned, precisely as it was. I did vote against acting at all on the subject; but I am entirely willing the information should be had, and that all the information shall be had which is desirable.

Mr. WEBSTER said, that the question now was, whether the House should take the course calculated to effect its own object. The present resolution had been introduced by a gentleman from South Carolina, who seemed to stand in a very convenient relation to it. He repudiates or adopts it, as it suits his purpose. When any proposition is made to amend it, by those who are entirely opposed to the call, the resolution is then his, and he adopts the amendment as a modification. At other times, he has no particular interest in it. Mr. W. thought it was better that the House should dismiss this state of things. It would be better to have a resolution which could be amended by all, and not by those only who are opposed to the motion altogether. As to all the information which can, without impropriety, be disclosed on this subject, I am as anxious to have it as any gentleman. Why should I not be? I am not one of those who can make up my mind, before I have any knowledge of the facts on which it is to be made up; and in the present case, I am still in the dark. I do not pledge myself either to support or to oppose the general measure. And, in making the call, my phraseology, within the usual limits, will meet my approbation. But I object to any call that is without the discretionary clause. Sir, the House tried the experiment when General Washington was President. They applied for the instructions which had been given to Mr. Jay, and they received for answer, that that was a matter which pertained to the treaty-making power. I have prepared, and now beg leave to offer, as an amendment, a substitute for this whole resolution. It is drawn in liberal terms, and will procure, as I believe, all that we have a right to ask for.

The SPEAKER said that this amendment would not be in order while the present motion was pending.

Mr. WRIGHT then withdrew his motion, and the amendment of Mr. WEBSTER was read, as follows:

To strike out all after the word "*Resolved*," and insert the following:

"That the President be requested to cause to be laid before this House so much of the correspondence between the Government of the United States and the new States of America, or their Ministers, respecting the proposed Congress, or meeting of Diplomatic Agents at Panama, and such information respecting the general character of that expected Congress, as may be in his possession, and as may, in his opinion, be communicated without prejudice to the public interest; and also to inform the House, so far as, in his opinion, the public interest may allow, in regard to what objects the Agents of the United States are expected to take part, in the deliberations of that Congress."

The amendment of Mr. WEBSTER was agreed to.

Mr. McDUFFIE rose to congratulate the gentleman from Massachusetts on his conversion; as the proposition he now offered was precisely the same in substance with his own.

Mr. HOUSTON then rose, and said, he should make some observations on the proposition now before the House, such as he thought he was in duty bound to make, having the misfortune not to concur in opinion with some of the gentlemen who had spoken on this subject. That this House should be in possession of the information required, was, he thought, very desirable. For his own part, he had no objection to receive it at the proper time, when they could receive it either by the voluntary act of the Executive, or when this House should deem it proper, without reference to any particular state of affairs, to call on the Executive for it.

There was, Mr. H. said, something peculiar connected with the history of this resolution. It was introduced at a time when the information was thought desirable to some gentlemen, but, owing to peculiar circumstances, or to suggestions made to the mover of it, it was thought inexpedient at that time to urge it on. Affairs since then had assumed a different aspect. One of the co-ordinate departments of this Government, they were told, and he trusted he did not violate any rule of this House in saying so, had acted, as far as they had power to act, with reference to this subject. Another department of the Government, they were informed, had not acted upon it. When the co-ordinate departments should have acted, and presented the subject to this House, then he thought would be the proper time to call for this information. It seemed to be presumed that, when it came before them in a proper shape and character, they would have to pass upon an appropriation for this object; and if such should be the fact, they would certainly require all the information which it was proper for the Executive to submit. They would require all the information connected with this subject: for, as it was to form a new crisis in the politics of this country, it would be certainly proper to have all the premises before them, that they might act understandingly on it. Mr. H said he would, in such a contingency, urge to have all the information laid before them; but he could not perceive, from the attitude which the subject at present assumed, that any information was necessary at this particular time, for this House, more than it was at the commencement of the present session. If it was necessary now, why was it not so at the commencement of the session? He could not see that the passage of this resolution was necessary now, unless this House was to be called upon to express an opinion on a subject not officially or properly before it.

Desirable as this information was, Mr. H. said, they had the privilege of conjecturing what it might be. He had no rays of light on this subject but such as were disseminated to all the members of the House. The arguments of some of the gentlemen had appeared to him to be hypothetically urged, presenting the subject in such an enlarged view as indicated a superior knowledge to what he possessed; and, as he did not wish to be inferior in knowledge on the subject of this mission, he was not less anxious than other gentlemen to be in possession of all the information in possession of the Executive on the subject. But he wished it to be presented in a proper form, and to come when it was necessary. If it was not necessary on an earlier day, we have now no call for the performance of official duty, that we had not then. When that call was made, then he would himself press the call for the information which had not been submitted to them, and which was necessary on the subject.

The gentleman from Louisiana, (Mr LIVINGSTON) had said, let us determine now, if such is our disposition, that we will make no appropriation when this subject comes before us. Mr. H. was not prepared to say that he would

no civil liberty could exist in reality, though it might in name.

We are told, said Mr. H., that, in this invitation given to our Government, we are not asked to commit ourselves. But, would it not have such a tendency, were we to send our Ministers there at any time, and a proposition should be submitted in the assembly, which we should not think proper to agree to? Perhaps the other Powers would propose an alliance, offensive and defensive; and if they should, and we should refuse to accede to it, the act of going there and appearing in the assembly, would be a commitment on our part, and the consequence might be an exasperated feeling towards us. Mr. H. begged leave to dissent from the opinion, that it was absolutely necessary that we should, at this particular time, send our Ministers there. The House had been told that no evils would result from it; but he thought that must depend very much upon the nature of the instructions which would be given to our Ministers, and the discretion of their conduct under these instructions It might be prejudicial if they went too far; and even in sending them there we might go too far We are told it is necessary, in reference to some of our Southern States, and the particular population of these countries; and in reference to Cuba and the West Indies, that it is of vast importance that we should be there, to prevent any thing arising that might be prejudicial to the interests of the Southern part of this Union. Mr. H. had the misfortune not to be able to see the immediate connection between the Southern States and any regulations of the South American Republics, in regard to the Islands. Those nations would find it as much to their interest to respect the rights of the United States as the United States would find a facility in guarantying their rights, without entering into all the views that would be presented in the Congress of Panama.

We are told, also, that this is a splendid opportunity afforded to us and our Ministers for figuring there. What splendid figures were to be cut? Are we to shew more largely in the drama than other Powers? Are we to stand in bold relief there, whilst those who projected this scheme are to be thrown into the back ground? Mr. H. said, he could not believe that the opportunity was afforded us for figuring to more advantage there than we do at home. We stand pre-eminent amongst the nations of the earth. The pinnacle is desirable and enviable, and we can maintain it so long as we continue to rely on our own resources, and refrain from borrowing foreign aid.

But, it is said, it is a dignified course to send Ministers. The United States, by their Ministers, will occupy a dignified and important station. Mr. H. said, he could not perceive any great dignity that was to attach to the United States from this measure. It might dignify the nation, but where was the safety of it? The page of history to be opened by us is splendid and new: splendid are the records of American achievements spread on it, and it asks for no civic wreath to be acquired there. The laurel and the civic wreath have been planted in this soil, and we cannot expect them to flourish by any alliance we can form with South America, beyond the common connexion we have formed with other nations with whom we stand on friendly relations.

But, above all, one principle had been advanced by an honorable gentleman, which, he presumed, had been advanced with deliberation, and not on the spur of the occasion; and which Mr. H. thought of a most extraordinary character. We are told, that this House has a right either to expedite or retard the progress of business in other coordinate departments of this Government; that comity ought to be exercised towards other branches of the Government; but that, in cases of emergency, this House ought to exercise its constitutional right of having subjects brought here which were under consideration by the other Departments. And for what purpose is it alleged this should be done? To enlighten the nation? Was it to bring all the information before the members of this House, to have it disclosed, and have it go abroad to the nation that the People might act on it? Was this the object? or was it to have presented to this House certain subjects under consideration by the other departments of the Government—that information not complete, but garbled, and presenting different facts and different conclusions to this House, than it would have done if all the information had been submitted. Misrepresentation would result from reasoning from false premises; this opinion would rest. this House was the organ by which this misrepresentation would be cast to the world, and a re-action would be produced through the medium of the public prints: such must be taken; the public mind would be operated on in this way, and that body was to be lashed into a determination ruinous to the nation. Were they to operate on the constituents, and they to operate on the other departments of this Government, contrary to the welfare of this country? Were they to compel the deliberative body, or the Executive of the United States to come to a conclusion, at war with the premises, and contrary to its judgment, by the fear of clamor? There was not a man within these walls that paid greater deference to an enlightened expression of public opinion than he did. He respected it when it was fairly expressed; but it was impossible to have a fair expression of public opinion till the public is in possession of all the facts—till their understanding is enlightened, and their judgment corrected by that knowledge.

Suppose, said Mr. H., the President recommended a measure to the Senate of the United States which was most ruinous in its tendency to our Government, involving the general ruin of the country, and the overthrow of its institutions—the Senate do not comply, because they see the evils with which this measure is fraught: suppose they deliberate on it, and they hesitate in giving an expression of an opinion, fearful that it may have an injurious effect on him who recommended it, or on those who adopted it. The Executive shall have his agents in this House, and it is necessary the measure should pass either for his satisfaction or aggrandisement. Information may be called for, important in its character, but when presented in a garbled form to this House, it will present a very different aspect to what it would have done had all the information been submitted. They will reason from false premises. They will say such and such things would be beneficial to the country; such is the information submitted to us, and our conclusion, is right, and the measure must be adopted. This goes out to the world. The presses teem with outcries against the Senate; they charge that body with all sorts of things, unknowing what their real situation is. They find they will be ruined unless they concur in this measure, and they adopt it, with all its train of dire consequences: and in what a state would not this nation be? And if this principle attains at all, in discussing subjects here, and sending them out to the world, that re-action may take place on either department of the Government. Mr. H. said, he knew not where the ruin was to be staid.

Whenever a subject is legitimately brought before this House, it would then be their business to act on it, and they would require all the information connected with it. If they could not get all the information, they would endeavor to get all that was proper to be submitted to this House; but he thought there was a remedy for any evil that might be anticipated to result from a communication of all the documents to the House.

The gentleman had told them they might consider themselves as the confidential friends of the Executive. If they were so in their political, and not in their personal relations, would not an injunction of secrecy confine it to the bosom of the assembly alone? Could they not keep

a secret, when they perceived that its disclosure would be ruinous to the vital interests of the country? Was it not safe here? Were there any traitors amongst them, who would disclose them to foreign Powers? He could not believe it. The evil, therefore, likely to attend on a full disclosure of all the documents to this House, would be at once remedied. They would have them before them, and when called on to act, they would have data on which to act. Confidential communications were made to the Senate, and he did not see why this House should be less entitled to complete confidence. He, therefore, thought that, in future, when any information was called for it might be sent in safety to this House. The nation's rights, and the rights of individuals, would be secured by it; and the responsibility of the President would not be greater than in a communication to the Senate, of a similar character. He could not see the necessity of quibbling about his full communication to this House, if it was required. When a proposition was made, from a thorough conviction that he was violating no principle of duty, or of respect, either towards the Executive, or any other branch of the Government, Mr. H. said, he should vote that communications be full and entire, of all matters relating to subjects coming before this House, on which they would be required to act.

He should, therefore, vote for the call for all the information on the subject at present under discussion, believing as he did that no evil consequences could result to the country, from an entire communication of all the facts and documents, even to the nature of the instructions, should Ministers be sent to Panama.

Mr. STEVENSON, of Pennsylvania, then offered the following amendment:

Strike out the words "*so much of*" where they first occur, and the words "*as may, in his opinion, be communicated without prejudice to the public interest:*" and also the words, "*so far as, in his opinion, the public interests may allow,*" and add, at the close, these words: "*making so much of his communication confidential as he may think proper.*"

Mr. WEBSTER suggested, that it was not in order to strike out words which have been inserted by a vote of the House.

The CHAIR decided, that so much of the resolution as related to striking out was not in order: but that so much of it as went to add to the resolution, was in order.

From this decision Mr. FORSYTH appealed, and said, that in proper deference to the longer experience of the Chair, he could not but deem the proposition of the gentleman from Pennsylvania (Mr. STEVENSON) in order. The rule of the House, to which the Speaker referred, is, that words inserted, by way of amendment, cannot be struck out on motion. The propriety of this rule is quite obvious; the House having decided upon the propriety of the words forming part of the proposition, ought not to be called upon again to decide the same question. It does not apply here. The proposition of the gentleman from Pennsylvania to add words, and to strike out others inconsistent with them, does not bring back the same question which has just been decided. It is perfectly distinct in its character, and has not yet been before the House. Mr. F. did not express any opinion in favor of the amendment itself. The House has decided that it will call on the President for such information as, in his opinion, may be safely communicated. The proposition is, that this discretion shall be limited to the *manner* in which the *communication* shall be made, whether *openly* or *confidentially*. In making this, the gentleman proposes additional words to the resolution, and the necessary erasure of words inconsistent with them. The additional words are decided to be in order. If adopted, the whole resolution becomes nonsensical; to make it sense, the words proposed to be erased, must be removed from the whole sentence. To erase them is out of order.

The conclusion is, that the part of the amendment which does not alter the proposition, except by making it senseless, *is* in order, and that part of it which makes the amendment itself, and the whole proposition intelligible, *is not* in order. To this conclusion, Mr. F. could not bring his judgment. He left the subject to the House without further remark. It seemed to him clear, that the whole amendment was in order, or none of it.

The decision of the SPEAKER was sustained; and the question being on adding to the resolution of Mr. WEBSTER the following words, "making so much of his communication confidential as he may think proper,"

Mr. STEVENSON observed, that he wished to vote for the call, but that he could not vote for it under the discretion and limitation. He wanted to have all the facts before the House. He did not wish to command them against the interests of the nation, nor was it his wish to embarrass the Executive; but he wanted to have full light on the subject—the same light which the Executive has had upon it, and as another branch of the Government is now supposed to have.

If the secrets of the nation have been confided to two branches of the Government, he thought that the Representatives of the People also were entitled to a full knowledge of them; and he, therefore, wished that the President should, in the first instance, communicate in a public manner, as much of this information as he may think proper, and then give to the rest a confidential character, if he prefers it.

Mr. INGHAM rose, to ask his colleague to withdraw the last part of his amendment.

[The only part very important was the former clause of it, and which was prevented from being inserted by a rule of order.]

He wished him to withdraw it, that he (Mr. I.) might be enabled to refer the entire resolution to a Committee of the Whole House, with instructions to strike out the discretionary clause, where it last occurs; and on this question he should demand the yeas and nays.

Mr. COOK suggested that this was unnecessary. The President has this discretionary power by the Constitution, and will no doubt exercise it, if he considers such to be his duty. He suggested that the object might be attained by a re-consideration, without any reference to a Committee of the Whole.

Mr. STEVENSON having withdrawn his motion to amend, the question was loudly demanded; when

Mr. INGHAM rose, and observed, that he should not be put down by any call of "question." He considered the subject as of too much importance to be deterred from doing his duty in regard to it, either by an expression of feeling in the House, or by its want of courtesy; and, though the hour was late, he thought the opportunity ought to be availed of to have his motion made, and a vote taken upon it. He would, however, slightly change its form. He then moved to refer the resolution to a select committee, with instructions to strike out the discretionary clause, where it last occurs. On this motion, the yeas and nays were ordered; and then

The House adjourned.

FRIDAY, FEBRUARY 3, 1826.

CONGRESS OF PANAMA.

The House proceeded to the unfinished business of yesterday, which was the motion of Mr. INGHAM, to commit the resolution of Mr. HAMILTON, as amended by Mr. WEBSTER, to a Select Committee, with instructions to strike out the clause which leaves it discretionary with the President to communicate the papers called for by the House, so far as relates to the objects in which our Ministers are expected to take part in the discussions at Panama.

Mr. METCALFE said, that the motion he was about to make was not introduced with any desire to prevent the discussion of the general subject, but only that the House may determine at once on the question of making a call for the papers, which ought to be the groundwork of the discussion. All legislation is suspended by a long debate, on the propriety of calling on the President for a certain correspondence—a debate which he was far from anticipating when he called up the resolution of the gentleman from South Carolina—and he thought that this was a proper occasion for taking the *previous question*, to preclude further debate on a question not before the House: he moved it accordingly.

Mr. FLOYD hoped the gentleman would withdraw this motion; he never liked either it or the sedition law.

The SPEAKER pronounced all debate at present out of order; and proceeded to take the question on Mr. METCALFE'S motion, which was negatived; ayes 75—noes 90. And the question recurring on Mr. INGHAM'S motion, to refer Mr. HAMILTON'S resolution to a Select Committee—

Mr. INGHAM then addressed the House. He said he could not but congratulate himself, and the House, and the Nation, on the failure of the motion for the previous question. The subject now before the House (said he) is one of deep and vital interest to our country, and deserves all the consideration which, with our most mature reflection and judgment, can be brought to bear upon it. It is a subject, therefore, of real congratulation, that an attempt to foreclose every amendment, as well as all debate, has met with such a decided negative. The time is not yet come, I trust, when questions of this nature are to be thus disposed of. The previous question was always regarded as a high-handed measure, only to be resorted to in time of great national difficulty.

I shall now proceed to consider the amendment, and, in the course of my remarks, will confine myself as strictly within the line prescribed by the rules of the House as possible, to which I am admonished by the indications of impatience manifested during the tedious debate heretofore. I do not mean to discuss the question of the Mission to Panama: that question is not before the House. The only question is, as to the extent of information we require, before we shall be called on to act in relation to this Mission. Should the amendment prevail, it will open a wider field of inquiry than the resolution as it now stands; which contains two restrictive clauses—an anomaly in calls for information of this nature. One is inserted as a matter of courtesy, because we consider the President as having the right to withhold whatever, in his judgment, the public interest may require to be withheld. It is conceived that, for such a purpose, we have no power to coerce his compliance with our call; but on such occasions as this, is it proper for us to depart from the usual course, and admonish the President, by the second restriction, only to give us what sheer necessity requires? The resolution, without the second clause, would justify an ordinary discretion: but with it, while it purports to ask important information, it admonishes him to forbear: it says to him, don't give us too much: we want very little; therefore, beware that you do not exercise too liberal a discretion in framing your answer. This is not the attitude which this House ought to take on such a question: the consequence of this measure may be too important to have it thus disposed of. But if the motion to amend shall be sustained, it will be a distinct indication to the Executive, that we want ALL the information we can get: that the great interests of the nation demand it. We do this, however, without any feeling of disrespect. I would be among the last to move any proposition, to be sent to another branch of the Government, containing the slightest mark of disrespect. I owe it to myself, to the House, to every consideration which ought to influence my conduct, not to do so. It is admitted on all hands that we are about to be called upon to act on a great question. How important, then, is it, that we should have all the information we can get, to enlighten our judgments in adopting or rejecting the resolution offered by my colleague, which lies on the table. Are we to be compelled to vote in the dark, upon such a question as this? I am free to declare, that I have not finally determined what it would be proper to do in relation to it. The proposition to send Ministers to the Congress of Panama is a measure wholly new in the history of our Government: it may constitute an eventful epoch in our affairs, and are we to vote on faith, without the same information which is possessed by the other branches of the Government, merely because it is recommended? I disclaim such doctrine. I must judge for myself, and vote on my own responsibility; not upon faith in any functionary whatever.

I cannot but notice some remarkable incidents in relation to this call for information. Its history has been once adverted to, but it cannot be too well understood. Early in the session, the gentleman from South Carolina moved the resolution. Soon after, we were informed, as communicated from the Chairman of the Committee on Foreign Affairs, who is understood to be the organ of the House, having the most direct communication with the Department of State, that all the information would be communicated in due time. No contingency was suggested as influencing the intention to send the documents. For one, I waited anxiously expecting to hear them announced, from day to day. It was not supposed that this communication depended on any contingency. Subsequently, we were told by the Chairman of the Committee of Foreign Affairs that the information would be sent as soon as the Ministers to Panama were appointed, and money was wanted for their salaries. This information excited my surprise. That this great question was to be decided upon by the House, under the very limited restraint of a mere question for appropriating salaries for officers who have been appointed by the proper authorities of the Government. It was not to be expected that the question would be presented in such a shape.

It is pretty well known what kind of argument would then be used to sustain the measure. We should hear lectures upon our duty and moral obligation to vote salaries for all officers lawfully appointed. It did seem that the House was about to be drawn into a snare, though certainly without such intention by the Committee of Foreign Affairs. Their Chairman, as I now understand, only gave the information as he had it from the Department of State. Although this is a new case, and members will feel less of the obligation to vote the salary, yet, were it an ordinary exercise of an ordinary power, I should find great difficulty in resisting that obligation, whether I approved of the service or not. The present case is, however, an exception to every other that can arise. But to proceed with the history of this measure: We suddenly found the whole matter taking a new direction. The Department of State had told us, through our Chairman of the Committee of Foreign Affairs, that the communication would be made only when the appropriation was wanted. Now a very singular change of position is exhibited; many, if not all of those acting with the Administration, determine not to make their issue on the question of appropriation, but become urgent for the information, in order to discuss the abstract proposition before the Ministers are appointed. Whether the members there acting have changed their minds, or the Department of State has changed its purpose, I cannot say; one or the other has undergone a very singular change, and they must choose either horn of the dilemma. If the Department of State still thinks it inexpedient to make the communication before the appointment of the Ministers, the

movement is certainly a countermarch on that Department; and, if the Department has changed, without notice to the Chairman of the Committee of Foreign Affairs, it leaves him in a very singular and awkward predicament. In whatever aspect we view these sudden changes, they seem to require some special explanation; but, for my own part, I like the latter movement best; it matters but little how, or for what purpose, it was brought about; and though late, it is better late than never. I care not how many changes and countermarches are made to reach this point. I trust the House will now say, let us have the information with as little restriction as possible, and then act upon the abstract proposition, untrammelled by any question of appropriation for salaries. But how is it possible that we can decide on the policy of this Mission, without having all the information that belongs to it—nothing less than the Senate have, or the President himself? Why, then, insist upon this double restriction upon our call? I wish to know who it is that is most desirous of being fully informed on this measure, before we act; and the vote upon the amendment will present a test which cannot be misunderstood. The gentleman from New York, (Mr. WOOD) asked, Shall this House be restrained from expressing its *feelings* on this great question? If the gentleman had substituted *judgment* for *feelings*, I would have agreed with him. It is not feeling which ought to govern the House on such questions, but an enlightened judgment, seeking to advance the happiness, the honor, and the safety, of our country; and in order to enlighten our judgment, we want all the facts, and, also, to know what are the intentions of the Executive, in relation to the Mission. It has been a long practice of the House to insert a qualifying clause in calls upon the President; but for this I would, so far as my vote would go, have asked for the whole, without limitation of any kind. Shall we go home to our constituents, and tell them that we voted without all the knowledge within our reach? They may well ask us, Why did you not call for it? And we should reply, with an ill grace, that we voted because the President recommended the measure; he knew all about it: but we thought it uncourteous to press him to tell us. We did intimate that we had some curiosity to know a little; but we told him to beware how he communicated too freely. We could not keep a secret; we had made up our minds to vote as he wished, and we only meant to save appearances by making a call upon him. In fine, that we, the Representatives of the People, in this branch of Congress, had agreed to become a mere registering assembly for Executive edicts. Such would be our position; but I trust it has not come to this; that no doctrine of confidence in public functionaries will ever be carried to such lengths in this Government. It seems, however, from the debate, that many gentlemen have made up their minds to send Ministers to Panama. We, surely, need not address any arguments to these, to let us have information, who have it not. It is to be presumed, they are fully informed as to all the facts necessary to a judgment. But one thing is clear; they must either have information which we have not access to, or have decided without knowledge, unless, indeed, they possess some intuitive faculty; but, in either case, will they refuse our request to be placed on equal terms with them? Our claim must appeal to their candor with stronger force.

I ask, is it fair or generous for them to exclude us from the opportunity of arriving at the same conclusions they have done?

But it has been observed that there is something peculiar in the time for pressing this restricted call. It has been conjectured, and some remarks which have fallen from gentlemen in the course of this debate go to justify the belief, that the singular change of position already adverted to, and the movement upon these resolutions at the particular juncture, was intended to act upon the *feelings* of the People and of this House, and react upon another branch of the Government, and cause it to "do quickly," what some gentlemen suppose "*well done*, if it were done." Some politicians have supposed that the People feel first, and reflect afterwards; and if this were true, the time chosen for agitating this question, was well chosen for its purpose; there might be time enough to excite *feelings*, but none for *deliberate reflection*. But there is no greater mistake than this, as to the People of this Nation. In every thing affecting their interest, and those of the Nation, they *feel*, it is true, but with an acumen bordering on the unerring certainty of instinct itself. I have, therefore, no fear of the influence of declamation on their judgment; their good sense is beyond the reach of its power. I do not speak without knowledge on the subject; we have had some experience; I have witnessed the most extraordinary efforts to excite the sensibilities of the People, even on the affairs of South America, but it produced no such influence as was hoped and expected. Love of country, and a knowledge of their true interests, predominated; they saw these safe, and they remained calm. We have, also, had some experience on another question, more recently. Two sessions past, a proposition was made to counteract the Holy Alliance, by sending a Mission to Greece; we had, on that occasion, all the declamatory eloquence of the Hortensius of the West, as he has been called in this debate, aided by the more argumentative powers of a gentleman from the East—but no effect produced, no rash feeling excited, either in this House, or elsewhere. The People were not disposed to do any thing that would, for a moment, jeopardize the safety of their country. The object, whatever it was, totally failed; the offspring came into the world still-born; it was put aside, not by the orators of the House, but by the middle-men, the common sense—the men, as they are sometimes called, of five feet eight; the dead bantling had not even an undertaker to perform the last offices, nor any funeral ceremony; it was carried down to the bottom of the garden and there buried. I know that this proposition was thought to be a great movement, having an ulterior purpose very different from its apparent one; and that it was resisted by the then Secretary of State, in a manner that merited the thanks of the country; but now the scene is changed, and projects and crusades are becoming more prevalent. It is well for us to consider whether we will, under any circumstances whatever, abandon, for a moment, the great policy of our country, viz: what has been called the American policy; that is, not interfering with the affairs of other countries; that policy which gained this nation its great moral ascendancy throughout the globe. It is one of the bases of our strength, which I trust will never be undermined by any unwise projects, or desire of exhibiting a splendid spectacle to the world. It would be well, also, to consider, whether, by sending Ministers to Panama, and assuming the relation, at least, of Quasi Allies, we do not, *prima facie*, abandon our neutral ground, and weaken the power which we might exercise more for the interest of the South American States, in the more commanding relation of Mediators, whenever any difficulty should arise between them and other Powers. We may honestly differ about the best means of advancing the interests of the South American Republics, but there can be no difference among us as to our wishes for their prosperity and happiness, to the same, and, if possible, to a greater extent than we enjoy these blessings. It is assuming too much, for the projectors and supporters of this Mission to Panama, to claim to be the exclusive benefactors of South America. The only difference is as to the means best adapted to the end; in estimating these means, we should consider whether the preservation of our own happiness and safety are not among the most essential. While

this nation remains strong and firm, it will be a nucleus to which all free Governments will be attracted, and imbibe lessons of liberty and peace from our example, more efficacious than from any officious intermeddling with their affairs.

We have heard many conjectures about the objects of the Mission to Panama; and unless other than these are intended, I think it more objectionable than at first blush it appeared. We are to make commercial treaties. What! with four or five nations at once, and yet no entangling connection? Could we not treat better separately with each, in the usual way? Do we know that it comes within the scope of their power to enter upon such negotiations? But we must go there to advise them—about what? Their religion! And is this a fit object for a *political* Minister? We undertake to interfere in matters which, perhaps, of all others, are regarded as the most sacred, and improper to be interfered with by another nation. Should our political missionaries attempt this, they might find a very different reception from that which some are perhaps expecting. It would be well for gentlemen to advert to the dangerous consequences of an order by Peter the Great, for cutting off the beards of his priests. However desirable it may be to see our principles of toleration spread throughout that region, we must wait for the influence of pure religion, and the light of reason, and our example, to dispel, gradually, that cloud which hangs over these Republics.

I should be glad to be informed what attitude our Ministers are to assume. It is said, by those who seem to know, (though we cannot tell how they know) that they are not to be considered as members of the Grand Council. What then? Shall they debate, like our Delegates from Territories, but not vote? or will they occupy the lobbies? Would this be a becoming position for the Representatives of the first Republic in the world? Or shall they figure behind the curtain, and make bargains with the individual Delegates? Whatever aspect we can view the Mission in, our Ministers will make a very awkward figure there; unless, indeed, we can get some information which shall remove all these difficulties.

Do we know what may be the feelings of those Powers who have not invited us to be present? Are we sure that this partial invitation does not contain within it seeds of serious jealousy? I have seen an article, extracted from a South American paper, indicating an anxious apprehension lest we might interfere too much in their affairs. Suppose that some of the States of this Union had invited our then ally to send a Minister to Annapolis, to be present at our arrangement of internal affairs, and the organization of our Federal system—what would the other States have said? Would it not have set the whole country in a flame, even if the Minister had been the great and the good Lafayette? Another object of this Congress, we are told, is to counteract the influence of the Holy Alliance in Europe. This is one of the most serious aspects in which this question is presented. We condemn the Holy Alliance, as well on account of its organization, as the means employed to effect its objects; not only we, but every friend of freedom throughout the world, condemn this combination of nations to effect the most unholy purposes which, without such combination, could not be effected. Then let us consider whether our presence among the nations of South America would not so characterise that Congress as to consecrate the means employed by the Holy Alliance. When means are thus made lawful by such a sanction, who can say they will not be employed for bad ends? It is yielding half the argument with which the Holy Alliance is every where so effectually assailed, for us thus to consecrate the means they employ, by participating in a deliberation of nations. But I have trespassed too long on the patience of the House. I trust the amendment will be adopted, and then, I am persuaded, the resolution will be almost unanimously supported.

Mr. STORRS said, that he hoped the proposition to commit the resolution would not prevail, and asked the indulgence of the House, to say a few words. He would endeavor to speak, and confine his remarks directly to the question. This, said Mr. S. is a call on a co-ordinate branch of the Government, for information. It is upon the Executive, who is charged by the Constitution with the management of the foreign negotiations of the country. It has been confided to him, because it would have been unwise to have lodged it here, at least. Now, the comity which should ever characterize our intercourse with the Executive, has settled, long ago, that respectful form which every call for information from that co-equal Department has usually assumed. Gentlemen who now press upon us so earnestly a change of this settled, and, certainly, courteous, usage of the House, should come prepared at least with some solitary precedent, from the whole history of Congress, to justify it. If no such example can be found, they should then, in my opinion, at least, clearly show us that the present is an extraordinary or alarming occasion, and calls upon us to adopt some uncommon and vigorous measures to meet its dangers, and that the call, as proposed to be amended, by the gentleman from Pennsylvania, (Mr. INGHAM) was indispensable, to enable us to discharge our proper constitutional duties. Now, sir, what is really the case before us, which has excited so much alarm—which is pressed so earnestly upon us, as a crisis of imminent danger to the country? If we go back but a few steps, and examine what information we already have, we may perhaps find that all these fanciful dangers are chimerical. The resolution now asks for such information, in relation to the Congress of Panama, and the objects of our own Government, in acting in its deliberations, "as the Executive thinks may be safely and prudently disclosed to us, at this time," by that branch of our Government. If I have understood gentlemen correctly, they wish this reference to the discretion of the Executive expunged. They see in this mission, or believe they see in it, a most alarming possibility that we are there to become parties to a combination, which has for its end and object resistance to the Holy Alliance—an alliance offensive and defensive, against Spain, or Europe, or some of the kings of Europe—that the Executive is about to compromit the peace, happiness, and prosperity, of our country, on some wild scheme of interference between these South American States and Spain. In short, that we are to unite our political relations with theirs; that we are to be hurried into a perilous state of public war with Spain, or some other Power of Europe. We are, for these, among other reasons, urged to make an unlimited call for all the information in his possession, without any restriction which may suggest itself to the Executive, as growing out of the extreme delicacy which always attends every diplomatic arrangement of the country. Unfortunately for the conclusion which gentlemen have drawn from these imaginary sources of alarm, the Executive has already plainly informed us and the country, in his message at the commencement of the session, that the United States would become a party in any deliberations or measures of the Congress of Panama, which may compromit our neutrality.

If this be so, we may at once dismiss our fears, and, for them, nearly all the arguments we have heard, unless we are prepared to go a step further, and deny that this information is satisfactory: for we can learn no more than this, after all which we acquire in the end by any resolution. It must come from the Executive at last; and if we cannot rely on this declaration, thus solemnly made to us and the world, will gentlemen profess any greater faith in any thing which he may send to us, in answer to a call from the House. It does appear to me, sir, that

we disbelieve the President, on his word, we can have nothing more satisfactory. His object is here explicitly declared, and voluntarily placed before us, on the very point which we seem to desire, with the most anxiety, to be satisfied about. I am not disposed, sir, to deny that a state of things may, by possibility, occur, in the history of the country, in which this House may not be justifiable in demanding information; but it is not necessary to express any opinion on that matter. It is enough for us to know, on this occasion, that there is nothing now before us, and nothing in the attitude of the subject, or as connected with it, which should at all discompose our minds, or disturb our tranquillity of feeling. The country will hardly be exposed to any disquietude, nor need we be, after this very explicit assurance of the President as to our strict neutrality between these States and all other Powers. What, then, can be the wonderful mysteries of this Congress, so far as it is proposed that we shall be concerned in its deliberations? If it is neither of war, nor alliance, nor interference with other Powers, it must necessarily relate chiefly to commercial arrangements; and if we will but look a little after the great interests which our commerce and navigation have in the subjects so likely to come before that Congress, we may, perhaps, find that its deliberations are worth the attention of our own Government, and be able to allay in our minds all the causeless alarms which have been spread out in this debate. If we are satisfied on these points, are there any of us, then, who can regard this question as different from a call for information on any other commercial negotiation about to be instituted? It would, in my opinion, be extremely unwise to call for an absolute development of all the objects which we may have in view at that Congress. No prudent Government could wish to have them disclosed to the world; and as our Ministers cannot, from the very nature of their powers under the Constitution, bind us to any thing whatever, even in commercial arrangements, we have a full security, in the supervisory power which both the Executive and the Senate subsequently exercise over all their acts, that there cannot be the remotest danger in the mission. We may, at least, feel some assurance that both these branches of the Government will not lightly compromit the advantages of our neutrality, or expose us to any very imminent dangers whatever. If the Executive were even disposed to hazard any thing, another branch of the treaty-making power still holds them in check; and after all, our own co-operation may be called for to execute the measures which may grow out of any treaties to be made at that Congress. But I will not enter into this branch of the subject, lest I may be considered as digressing from the question. It is only pertinent to the debate, to show how unnecessarily alarms may be excited, and how causeless these alarms may prove to be. We must come to the conclusion thus early on this subject, that we cannot trust the Executive at all in the ordinary exercise of his constitutional duties, or we must take his declaration in the message as satisfactory. Whether he has or has not nominated to the Senate Ministers for this session we know not, nor is it necessary for us to know. Of as little importance is it to us to know, on this question, whether, if he has, the nominations are confirmed or not. We may have a plain duty to perform, whether the Senate approve or reject any such nominations. We cannot, and must will not, at this time, take into our consideration any thing not directly before the House; and when the time shall come that a proposition shall be presented to us for an appropriation for this mission, we have only to do our duty, and to take upon ourselves our own responsibilities, regardless of the views which others may entertain of it elsewhere.

Mr. HAMILTON said, that he would abstain, he hoped, from indulging in any discussion as to the general merits of the purposed mission to Panama: for he humbly conceived that those gentlemen who had given so wide a range to the debate, had violated the propriety of debate, if they had not the rules of Parliamentary order. He would, therefore, endeavor so to confine himself to the subject matter before the House, as not to furnish his poor example, valueless as it was, as a refutation of his own doctrine.

Indeed, he proposed merely to say a word or two to the gentleman from New York, (Mr. STORRS) who certainly had evinced a most extraordinary and instinctive confidence in authority. This gentleman has given us a new reading to the maxim of the British Constitution, "that the King can do no wrong;" and has pushed this doctrine even beyond the limitation which it is safe to urge it in England: for I infer from what he says, that he not only believes the President can do no wrong, but his Cabinet counsellors also. It seems, because the President (with these his chosen advisers) has said that the invitation to join in the deliberations at Panama has been accepted, in such a way as not to affect the neutral relations of the country, we are bound to take this as a matter of implicit uninquiring faith, and to be satisfied it is so, because the President has so assured us. This was, indeed, giving to this distinguished personage, said Mr. H., an infallibility which it does not suit, at least my loyalty, to impute.

For my part, I wish to see the authority on which the President has made this assertion; in what way our neutrality has been guarantied, and by what nicely adjusted contrivance of diplomatic ingenuity he has made that neutral, which bears on its front a flagrant violation of our pacific relations. The assertion of the President might be consoling enough to the gentleman from New York, but I confess I should like to deduce this security for my country, from the facts incident to the invitation, from the documents and correspondence between the South American Republics and our own Government, and, if possible, from the powers which may be given to our Ministers. In this view, how exceedingly pertinent is the amendment of my friend from Pennsylvania. Its peculiar fitness and propriety must be acknowledged by all, except those who are willing to accept a modicum, at best, and to take all the rest upon trust.

But the gentleman from New York obviously entertains the opinion, that, although the primary and leading object of the Congress may be to deliberate on the most effectual means of annoying Old Spain, we can, nevertheless, participate in these most *pacific* deliberations with perfect safety—if we only make a timely protest of our neutrality! He seems to have forgotten, with all his knowledge of the sessions, the penalty of those who unwittingly keep riotous and bad company. I will propound a case for the professional consideration of the gentleman. Suppose, in the village in which he lives, there should occur one of those things which, in my country, we technically call a *row*, in which divers breaches of the peace should be made, some hard blows given, and some blood spilt. If, in the midst of this affray, one of the gentleman's clients should come up, and ask him for a legal opinion, "whether he could, with safety, take part in these deliberations?" Would the gentleman reply—"yes, with perfect safety, provided, when you get fairly into the thickest of the affray, you lift up your hands and make proclamation of your neutrality." No, the gentleman from New York is too sagacious to give such counsel. He would tell him to "take himself home, and mind his business, if he loved peace and whole bones; that a man caught in the fact of caballing and confederating among rioters, must take the belaboring a court of justice is apt, in these cases, to decree."

Whether the declared objects of the Congress, (in the event of our participation) did not put us in the penal condition of those who associate, after full knowledge, with rioters, was a point altogether aside from his present

purpose to discuss, although, he apprehended, if such was his object, the Conventions and State papers of the parties would bear him out, not a little way, in deducing such a conclusion.

For my part, said Mr. H., I frankly confess that I wish to see, if, by lending our countenance to a Holy Alliance on this side of the water, we are to be put on worse terms with the Holy Alliance on the other; as it happened that some of the members of the latter owe us money. Our merchants have claims upon them. I wish to ascertain whether this volunteer, in behalf of South America, will coax France and Naples into a better *paying humor*. Let us, then, have all the information which can tend to show how one Holy Alliance is to be arrayed against the other.

Mr. WEBSTER then rose. The honorable gentleman from Pennsylvania has said that the present call on the President for the correspondence in relation to the Congress at Panama, reminds him strongly of a resolution I once had the honor to submit to this House. That case and this, are, in that gentleman's sober, close, and tenacious judgment, very closely connected. The gentleman says, that my resolution "was still-born; that it had no funeral, no undertaker; and that it was carried out and buried at the bottom of the garden." But, sir, so far as I recollect, we had not the pleasure, at that time, of hearing from the honorable gentleman. The gentleman himself seemed then to be as still as if he himself was dead and laid at the bottom of the garden; and ever since the gentleman has been as much under a clod as my resolution itself.

As to the gentleman from South Carolina, who has just taken his seat, he embarrasses me exceedingly, as I always am embarrassed when I have to decide between two opposite propositions of one and the same gentleman. Sir, the very clause proposed to be stricken out, was in the gentleman's own proposition, as he presented it himself to the House. In now inserting it, I am but the humble imitator of that gentleman: he put these words in his resolution, and, through all the processes of repudiation or adoption, or both, I have never heard till now that he thinks them wrong. The honorable gentleman must pardon me, therefore, sir, if I take the liberty of thinking that his *first* opinion was right; nor can he take it as hard that the House should be in favor of his own proposition, and against the amendment. The ground on which the words in question were, and still ought to be inserted, is, that such is the ordinary, and, I believe, the invariable practice. We shall certainly, sir, manifest a most extraordinary want of confidence, indeed, in the Executive, if we send this resolution to a select committee, with instructions to strike out the clause which leaves it to his discretion to judge how much of the correspondence may be communicated without detriment to the public good. Sir, do we doubt? Do gentlemen sincerely feel any doubt, and do they wish publicly to express any doubt, that the President will deal fairly with us? If gentlemen do not wish this, the words of the clause are unquestionably proper, and ought to be inserted.

Mr. COOK said, it struck him, that the honorable gentleman from Pennsylvania, in submitting this motion, did not perceive, what he thought must be most apparent, that it would defeat that part of the resolution which that gentleman was willing to adopt. The object of the first part of the resolution is, that the President of the United States shall communicate to us such correspondence between this Government and the Governments of South America, touching the objects and designs of that Congress, as will not be *inconsistent* with the public good to communicate. And why had we adopted any discretionary clause in this part of the resolution? First, because it was the usual mode, and because the Congress of the United States, in making calls of this character, look on the President as responsible to the People of the Union, having the same interest at stake, and responsible in the same manner that we are to the People; and that he will, therefore, communicate to us all those circumstances proper for us to have, and which it is not inconsistent with the public welfare to communicate. And, secondly, it is predicated on the supposition that the President will do his duty. We call for information as to the objects and views of this Congress at Panama, and leave it to the President to exercise his discretion, in withholding from the public such parts of the correspondence as had passed between him and those Governments, which could not, in justice to those Republics, be published; they did not suppose, when they corresponded with us as friends, and placed confidence in us, that we would betray any of their secrets entrusted to our keeping, by publishing any thing that it was improper for the world to see. On this secret ground, Mr. C. said, the discretionary clause in the resolution must be based. What would be the effect of expunging that part of the resolution which was sought to be expunged by the gentleman from Pennsylvania? It would tend to deprive the Executive of the exercise of this sound and wholesome discretion, of withholding from the public such portions of the objects our Ministers are to be instructed to accomplish, as would not be proper to be communicated, and which it would be doing injustice to those Governments to publish: for, after we had been furnished with all the information touching the subject, in giving the information sought for by the honorable gentleman, if there was any thing in relation to those Governments which ought not to be published, the President must, necessarily, if he felt bound by the resolution, disclose it to us. By this proposed amendment we say in one breath you may save the secrets of those Governments; and in the next breath you say, they shall come out. There would be, he thought, an inconsistency in the resolution; if any part should be expunged, the whole should be expunged; they were so closely connected, it was impossible to separate them.

But, Mr. C. said, this was a new feature in this resolution, as was said by the gentlemen from Massachusetts and New York. It implied a want of the usual confidence in the People and the Congress of the United States always placed in the Executive of this country. It implies a belief that he will not do justice to this House, or act in good faith discharge his duty. Was there any thing, Mr. C. asked, in the nature of things, in the situation of that officer, or in the situation of the country, to justify such an apprehension? Was there any thing in the situation of that officer, either personally or in relation to the People of this country, that would justify it? He thought there was not. What is it that he has informed us? That he has accepted an invitation—not that he is disposed to accept into this Congress—but he has accepted a friendly invitation for the appointment of Ministers to join it; and in due time he would call on this House to give its aid. Now it was most probable, it was reasonable and just to suppose that, when the President asks us to furnish him with auxiliary aid, to carry his design into execution, he will furnish us with all the information which he might think necessary to do justice to the subject. He believed that the appointment of these Ministers will have a very great effect on the public interests of this country; and, in accomplishing that purpose, he knows that he must have the aid of this House, and he will furnish us with all the light, with all the information, that he thinks necessary to guide us to a just decision on the subject. Should we not be satisfied, we may withhold the appropriation: for the Constitution has placed this defeating power with the representatives of the People.

There was nothing, Mr. C. said, to justify the charge that any bad faith was intended; yet this proposition implied a belief that the Executive intended to act in bad faith towards us. When this proposition was

made, we were informed that this information would be furnished in due season—and what was its situation then? The Executive, conceding to the invitation, proposed to nominate to the Senate Ministers to this Congress. It appeared from his message, that, having make up his mind on the subject, he intended to made a speedy nomination, and the subject-matter may be depending before the Senate; and, if this is the fact, it might be the reason of his not sending a message to this House. But we are told we are to be called on to act on this subject. The season is advancing, and gentlemen say, on all sides, this is a very important subject; but we dont wish to stay here till January next, to decide this question; we want information on which to act.

Mr. C. said, he had reason to entertain the expectation that this communication would be made voluntarily, in due season, by the President; and yet there might now be circumstances, which, in the exercise of that comity which ought always to subsist between him and the other branch of the Executive, would forbid it; and yet those circumstances might not be, as he thought they were not, entitled to any weight here. We have to act, and are entitled, when we desire it, to information. The gentleman from Pennsylvania, Mr. C. said, in aid of the argument which he had advanced in the House, to shew that there was an intention to operate on the public feeling, had thought proper to refer to a subject of a former date. Mr. C. remarked, on that subject, that he was not aware that it was intended, as the gentleman had intimated, to have some operation on some great political movement. I know of no such design, said Mr. C., but perhaps the gentleman is more fortunate than I am; yet I ought to be supposed to understand the motive of the proposition, seeing that I advocated it. I was not governed by any consideration of that sort. I was governed by my convictions, founded on such information as I had, that the measure was a proper one, and that we were doing in that instance nothing more than had been done to the Governments of the South at a former period. If I was in error, t was an error of judgment and not of intention.

In relation to all this matter, touching the effect it was o have on the Holy Alliance, and on the interests and eace of this country, which had been so much dwelt pon in this debate, on a mere call for information, Mr. C. aid he should not venture to form any opinion till he was possession of the necessary information as to the nature f the Congress, and the objects to be attained by sending ur Ministers there; then he would carefully examine e subject, as one determined to act rightfully, and if he und that any pernicious effects were likely to result, en he should vote against making any appropriation. et them have the information, and then they should proed to deliberate on the subject fairly and calmly, and ee from any other feelings than those which influenced en devoted to the interests of their country. He thought was not entirely wise to make up an opinion in the dark; looked like prejudging the matter; and after gentlemen d expressed opinions on the main question, either one ay or the other, they were not likely to be so open to e influence of reason as if they remained free and unmmitted. He thought it was due to the subject, and minently due to themselves, that they should, when all e facts were before them, be free and unprejudiced on e subject. To be so was indispensable, in order to arve at a just conclusion on the subject.

Mr. SPRAGUE said, he did not rise to discuss the subct of the Panama mission, under the present motion, t because the question before the House presented elf to his mind in a different view from that which other ntlemen had taken of it. The gentleman from Pennlvania, (Mr. INGHAM) the mover of the amendment, has ld us that the question is, "Shall we have more or less formation?" Is it so? Why do we *request* the President instead of directing or commanding him? Is it not because we have no right to command him; because he is as independent in his sphere as we are in ours? He is bound to execute his high trust in the manner which, in his sober judgment, shall best conduce to the interests of the nation. Suppose, then, we request the President, in the most unqualified terms, to send us all the information; and he, with the whole before him, shall firmly believe that, to disclose it, would be of essential injury to the public interests, or violate our faith to foreign nations—would he not be bound, in the discharge of his duty, to withhold it? If, then, the President shall perform his duty, and I firmly believe that he will, conscientiously and independently, the same information will be communicated whether the qualifying clause shall be stricken out or not. The extent of information to be obtained does not depend upon the terms of the resolution. Still I do not consider the phraseology a matter of form only; and if it did appear to be so, it would not be wise unnecessarily to depart from the established forms of official intercourse. Such a deliberate departure, at this time, must indicate something—I need not say what. I apprehend that the clause now proposed to be stricken out, was originally adopted by the members of the House, not only because it was respectful to the Chief Magistrate, but, also, out of respect to themselves. They were unwilling to make an improper request. They would not subject themselves to the imputation of asking the President to do that which it might be his duty to refuse; they, therefore, used such language as restricted the request within its proper limits, and left to the Executive the free exercise of his legitimate powers. Why should we now depart from a precedent so long established? It is answered that this is a new case. The same may be said of every question under any new circumstances. If this identical case has not before arisen, there have been many so similar and analogous as to govern the present. This refers only to our foreign relations, and missions deeply affecting those relations have been of frequent recurrence. Again, it is said that we should disregard precedent, because this is a subject of transcendant importance. If the view which I have taken be correct, the importance of the proposed mission has no bearing upon the question, since the extent of our information will not be affected by the amendment. But, is this a matter of such unparalleled importance? Was there never a case of equal magnitude in our history? It is said we were about to change our national policy. Of this I can see no evidence, and do not believe it. If it were so, is the question, whether we shall change our policy, of greater magnitude than was the original question, whether we should first adopt it? When, during the late war, Commissioners were empowered to negotiate for peace, and form a treaty which might affect all the vital interests of the nation, was it a matter of less importance to us than the sending of Ministers to Panama? I cannot consider this a subject of such overwhelming magnitude as gentlemen have represented it. I see nothing in the present conjuncture, of that imperious necessity which disregards all law and all precedent: and believing that the proposed amendment will produce no good, but much evil, I shall vote against it.

Mr. MITCHELL, of South Carolina, said, that, in some respects, he considered this amendment in the same light with the gentleman from Maine. He held, that each branch of the Government is responsible for its own acts, and each had its own distinct rights and powers. The Executive is possessed of the information which is asked by this House; but, if he does not think proper to communicate it, he has the right of refusing. The amendment, therefore, in its effect, must be perfectly nugatory, and, in that view, he was unwilling to vote for it. But, Mr. M. said, there were two points of view in which he considered the amendment as highly necessary. The first of these

had respect to the honorable mover. That gentleman wished that the resolution should be referred to a Select Committee, that the discretionary clause might be stricken out. Now, as it was a matter to Mr. M. of entire indifference, and would, in effect, be the same, whether the clause was stricken out or not, he said he would vote for the reference, out of respect for that gentleman's wishes. But there was another ground, on which it might be proper to strike out this clause. Doing so, might have a tendency more fully to express to the President what are the wishes of this House. It would manifest that the House is desirous of having all the information which pertains to the subject. And for his own part, Mr. M. said, he was free to confess that he would not vote for this mission, unless he was fully convinced that he had all the information respecting it, which the Executive has. What is it, (asked Mr. M.,) that we require? In the first place we ask for the whole of the correspondence which relates to this invitation; and is there any member of this House, who will be willing to vote an appropriation for the mission, unless he has the whole of this correspondence before him? We ask, in the next place, to be told what are the objects of this Congress: and will any member vote for the mission without knowing them? We ask, what are to be the powers of the Ministers who are sent: and will any gentleman be willing to vote an appropriation to send them, who does not know what is to be the extent of their powers? Whoever may be willing to do so, I am not. It is very true that we have no right to demand these instructions from the President; but it is also true, that I will not vote without them. And this, I think, is the precise limit of the respective powers of these two branches of the Government: that the President of the United States may refuse to communicate to this House, the information it asks respecting this mission, and, if he does, the House of Representatives may refuse to vote for the appropriation for that purpose. Sir, I absolutely disclaim all opposition to this mission. I do not, as yet, know what are its specific objects; and I surely, therefore, cannot be opposed to them. A gentleman from Louisiana, (Mr. LIVINGSTON) has represented it as a measure founded in a great and enlightened policy—if it be so, none will be more delighted to see it prevail than I shall be: for I will support any Administration which acts on such policy. But, if it is a measure fraught with all the direful and disastrous consequences predicted by the gentleman from Virginia, (Mr. FLOYD) may God give me power to resist it with my life. I certainly would not wilfully shew any disrespect for the President. I should consider it unworthy of my own character, as well as unworthy of this House, to do so: but I wish, from the sincerity of my heart, that the President may send us the whole of the information we desire—and I shall vote for the amendment.

Mr. FORSYTH did not attach any consequence to the proposition of the gentleman from Pennsylvania, so far as it could practically affect the information to be procured. The subject was of such a character, that it *must* be the duty of the President to give the House the fullest information. In presuming that this would be done, Mr. F. only presumed that the President understood, and would do his duty. While he considered the amendment proposed of no immediate practical consequence, yet, as a matter of principle, he was in favor of it; and he rose chiefly to remove the impression made by the very imposing, but, as he thought, very inaccurate statement of the gentleman from Massachusetts, (Mr. WEBSTER.) The gentleman presented the subject to the House as if it were precisely the question presented by the resolution of the gentleman from South Carolina, in which it is alleged the words referring to the discretion of the President, were introduced. The resolution now before us embraces two distinct calls. The first, like that of the gentleman from South Carolina, for correspondence, or parts of correspondence, in relation to the Congress of Panama. The second, altogether different: for an explanation of the objects the President has in view in accepting the invitation to send Deputies to that Congress. So far as regards the first part, the statement of the gentleman from Massachusetts was perfectly accurate. The discretionary words were proper in both, and no motion has been made to strike them from the resolution before the House. The motion is to strike them from the second part of the resolution, into which they had been carefully introduced. The gentleman alleges, as the reason for their introduction, that it is usual, according to ordinary forms, in such cases. This is certainly incorrect. The occasion is extraordinary. The call, like the occasion, is extraordinary. The ordinary rule cannot properly apply to it. Similar words are found in ordinary calls for diplomatic information—not that their introduction is courteous to the Executive Magistrate, but because the House well knows that the correspondence of our Ministers, with their own and foreign Governments, necessarily contain various matters and allusions, the disclosure of which would be injurious to the public interest, and could not be useful to the House. We do not ask for instructions from our Government to our Ministers, because they necessarily contain the details of the manner in which our wishes are to be obtained, and contain also a statement of all that we want to accomplish, and the least that we will be satisfied to obtain. Another reason for not *usually* asking instructions is, that we cannot, except in extraordinary cases, make any constitutional use of them, if they were presented to us. The reference to the discretion of the President, is not matter of courtesy, but of utility, and regulated by the answer to the simple question, Can there be any proper motive for withholding any part of the information desired? There is none. There can be no want of courtesy presumed from the omission of the words proposed to be erased. What injury can arise from an explanation of *all our* objects in going to the proposed Congress? Mr. F. had tasked his imagination in vain, to discover what legitimate object could be contemplated that might not be safely, and ought not properly, to be disclosed to the House. He took it for granted, that the invitation to us to attend, explained the objects of the Power who gave it, in desiring us to be represented; and for that the acceptance explained our objects in consenting to be present. Supposing any thing to be omitted, the first step of our Deputies, on their arrival, would be a disclosure of what we desire to know—the objects of the deputation. The disclosure *now* cannot be injurious in its effects, since all that will be known to us, is already, or will be, immediately, known to the other Powers. If we intend to make commercial treaties—and this object is deemed propitious—this might be stated without injury to us or to our neighbors.

Mr. F. begged that it might be distinctly remembered that he did not seek to know the precise commercial regulations that might be contemplated, or the means intended to be used to induce our American brethren to join them. He did not wish to know any thing, the disclosure of which would be either noxious or useless. How can it possible for the House to decide the propriety of our being nationally represented in this Congress, without knowing with precision what is to grow out of such representation? An honorable gentleman from New York, Mr. STORRS) pursuing the example of others, makes [illegible] this Congress. He says, one thing is fully understood, that there is no intention to involve us in entangling alliances, or to endanger the peace of the United States. How is this fully understood? So far as regards the present war between Spain and the Spanish American Governments, we are not expected or desired to take part in the deliberations of Panama. For ought that appears in the language of the President, in every thing else that

deliberated in, we may take part. Every question of every imaginable magnitude and character, that could be brought into view, would be fairly within the scope of the President's words, limited only by the exception, that we were not to violate our neutral obligation. A solemn engagement to make common cause with Spanish America, against every power which might come in aid of Spain, in the present contest, would be strictly within our obligation as a neutral power, and may be a subject of discussion for our deputies. Mr. F. did not allege that this was intended: all he sought to prove was, that it might be; and that it was important, that the House might have light enough to ascertain whether it was or not. It would have been highly gratifying to him, if some gentleman, who seemed to consider this affair of Panama as a very ordinary occurrence, would have informed the House how its decisions were to be made. With some care, Mr. F. had sought to ascertain that very important point. He had not succeeded entirely to his satisfaction, but he would put the House in possession of all the knowledge he had acquired. The 16th article of the treaty between Mexico and Colombia, published in Mexico in 1825, but, as it was asserted, formed in October, 1823, provides for the manner in which one important question is to be decided. The present seat of Government of the Confederated Congress, is Panama. Looking forward to the necessity that the accidents of war might produce, the parties, anticipating that another place in Mexico may be fixed upon, agree that the obligations imposed upon Colombia, by the 15th article, to treat the Plenipotentiaries as Ambassadors, &c. are to be binding on Mexico, if ever, by the accidents of war, or the consent of the *majority* of the *States*, the Congress should meet within her jurisdiction. The seat of this organ of the Confederation, may be changed by a majority of the States voting by States. How other questions are to be decided, can only be matter of inference; but that all questions are to be decided in the same way, might be fairly presumed, until the contrary was clearly shewn. He admitted that this might be a subject of discussion when the Congress met, but could scarcely imagine that, considering the character of the compacts by which it has been created, our Deputies would be called upon to deliberate upon its primary organization, or to discuss the rules of its proceedings. This could not, will not be, unless we are to become *pars integra*, and we have already heard a formal protest, that it cannot be the intention to make the United States a party to a confederation.

The House is called upon, however, to repose confidence in the Executive. Mr. F. was not disposed to withhold Constitutional confidence. He had no reason to believe it was the intention of the President and Senate to involve the country in a pending or expected war; but that he foresaw various means by which the peace of the nation may be endangered, and the obligations of our neutrality might be violated, without supposing any design on the part of the Executive to do either. Judging of the future from the past, he asked the attention of the House to the condition in which the United States are now placed between Colombia and Spain. By the stipulations of our treaties with these Powers, a case may arise which shall compel us to insist, at the point of the sword, that Spain shall *formally* acknowledge Colombia as an Independent Government. The treaty between the United States and Spain contains the principle that free ships make free goods; but it is not to apply unless one of the parties is at war with a Power which admits the principle and acts upon it. With Colombia we have precisely the same agreement. In the present war, the American flag should cover Spanish and Colombian property from capture and condemnation. Suppose Colombian property is taken in American ships by a Spanish armed ship. Our obligation to Colombia obliges us to demand its restitution. The Spanish gives up the ship, but holds the property, as fairly seized, and liable to condemnation, as belonging to his insurgent subjects. We must submit to this claim, or compel the re-delivery of the property as belonging to an independent Power, which admits and acts upon the principle that free ships make free goods. The same gentleman who had said we are to have no entangling alliances, has also informed us that the Congress of Panama is to have no reference to the Holy Alliance, at least so far as we are to be concerned in it. This is the assumption of the gentleman, and altogether gratuitous; and although it may not be dreamed of by those who are at the head of our diplomatic relations, is yet fairly within the plan of the deputation, so far as it is unfolded to us. A stipulation, formal and precise, to make common cause with Spanish America, to establish the American system, as contra-distinguished from a European system, would be perfectly consistent with the message of the President at the opening of this session, provided that this stipulation was not to be obligatory while Spain was left single-handed to maintain her contest with the newly established Powers.

A gentleman from Maine, (Mr. SPRAGUE) who addressed the House, Mr. F. believed, for the first time to-day, has spoken of the impropriety of asking any thing of the President which he might be possibly disposed to withhold—we having no right to do more than request, and the President not being bound to obey. When the House request information from the President, the phrase is used from courtesy; not because the House have no right to demand information, or that the President has any right to withhold it. By the Constitution, the President is the organ, by which information of exterior interest is obtained—not for his use only, but for that of the Senate and of the House of Representatives. Whenever, in the exercise of our Constitutional authority, any thing is wanted from the President, we have the right to demand, and the power to compel the production of it. The only instance in which this right was not disputed, has been already stated in this debate. It occurred in the discussion of the British treaty. The House called for the instructions under which the treaty was negotiated. General Washington refused to disclose them, not on the ground of the want of authority in the House to demand them, but because the demand was not made with a view to the exercise of any of the Constitutional powers of the Representatives of the People. It did not appear, said that illustrious Statesman, that the inspection of the papers asked for, could "be relative to any purpose under the cognizance of the House of Representatives, except that of impeachment, which the *resolution* has *not expressed*." Strange, indeed, would it be, if the House of Representatives, whose right it is, and whose duty it may become, to impeach those who gave, or those who obeyed instructions, should be without the power to compel the production of them. The House has the right to demand of the President, any information it may Constitutionally want, and, by the ordinary process of its Sergeant-at-Arms, to take it, if treacherously withheld from them. Mr. F. had thrown out these ideas in order to correct certain vague notions that appeared to be gaining ground about the independence of the different departments of the Government of each other. The true power and importance of the Representatives of the People, were in some danger of being forgotten, even by the Representatives of the People. Upheld by the Constitution, that House had, and would exercise the power to reach every post and officer of the Government, except the co-ordinate branch of the Legislature, breaking down all the fences which courtesy and deference always seek to erect around the Executive and Judiciary.

To return from this digression to the point before the House, the whole argument against the proposed commitment is precedent—precedent. Yet there was no precedent, as the occasion was beyond all former experience or usage. Mr. F. hoped there would be no refined profes-

sional pleadings on the analogy of the cases. Precedent itself was no argument on a great question of the rights of the House. Refined and fancied resemblances between what is proposed, and what has heretofore been done, should have no weight in the decision of it.

Mr. WEBSTER said, that he rose to offer a few remarks in reply to the observations of the gentleman who had just taken his seat; and, in doing so, would endeavor, as nearly as he could, to follow the course of those observations. The gentleman, it would seem, admits that the amendment under consideration, is not likely to be of practical importance in the present case; but he supports it on the ground of pure principle. Well, sir, on the ground of principle, then, I consider it as of importance that this House, when it calls at all for papers, should make the call with the usual reference to the Constitutional discretion, which belongs to the President of the United States, and subject to the limitation which that discretion may dictate. The gentleman says, that I have not stated the case accurately, in respect to the history of this motion and its original shape; and that, although at first, the insertion of the clause might have been very proper, yet now the ground is changed, and it has become improper; and that there is no precedent to support it. And the gentleman bars all inference from cases merely analogous, and calls for a precedent that shall be identical with this case. He forewarns the House against being misled by a lawyer's argument, from analogy. Doubtless, sir, this would be very convenient to the gentleman's argument; especially if it be coupled with his other position, that the case is new. If no precedent deserve regard, but one to be found in precisely such a case, or the same case, and if no such case exist, the inference is very easy, that there is no room for the influence of precedent. And if the premises be true, the inference would hold always, and in all cases: for no two are exactly alike. But that plain rule, which the gentleman calls a lawyer's argument, is somewhat in his way. This teaches us that precedent is applied from one case to another, not where the cases are precisely the same, but where the principle is the same. In other words, that a just and proper analogy is fair ground of argument.

Now, sir, in this case, a resolution has been introduced, requesting certain information, or certain correspondence, on a subject affecting our foreign relations, to be communicated, with the insertion of the usual clause, leaving it to the discretion of the Executive to judge how far such information or correspondence could be communicated, without injury to the public interests. To this resolution, the House has now added, in substance, a new paragraph, requesting other and further information, on precisely the same subject; and, as matter of course, I added to this second call, the usual words of qualification.

Both paragraphs respect our foreign relations: both respect the same branch of those relations: both respect the same identical subject. What reason, then, can there be for striking out the qualifying words in the *last* paragraph? This is closer than common analogy: it would seem to be, as nearly as possible, the same case; the two calls are but parts of one call, on one subject. My argument is, that, being introduced into the first resolution, (now the first branch of the present resolution) they are equally proper, in the added part, (or that which is now the second branch of the resolution.) How is it shewn that the qualification is proper in one part, and not in the other? Suppose this were the case of an ordinary mission, (and, in principle, it is the same thing as if it were any of our missions to Europe,) I ask, would it be Constitutional, in this House, to ask the President to disclose, particularly, and without reserve, all the objects he had, at a given time, in view, in that negotiation? Surely not. It cannot be pretended. But the gentleman tells us that, as the latter part of the resolution asks for more than is usual, it is, on that account, not to be made subject to a discretionary clause. Now, sir, to me, this appears to be an argument for directly an opposite inference. I think that, for that very reason, it ought to be subject, at least, all the usual qualifications. If the call, itself, is for more than is usual, it is a stronger case than usual for the qualification.

Let us look at the general reason of the thing. If there not be, by possibility, some one or more objects importance and utility connected with this mission, which a disclosure might defeat? I think, that this is possible can hardly be doubted. It is well known that the general wish and expectation is, that the communications practicable, may be public, and not secret and confidential and therefore I repeat the question, may there not be, all probability, some object which could not, now, be usefully made public? If we can suppose any one such, ought to settle this question. I can suppose many such. The first which occurs to me, and that only, I will state. The honorable gentleman from Louisiana, in the succinct and able view which he presented of those things which might engage our Ministers at Panama, mentioned, as one the endeavor to persuade the new formed nations of the impolicy of forming commercial treaties on the ground of giving preference to particular Powers. Can we not see, that if this purpose, in all its detail, were made public, it might defeat it? If we ask, in an unqualified manner, for the objects, we ask for *all* the objects, particular and general, collateral and direct, primary and contingent. What practice or what principle can justify us in demanding such a premature disclosure? *Would* it not, or might not, enable other Powers to thwart us, and to secure their own ends, and clinch the nail, before we could effectually act in the case? Many other instances might be adduced; but the position is too obvious to need further illustration. The honorable gentleman refers to the language of the President's message, in which he speaks of the conditions under which this mission is proposed, viz. of not departing from our neutrality. The gentleman quotes the message as if the purposes of neutrality were expressed were limited to the *present war*, between new American States and Spain. Where, sir, did he find this limitation? It is not in the message. He uses the words *present war* with emphasis. I repeat, they are not in the message. The gentleman cannot find them there. (Here Mr. W. read all that part of the message which relates to this subject.) There is nothing here, sir, about the "*present war*." Does the gentleman mean to say, and to throw it out, as a possible object of the President to enter into *prospective* alliances, offensive and defensive with these Powers, or any of them? And that after the present war," we are to be bound by the acts of the Congress at Panama, as a *pars integra*, as he calls it, of alliance?

[Mr. FORSYTH explained. He had not said that was now intended by the Executive, but that something might happen. Neutrality has not any relation to wars *hereafter*.]

Mr. WEBSTER proceeded. Sir, I thought it thought that our policy of neutrality refers to wars or contingent, as well as wars present. I thought in declaring that we should not depart from our it was the plain and obvious meaning of the Presi we had no intention of changing our peaceful and peaceful pursuits, nor of entering into engage which might lead us into any body's quarrels but Our neutrality is a system growing out of our consonant with our institutions, and approved whole history, and all our experience. And neutrality, as I understand the message, it is not that we shall in any degree depart, by any thing done in the Congress of Panama.

The honorable member pressed this part of the

still farther; and endeavored to show that war might result from this measure. And how does he make this out? Why, he says, we have a treaty with Colombia, in which the principle is adopted, that free ships make free goods; and that, whenever either party shall be engaged in war, the other shall respect this principle toward all the Governments which shall adopt and act upon it: that we have a like treaty with Spain; and that, if Colombia and Old Spain shall be engaged in war, and we were to act upon this principle, Spain will refuse to admit its application, because, she will reply, that the Republic of Colombia is *not* a nation, but only her rebellious subject: and so, if we comply with our treaty, we must go to war with Spain. Sir, the gentleman has gone very far round to find out a way in which this country may get into a war with Spain, on the ground of our recognition of the independence of Colombia. Why all this circuity of supposition upon supposition? The result of the whole is, that Spain may go to war with us for acknowledging the independence of her former Colonies. Sir, that cause of war is notorious. We have done the deed: we have made the treaty: we hold intercourse with Colombia as a sovereign Power: her Minister meets here, in this city, the Representative of the crown of Spain, on equal terms. Does Spain choose to consider this as cause of war? She has long had the option.

It is not asserting the provisions of our treaty with her, in their application to the property of citizens of Colombia, found on board vessels of the United States: it is not from proceedings in any of her admiralty courts, that Spain is to be informed, for the first time, that we regard Colombia as independent. Do we not hold an open trade with all her ports? Nay, have we not a public treaty of amity and commerce with her? Are not our diplomatic relations with her as open, as notorious, as much professed, as our relations with Spain herself? Aye, Sir, have we not gone still further? Have we not declared, that we will not look with indifference on any combination of European Powers, to subdue these new States, and reduce them to their original dependence? To what purpose, then, Sir, does the gentleman argue, that war with Spain may grow out of this mission, when no other ground is found for it, after all, than our recognition, already open and avowed, of the independence of the new Republics? If this be cause of war, I repeat, we have already furnished it. We are committed, and shall not go back. If it be said to our charge, as an offence, that we treat the former Colonies of Spain as independent, we cannot deny it. Our acts have been overt. If Spain chooses to regard this as cause of war, the option is, and has long been, with herself. It is vain, then, to urge, that war with Spain may follow from acts which, after all, amount to no more than we have already done.

But gentlemen say that they wish to see the instructions of our Ministers. And what will they do with the document when they get it? Do they propose to amend?—Modify?—Strike out?—Insert? Sir, if we propose this, we propose to take into our hands the Executive power of this Government. We transfer the treaty-making power from the President of the United States, where the Constitution has placed it, to the popular branch of the Legislature. Undoubtedly, under the responsibility of his situation, every member must decide for himself, when an appropriation is asked to carry a treaty into effect, whether he will grant or withhold it. It is vain to speak of his moral obligation: the Constitution gives him the power, and he may exercise it, of withholding his consent to the appropriation. But that is the extent of his agency, and of his power, as to a treaty proposed or made by the Executive.

I agree, Sir, that it is very desirable we should have all the knowledge on this subject which we can properly possess: but the question is, whether we shall not make the same reference to the Executive discretion, in this, that we do in all other cases? It is said, we must not; but that we should call for the entire correspondence, and all the objects, specifical and in detail, of the Congress, and all the powers of the Ministers who are to be sent there. Sir, the President may have the best reasons for withholding these, or some of them. It is very probable that, in the progress of events, his own views may change, with changing circumstances. New relations may arise: and whenever any such changes happen, is he expected to come again with his object, and his details, to this House? The gentleman himself admits, that the omission of the clause will do little or no good, as to obtaining what we want for the present occasion. I hope, then, we shall not set a general precedent of this character. In one respect, I agree entirely with the gentleman: it is when he says, that, after all, it must remain discretionary with the President to make a full communication or not. But, Sir, who doubts that the President will make the communication, and that he will make it as full as can be desired? Is it not his interest to do so? Must it not be his desire to do so? Must he not know that in this, as in every thing, he can only stand firmly, while he stands on the enlightened approbation of an enlightened People? Dares any man doubt that the President is as willing to shed light on this subject, as the humblest citizen can be to receive light? The gentleman says, it is recommended to repose *implicit* confidence in the Executive. Sir, I have not heard it recommended, by any body here, to repose implicit confidence: I have only heard it said, that we ought to repose the *ordinary* confidence which we repose on other occasions, and that we ought not to exhibit extraordinary diffidence. I object only to unreasonable jealousy, and premature suspicion. Let us go on, then, with the call, in the ordinary manner. I only repeat what I said early in the debate, that I act, and mean to act, without the least reference whatever to the manner in which others, in another place, may perform their duties. I look only to the duty incumbent on us, on a subject of high interest, and on which this House has a right to the information which may conduct it properly to the end of its deliberations.

Mr. POWELL said he was opposed to the resolution of the gentleman from Pennsylvania, and he should have contented himself with giving a silent vote in opposition; but, from the course which had been adopted by gentlemen, during the discussion of this subject, and the extensive range of argument in which they had indulged, involving the policy of the Panama mission, it might probably be inferred, that, by voting in opposition to the resolution of the gentleman from Pennsylvania, and the original resolution, he should be considered as pledged in relation to his final vote on the subject. To rebut any such implication, he now rose to detain the House a few moments, and to assign the reasons for the vote he intended to give.

The original object of the resolution moved by the gentleman from South-Carolina, (Mr. HAMILTON) and the object of the amendment proposed, and now adopted, by the gentleman from Massachusetts, was to obtain such information as would enable us to proceed to the investigation of the subject of the proposed mission to Panama; and to act understandingly and correctly on the subject.

Mr. P. considered the whole course of the discussion, as to the policy of this mission to Panama, as premature, and unconnected with the real question which had been submitted to the consideration and determination of this House. The object of the resolution, he repeated, was to procure the necessary information to enable the House to understand the important question as to the policy of the recommended mission to Panama. It is evident, he said, that it was premature to go into such discussion, without the lights to be calculated upon from the information the resolution asked for. Mr. P. asked what would be the

practical effect of the proposed amendment of the gentleman from Pennsylvania? Would it afford to this House any further information than the House could or would derive from the Executive department, under the resolution as it now stands? By what process of reasoning could the gentleman bring his mind, or the minds of this House, to the conclusion that they would derive more information by giving the resolution a shape such as he contemplated, than by suffering it to remain in its present situation? The proposed alteration is only calculated to be operative as it implied a want of confidence in the President of the United States. It could, in fact, have no useful effect, except in reference to a dereliction of duty in that officer, if it could even have effect in that aspect: and although, (Mr. P. said) he was not disposed to yield himself up implicitly, in relation to confidence in the President, or to pin his faith upon the Head of any Department of the Government, yet he was not disposed to withhold that confidence, unless he was warranted in so doing, by some information, or some fact, calculated to diminish reasonable and proper confidence. Was this House prepared now to say, that, by an official act of the President of the United States, he has justly forfeited that confidence which was due to him, and which ought to subsist between the co-ordinate branches of this Government? If any circumstance had taken place, which would warrant such a conclusion, Mr. P. said it had not reached his ear. So far as the President stands in relation to this House—so far his course had been of that character as not to destroy a reasonable and fair confidence in him. Thus, Mr. P. said, the necessary effect of the proposed amendment would be, to imply a want of proper confidence: because, if the President acts with good faith, the necessary result would be, that he would, upon the call recommended, communicate all the necessary information. It would only be in the event of his acting in bad faith, that he would withhold it—provided the safety and interests of the nation did not require him to do so. Surely such would be his course. If he should not act with good faith, could the House, or the gentleman, by giving his shape, or any other shape, to the resolution, make him observe good faith? No. If he were disposed to withhold the information from the House, or if he were disposed to make it his duty to the House, and its call, or to the nation, they could give no shape, however imperative it might be, to any resolution, to drive him from his course, and to act with good faith.

Mr. P. said, he had no apprehensions that the President would not observe good faith to this House, in relation to this matter, and he hoped, sincerely, he should be able to say so hereafter, as it regarded every other great and important interest of the nation. If in this hope he should be mistaken, he should not be silent. Mr. P. repeated, that the proposition, if important, must be based on a want of confidence in the good faith of the President. If he acts with good faith, we shall have all the information he has, if it be safe and proper to communicate it, under the resolution as it now stands. He is a co-ordinate branch of the Government. His power to exercise discretion in this matter, is sanctioned by the example of Washington, and, in the exercise of that power, he will give or withhold information, whatever shape we may give the resolution, or whatever langague we may employ. If we give the peremptory aspect to the resolution, that was asked by the gentleman from Pennsylvania, would his object be more certainly attained? Mr. P. said, no. It could not alter the result, in any aspect in which he could view the subject. The President would either give or withhold, in reference to his own judgment, any portion of the information that he may think proper, in the exercise of his constitutional power. If the President, in violation of his high duties, intended to withhold from this House any information in relation to this subject, or any other, he should despair of removing the difficulty by the amendment proposed, or any other amendment that human ingenuity could shape or devise. We shall get the same information precisely, whether we adopt or reject the amendment: and, being worse than useless, I should vote against it.

Such being the result, he would ask the House if it were disposed, even by implication, to evince, under existing circumstances, such a distrust of the Executive to believe he would wantonly and uselessly withhold from the House information—information which they asked for, and declared necessary to enable them to act understandingly? It would be against his own interest to pursue such a course. He is pledged and connected to the world, to the nation, and to this House, as having approved the policy, by accepting the invitation to send ministers to Panama. His pledge is evidenced by his message to this House. He depends on us to redeem this pledge. He must, of course, feel a strong solicitude to have the sanction of this House. He cannot proceed without it. We may, in this view, confidently expect *full information*. But, till the information came, he should not, blindfold, express his opinion on the subject of the mission. He would not trouble the House with his crude notions and suggestions on a subject upon which we profess to be uninformed, and ask for light. He would not, in the dark, speculate upon the objects, purposes, and ends, to be attained by our participating in the affairs of the Congress. No: he would he say that we ought to meddle in the matter.

Mr. P. begged leave to make one more remark before he took his seat, as having an operative influence on his mind in the vote he had already given, and the vote he intended to give. It was in reference to a resolution moved by an honorable gentleman from Pennsylvania, which he had in his eye, and the reading of which he had called for at an early stage of this debate. On this resolution the House was compelled to express an opinion upon the subject of the proposed mission. The subject was distinctly before the House: we are bound to deliberate upon it and vote. Being thus obliged to express our opinions, it was certainly not only desirable, but was essential that we should have all necessary information to enable us to act understandingly; and in this view the call was proper. As to the time of making this call, he (Mr. P.) said, there was, in the resolution, no time prescribed within which we expected the communication to be made. The time was a proper subject for the exercise of the discretion of the President, always holding him responsible for the observance of a proper decorum towards the

Mr. DRAYTON observed, that it was certainly a subject of deep regret that so much time should be consumed by the discussion of a question like that which now occupied the House. For himself, he conceived that, in substance, there was little difference between the resolution, as proposed to be amended by the gentleman from Pennsylvania, and as already amended on the motion of the gentleman from Massachusetts. But, two resolutions might differ very little in substance, and yet greatly in their import. The introduction of a single word, that might not change the sense of a proposition, would be sufficient to present it in a different shape, and, by overloading a resolution with exceptions and provisos, which do not entirely destroy its substance, we may greatly weaken its effect. Whether provisos were repeated or not so often, or whether they were not inserted at all, the practical result would be the same; because, let us make the call in the most imperative form we can conceive, and let us insert into it a requisition for every document and paper, and for every species of information which can be imagined, would not the President, when he made the communication, withhold such documents, papers, and information, as he supposed the public good required should not be communicated? No difference, then, as to the authoritative effect of the resolution, would result from agreeing or not agreeing to the motion of the gentleman from Pennsylvania. But there was

view in which this became of some importance. It is certainly proper that this call should so be framed as to show to the President whether we are anxious for this information or not; and to him it appeared that, if the proviso should be repeated in the resolution, the House would seem to express to the President that they wish him to be particularly careful as to the extent of his communication; and in this it appeared to him that the great difference consisted between the amendment of the gentleman from Massachusetts and that proposed by the gentleman from Pennsylvania. If the former prevails, the Executive will perceive, on the face of the resolution, that the House feels lukewarm on the subject, and is disposed to furnish him with pretexts for not fully giving the information. But if the call is to go in the unqualified form desired by the gentleman from Pennsylvania, no such inference can legitimately be drawn.

In the course of this discussion, several remarks had been applied to his honorable friend and colleague, (Mr. HAMILTON) who was not now in his place, in which he did not think that gentleman had been fairly treated. The resolution had been called his, and the gentleman from Massachusetts had said that his honorable friend had alternately adopted and repudiated his own offspring. But how had his colleague done this? Was it not from the first manifest, that, owing to causes which his friend, with his usual candor and frankness, had stated to the House, he did not think the House ought then to pass the resolution? A similar resolution was afterwards offered by another gentleman, and the question being put whether the two resolutions were not in substance the same, the Chair had decided that they were. And, with the consent of the mover of the latter resolution, the resolution of his colleague was considered before the House. What then was the conduct of his honorable friend? So little desirous had he been of being considered the author of a resolution which he had not pressed, that he wished to withdraw it, and suffer that of the gentleman from Kentucky to take its place. But this course was forbidden by a rule of the House. He was therefore obliged, by circumstances, to consider as his own, a resolution which he did not press, and which he, in fact, desired, should not, at that time, be considered. Now, every gentleman must know, that there was often as much consequence in the time at which a resolution is offered, as in the form which may be given to it. Various amendments were afterwards introduced, and as his friend was not permitted to withdraw his resolution, he consented to those amendments, under the impression that they improved the original resolution. Afterwards a proposition was offered by the gentleman from Massachusetts, which, though it had the form of an amendment, and by rule could only be received as such, was, in fact and in truth, a substitute for the resolution of his honorable friend. This new resolution contained a duplication of provisos, as to the discretion of the President in making the communication required, and this produced an essential difference in the tone and manner of the call. His friend was, therefore, justly entitled to consider this resolution not as his, though, in point of form and rule, it had to be so considered by the House, and he had an entire right to act toward it as if in fact it had been the resolution of the gentleman from Massachusetts. When, therefore, the gentleman from Massachusetts, in a vein of pleasantry, talked about his friend's adopting and repudiating his own offspring, he must have forgotten that he was himself the parent of the bantling which he assigned to another father.

Mr. D. added, that he had been induced to make these remarks, because his honorable friend and colleague was absent, and had not had an opportunity to defend himself.

Mr. D. went on to observe, that the few observations he had addressed to the House some days before, appeared to have been altogether misunderstood. A gentleman from New York, (Mr. WOOD) ascribed to him words which he had never uttered, and assigned to those words a meaning which he certainly had never intended to express. The gentleman represents me as having said that this House has nothing to do with the present subject. Sir, I never said so; but I did say, that I thought the House had nothing to do with its discussion at the present time; and it does really seem to me extraordinary, that the House should consume so much time on a question which may never come before it, unless we should resolve ourselves into a Committee of the Whole on the state of the Nation, for the purpose of discussing an abstract proposition as to the policy of sending Ministers to the Congress of Panama.

He held it to be the duty of the House to be economical of its time: for, added Mr. D., make what speed we can, there is always, at the close of the session, a vast arrear of unfinished business.

Suppose the information required were obtained, what practical use could now be made of it? I know of none, excepting that the act of this House might be supposed to give an impulse to the too deliberate movements of another branch of the Legislature.

Cases have occurred, in which information relative to treaties has been refused. If such information could be refused, could it be upon a better ground, than that Ministers, to negotiate the treaty referred to, had not been commissioned, might never be commissioned, and that the treaty might never have an inception; and, if it were refused, for the reasons assigned, should we not, by these long debates, have been consuming time, which our constituents intended we should employ in a very different manner? Should we be called upon for appropriations, we should then be entitled to ask for information. When thus called upon, it will be soon enough to ask for information, and then we should act upon that information practically and usefully.

A question had been asked by the gentleman from Massachusetts, which appeared to him to be a very extraordinary one. After he himself had moved the amendment which is now before the House, and which calls for this information, the gentleman inquires for what purpose we want it? Whether we are to add to or to limit the instructions given by the President to our Ministers? No, sir. We are not either to add to, or take from, their instructions. But we need this information, if we do require it, in order to guide our judgment, and enable us to act when it shall be proper for us to do so; because, if the mission, when explained by the information, shall appear to us to compromit the honor, the neutrality, or the interests of the country, it will be our duty to refuse to make appropriations for carrying it into effect. After it has been ratified, we could not, constitutionally, refuse the appropriations which its execution might require.

Mr. MITCHELL, of Tennessee, now moved an adjournment; and the question being taken, it was decided in the negative.

Mr. MALLARY now renewed the motion for the previous question; but the House refused to sustain the motion—Ayes 69, noes 110.

Mr. MITCHELL, of Tennessee, said, though the hour was late, he wished to say something to the House on this subject, but it was with peculiar diffidence that he should do so, seeing that certain men, who were pursuing certain measures, would be opposed to hearing him. He had always thought, till recently, that he knew something of human nature, but he now found that he was a mere novice. He believed he had less feeling on this subject, than most of those who had undertaken to say any thing about it. He had hitherto said but little, and he intended to say still less, in relation to it, but it might happen that he might cast some idea into the minds of some individuals, that might be useful to them; though he should

not attempt to convince them on the Hudibrastic principle: for

"He that's convinc'd against his will,
"Is of the same opinion still."

To such as these, he addressed no argument. He spoke to those who would think—to those who would listen—and who had not applied to the Delphic oracle for opinions. Mr. M. said he was one of those, who, let their minds be never so limited, thought for themselves. The ninety thousand people whom he had the honor, for their misfortune and his happiness, to represent, had sent him here to think for himself: he was not sent here to allow others, however high their standing, or brilliant their talents, to think for him. Their thoughts might be more brilliant and freer, but they were their own and not his, till he adopted them.

And now, a few words to the subject: and he would attempt first to answer some of the arguments of the gentleman from New York. That gentleman seemed to oppose the proposition of the gentleman from Pennsylvania, on account of its novelty: it was a new matter, and, therefore, we must have a precedent for it. He did not wish to treat the argument of the gentleman with ridicule, but he must ask his pardon for doing so: for it put him in mind of a story he had heard of a boy, who was carrying a bag on his back, with a pumpkin at one end, and a rock at the other, and when he was asked why he did so, he said, why my father did so before me. If they talked of precedent, they went on the ground, that, heretofore, they had acted in a particular way; *ergo*, they must do so still.

It is never too late, Mr. M. said, to correct an error. Now, as to precedent, he thought it was impossible, in the annals of the history of this nation, we could get one for the subject now under discussion. They might look back to those annals, and they would not find even the vestige of one. When did ever a case like this present itself to the House? Where was one to be found, bearing a similitude to it? None, he was sure, had ever taken the devious and strange course which this proposition had taken. When it was first introduced, they had no feelings on the subject; but it was laid on the table, and there rested for a while: but it afterwards rose up, foaming on them like soda water. What was all this for? What was all this feeling manifested about? A while ago, they did not want the information, and now they do. If it was right formerly, it is right now. Mr. M. said he had asked for a little information on this subject, in the earlier part of this investigation, but he had received none. Why, therefore, was it asked for now? On the other hand, it was said, it was all right; it was quite consistent this information should be furnished; but, whatever you do, dont have too much of it; their eyes were weak, and they might have such a blaze of information as would palsy every exertion of their minds. Mr. M. said he thought he was able to resist this effulgence. But they were not to have it: for, if they did, they would become as wise as the President.

What is it, then, that gentlemen so much fear? Why is the resolution so guarded? In his mind, Mr. M. said, it was a sort of advertisement to the President, which says, we ask you to give information, but we dont want you to give all the information. Why were those words so often used? Why were they so tautological, unless with a view to communicate to him that, though you are asking for information, in truth you do not want it? There could be no other reason that he could see. The gentleman has said there could be no precedent for this mission. Mr. M. would tell him, in reply, that such a case had never occurred, and if it had not occurred, how could they expect to find a precedent for it? The gentleman from New York said, a case might present itself, where this course might probably be thought necessary; but Mr. M. said, if there was any case on this earth that presented itself for the deliberations of freemen, that required a fair investigation of its whole contents, this was one.

What was it they were about to do? Mr. M. said he would take up the President's language, and on that he would view the matter.

[Here Mr. M. quoted that part of the President's message, which relates to the mission to Panama.]

This was what the President had said, and this was the foundation of all this inquiry, this argument, this expression of feeling, this brawling for the question. Look at it for a moment, and what was it? The President says we are to partake in the deliberations of this Amphictyonic council, but we are to take special care not to violate the neutrality which we hold to England, to Spain, and other Powers. This, it was said, was not a Holy Alliance: but, if it was not a holy one, it must be unholy.

The President had told us, we were to participate in the deliberations; *ergo*, in the debates of this Congress; and we must, therefore, have some Nestor, some Socrates there, some philosopher of the old times, whose mind was so trained that he would not deviate a hair's breadth from the line of conduct he ought to pursue. This was a good cause, Mr. M. said, why they should make the inquiry in the most peremptory manner, why he had accepted the invitation. We could not possibly interfere in their concerns and conclusions, without taking part, one way or the other; and he begged leave to call the attention of the House to the language of one, whose spirit perhaps hovered over this assembly, which he was the very means of founding: they ought to reflect and deliberate coolly, agitated by none of those feelings of asperity towards the powers that be; neither were they to eulogise, and place unbounded confidence in the same power; but they should act, as it became Americans to act—as Representatives of a free and enlightened People, to whom they were to give an account of their conduct, as well as to that tribunal, to the bar of which they must all, sooner or later, appear.

[Here Mr. M. quoted that part of Washington's Farewell Address, which relates to the policy to be pursued by America towards foreign Powers.]

Let us, said Mr. M., be free from entangling alliances, let us be distinct, as our motto imports: "e pluribus *unum*"—one amongst many; let us be as a towering person to man in pursuit of liberty; but never let us meddle in the disputes of other nations, and involve ourselves in their policy. Our distinct situation requires us to take care of our own concerns, and not to meddle with those of other nations.

Why were we to send Ministers there? The President has said it shall be done, and the gentleman from New York has said, we ought to have unbounded faith. Mr. M. said he was no sceptic; he had as much faith as the gentleman could reasonably expect, in the President of the United States, though he had been denounced in some of the little hireling prints, (he did not allude to those in the city of Washington) as an oppositionist. He repelled the foul charge. He would have taken the same course he had done if he had been raised at the foot of Quincy Hill; but because he was a Tennessean, because he was free, and was not ashamed to speak what he thought right, he was to be set down as an opposition man. He would, he said, support the Administration when he thought it was in the right, and he would oppose it when he thought it was wrong; and he would have opposed the Administration of his friend, General Jackson, had he attained that high station, with the same feeling that he would the present Administration, if he believed it were acting wrong. He believed, in his conscience, that before God, they ought to have all the information on the subject; all that the President is possessed of, they ought

to have. They had been forced, prematurely, into this question. They were anticipating the measure by running into the investigation of a subject not before them, except as it would operate in the minds of the public, or somewhere else, and there was no use in it; but if they were to have information, he asked for the whole of it; and if this was not a case where the necessity existed of calling on the President, he would ask the gentleman to point out one to him where it would exist. It was one, he thought, of the most important character to the liberties of this country; and there was not, he imagined, one that could come within the grasp of the human mind, which would present stronger results.

The gentleman had said, we have had the information, and we have seen the extent of it. But here was no argument. He says, be quiet—let your fears flee from you—believe that all is right. Believe in whom? Believe in the President, and all is well! Mr. M. was no sceptic; he had every reasonable kind of faith; but, from the imposing attitude that had been assumed, these words ought to have been added—believe and you shall be saved; he would then have had no objection to it, because it would have been a fine scriptural quotation. Mr. M. said he never believed, till he was convinced; and, when he was convinced, he would admit it.

What commercial treaties, said Mr. M., could be concluded at Panama? Do we not carry on our treaties with those Powers as we do with England? Do we not send our Ministers there, to enter into negotiations, and when these are completed, do we not have a treaty, which is to guide not only the Powers that are parties to it, but it is published to the world, that all may know the nature of our commercial connections? If we are to have any thing of this kind at Panama, let the President tell us, if he can, what kind of a treaty it is to be, and what is to be the extent of its operation.

The gentleman said we might carry this Treaty into operation, provided the President and the Senate shall both concur in it. Mr. M. said he should hesitate long before he raised his puny arm against the powers of this Government. His rule was always to act in the negative, till he was convinced of the course he ought to pursue; but as this matter was to be carried on in this way, to tell them, if you don't get this information you cannot act, and at another time, if you get too much light you will destroy the whole affair; this, he thought, was not treating them fairly; it was at one time raising the cup of expectancy, and the next moment dashing it to the ground.

The gentleman from Massachusetts, on his left, Mr. M. said, had told them that there could be no doubt that the President would communicate all this information. He feels as great a desire to communicate all within his power, as any member on this floor can do to have it communicated, because he rests on the affections of the People just in the same ratio as the members of either branch of the Legislature rest on their affections. Let this be true—take it as an axiom, and what does it lead to? Nothing that would enable us to decide whether the measure is useful or not.

Mr. M. could not agree with the gentleman, that the whole utility of this Mission would be defeated by the information being given. If there was any utility in it, he would ask the honorable gentleman to inform him what it was. He should like to have facts to rest on. He should like to know how it would operate usefully. In a commercial way, at least, he supposed it was intended for useful purposes. Though some salutary influence might grow out of it, might not the stream become corrupted whilst they were drinking at the fountain? Were they to enter on this investigation with their eyes shut? The gentleman had said, if we get all the information asked for, it would destroy the utility of the measure. Mr. M. said he was incapable of determining what was to be meant by an argument of this sort. He would say, as the gentleman who had preceded him had said, let it come here confidentially; if, in this assembly, there were any who could not keep a secret when it was for the interest of all that they should do so, they ought to be marked as black sheep, and turned out of the flock. The gentleman had said, that the intention of sending Ministers to this meeting, was to prevent the Republics from entering into negotiations with Foreign Powers. But did not this argument tend to show that they must enter into argument, into discussion? If they were to go into measures there to prevent this mischief, the consequence must be, that they must be engaged in the heat of discussion and feeling, that would necessarily arise; and, if they were to go there, and not to be bound by any awards there, they might as well play at *tag*, or any other child's play.

It was said our Ministers were to meet Ministers there. What Ministers? One from Spain, one from England, one from Germany, &c. were all to come there together, and in this kind of heterogeneous multitude, they were to settle, not only the affairs between North and South America, but the grand and magnificent affairs of this terrestrial Globe were to be determined there; and if it was to proceed to this extent, he thought he saw ruin in its train. It must be destructive in all its consequences, in every point of view, and therefore he was opposed to the matter.

The gentleman had further said, they should leave all this to the discretion of the President. Mr. M. said, when he who was never surpassed by man presided in the Presidential chair, did they leave it to his discretion when he refused to give information on an important subject? No; they voted a censure on him for this refusal Then the People were free, and political faction had not raised its head in this country. A measure of so much importance ought not to be left to the discretion of any individual. The President says, Ministers will be commissioned. Mr. M. therefore took it for granted, they ought to have the information on which this declaration was made. They might say to the President, you have made this unqualified declaration, and there must have been strong reasons on your mind to have induced you to do so; communicate your reasons to us, and then, if they are satisfactory, we will coincide with you, and do what we constitutionally may do. The gentleman had said, that no man could imagine but that the President was desirous of communicating this information. To that, Mr. M. said, he would answer, that they had a right to conclude there would be no harm in asking him to do that which he was willing to do. Nor could the President think it any violation of decorum on their part in doing so.

Hitherto, Mr. M. said, we had remained free from entangling alliances; we stand alone; we have given the nations of the South the recognition of their independence; we have given them the light of our experience; we have extended the right hand of fellowship to them; and what more had they a right to ask or expect at our hands? But now we are to be placed in a different situation. The President has pledged himself that we shall meet them in this Council, and we, the Representatives of the People, are asking for the grounds on which this solemn promise was made. Those who have spoken most in his favor, say he is willing to do it, but, at the same time, they put a kind of silent advertisement into the resolution, which says don't do it. Was it not right, Mr. M. said, standing as we did, distinct from all the nations of the earth, that we should have all the information on which this solemn pledge had been given? Let it come, and then, he might be one of the first to say that the President had the best reasons for pursuing the course he had done. All the difficulties in his mind might be removed when it was presented; but, in the name of God, let them have the whole, and not a part of it. If the President had the

power of withholding it now, he would have the same power in future, and they would not get it. Mr. M. did not intend to commit himself as to the course he should pursue in relation to this measure. It might possibly happen that light might come which would dissipate the mist which was now spread before his eyes, and he should then be enabled to decide on the course he was to take.

Mr. KREMER moved that the House adjourn. The motion was negatived.

Mr. FORSYTH, arising in reply, said he would detain the House but a few minutes. He could not forego the temptation, to bring the House to a precise understanding of the points of difference between himself and the gentleman from Massachusetts, (Mr. WEBSTER.) They agreed that, practically, the question of commitment was unimportant. Having similar views of the duty of the President, both expected a full disclosure, under the resolution, as it stood, or if it should be modified. Mr. F. was in favor of the amendment, on principle. The gentleman from Massachusetts is against it. Why, sir? Not on account of practical effect. That is disallowed. On principle—or, to use the gentleman's own and selected qualifying epithet—pure principle; an epithet not chosen with his usual professional accuracy. The principle of a proposition is either correct or erroneous; not pure or impure. Although coming to opposite conclusions, they were both satisfied that the decision to be made was, theoretically, important. What says the gentleman now? The ground formerly assumed is abandoned—usage is given up—it is admitted there is no precedent. But the case now before the House is analogous to the cases heretofore adjudged. Where is the proof of this resemblance? The discretionary words, as the gentleman says, being admitted to be proper, in the part of his resolution that relates to "correspondence," properly belongs to that part which relates to "objects," as they are part of the same subject. This is rather slender; the analogy too remote. Mr. F. would present to the consideration of the gentleman, a case for information, relating to the same subject, to which, even he, would not think the discretionary words should be added. Suppose a call on the President for copies of the Treaties, made by the Spanish American States, about this Congress, and communicated by our Foreign Ministers to the Department of State: would the gentleman leave to the discretion of the President, what part of them he would communicate? [Mr. WEBSTER observed, certainly.] Mr. F. said, this answer was so extraordinary, that there must be some mistake; the gentleman could not have understood his question. [Mr. W. said, the treaties alluded to might have been secret treaties, and communicated in confidence.]

Mr. F. continued. Secret Treaties were never communicated, confidentially, to third Powers, if they were not expected to become parties to them. He said, however, that the gentleman had not caught the precise idea intended to be conveyed. Mr. F. spoke of public published treaties, which members might wish to use in the discussion, and the authenticity of which would be shown by their communication from the Department of State. In a call for these, on the same subject of the Panama Congress, the introduction of the discretionary words would provoke the smile of the President, at the extreme caution of the House. No one could seriously insist, that they could be appropriately introduced.

The gentleman, however, produces a stronger argument. The reason of the discretionary words, in a call for correspondence, is, that no injurious disclosures may be made. This reason applies to the call for an explanation of our objects in going to Panama. This is the true and only point of difficulty, and, on the discussion of it, Mr. F. was content the decision should be made. Will the disclosure of our objects prevent the accomplishment of our objects? The gentleman has judged rightly, in supposing this point could be best illustrated by an example. Without resorting to his own ingenuity, he has taken one from among the numerous *conjectures* of the gentleman from Louisiana. We want, probably, to form commercial treaties, and, as the gentleman from Massachusetts says, to prevent the European Governments from being placed on a better footing than ourselves; if this is known, these Governments will use means to defeat us. This example was most unfortunately chosen. All the gentleman supposes cannot be disclosed without danger, is known to all the world. If we wished peculiar favors we might have a motive for concealment: this cannot be we have too often protested that we desire but equality of treatment, in commercial affairs, to ask any favors from South America.

In order to make out danger from disclosure, in this example, the gentleman is compelled to go into specific detail. We do not want to know what sort of treaties of commerce, alliance, and of confederation, the President intends to make: but does he propose to make treaties of commerce, alliance, or confederation? Mr. F. was surprised that the gentleman had not taken another of the conjectured objects brought up to view by the gentleman from Louisiana, one of great and peculiar interest, and of the most delicate and difficult character. The destiny of Cuba and Porto Rico may be discussed at Panama. Mr. F. thought the reason might be found in the limitation fixed in the President's Message. We cannot sit in judgment on Cuba and Porto Rico, consistently with that neutrality from which it is neither our interest nor the desire of the other American States, that we should depart.

The gentleman from Massachusetts had asked, with great emphasis, if the words "present war," were in the President's Message, and if not, where did they come from? Mr. F. replied, neither the words "present war" nor "future war," were in the message, nor "war," in any part of it of which he then spoke. The President spoke of "neutrality;" that neutrality which is incompatible with deliberations in Congress with the Spanish American States. What does he mean, if it is not neutrality in the present war? The gentleman may be satisfied with the security given by this clause, that our neutrality in all future contests, will not be endangered. Mr. F. wanted better assurance of it.

Mr. THOMSON, of Pennsylvania, rose, and observed, that he should not detain the House one minute. If he could agree with his colleague, (Mr. INGHAM,) as to the construction to be given to the restrictive clause of the resolution, he should vote with him; but he was not of opinion that that clause, where it occurs in the first part of the resolution, covers all the residue. This however, said Mr. T. was not the reason which induced me to take the floor at this late hour. [It was now past two o'clock.] One thought had struck him, which had been suggested by a very weighty remark made yesterday by the gentleman from Delaware, (Mr. MCLANE) who observed, that it was of the utmost consequence that the Government, when acting towards foreign nations, should present a firm, unbroken front. Now, supposing the amendment of my colleague to prevail, and the restrictive clause, where it last occurs, to be in consequence stricken out; suppose the President, when he receives our unqualified call, as to the objects of the Congress, and the powers of our Ministers, shall refuse to make any communication of them. We shall then have to settle the question, whether this House shall submit to such refusal, or whether it shall repeat its application to the President. Two co-ordinate branches of the Government will then be brought face to face, in open conflict. Sir, said Mr. T., I do not wish to see my country placed in such an attitude before the world; and that I may give no pos-

ble pretext for a contest of this sort, I shall, though reluctantly, vote against the amendment of my colleague.

Mr. FLOYD then took the floor. He observed, that, as there had been already two calls for the previous question, he was warned to say but little now. He was at a loss, for his part, in what attitude this call for information was now to be considered. He believed that all agreed that the subject was new, when it first came up. One gentleman from Louisiana has made a speech very logically on the subject—he tells us, said Mr. F., that our Ministers are to go to Panama to make a figure; that it will be a great spectacle; that we are to exhibit ourselves to the Spanish Provinces, and to all Europe, as a spectacle. On this he would say a little more presently. In the meanwhile, we are admonished that we must be *very respectful* to the President of the United States. We are not to ask any thing too rudely. We must sit here and take just such information as he pleases to communicate, and no more. We were told yesterday, by one gentleman, a member of the Committee on Foreign Affairs, that he had been present, constantly, during every moment of the session of that Committee, and that not one word was said about applying to the President for this information: but that the Chairman of that Committee had given them to understand—"informally," he believed, he did not know whether that was the exact phrase, "semi-officially," perhaps—that the President had said, as soon as the resolution should pass the Senate, he would then make a communication to the House; and all we good friends of the Administration think it is respectful and proper to wait his good pleasure. How is it, then, that this question has now taken a different turn? A gentleman from Kentucky, who, I suppose, is better acquainted than we, in these matters, has told us that we must whip the Senate, and urge them on, when they do not subserve the proper ends which the President has in view; that we must send these documents abroad to the People, and let public opinion react and coerce the Senate. This is the idea, it seems. The same thing was told us by the gentleman from Louisiana; and that he expected the House of Representatives would have nothing to do with interfering with the treaty-making power. And is it to be expected, said Mr. F. that the House of Representatives is to be arrayed against the Senate? And for what purpose? Because the Senate does not subserve the President's purpose! That is the truth of it. Has the gentleman from Louisiana ascertained that the palace guards have been overthrown? That the Prætorian cohorts have fled? Or, will he, like Cæsar, say to the Senate, if you won't go, I will take the tenth legion, and go alone—to make a spectacle! The gentleman has told us that Mr. Sergeant, the gentleman named for the Mission, is a patriot, a great lawyer, and a man of talents. I believe it—at least the two last. We are acquainted with the gentleman here. We knew him as the great champion of the Missouri question, which the Speaker had the honor to introduce into this House, in which he was supported by Mr. King, in the Senate, who is at present our Minister at London. That was a really important question—more so than this. Sir, I thought, then, that if that question had been pressed farther than it was, it would have put an end to this Union; and I still think, that, if these gentlemen had carried their point, the Union would have been gone. We should have made a spectacle no more. A great spectacle! The gentleman tells us a great deal about national gratitude. Twenty-six millions of people are to rise up, and to invite us to come and make a figure. Sir, I am not in favor of sending Ministers there to make a spectacle.

After some observations in reference to the obligations of neutrality, Mr. F. said, that, by the third article of the Treaty, among these Spanish Provinces, it is proposed to invite all the States of America to assemble in Congress, there to form a Union, offensive and defensive—for that is the amount of it, though not the precise words. The gentleman would send Ministers there to make a spectacle—to witness all the burning lava that may issue from that crater. If we are to do this—if we are to enter into a confederacy with these States, what shall we not have reason to apprehend? The Constitution has granted to this House the power to make peace and war. But by these arrangements at Panama, we may be brought into war with any Power that shall go to war with either of these States of South America. If any one among them break the Treaty, forthwith we are at war. That would be another spectacle. Can I consent to that? And do gentlemen expect that I will undertake to decide on this question with less information to guide me than the President has given to the Senate? No, sir. The President must give me the same light he gave to them. But it is said the President does not ask our opinion; and that it is gratuitous, on our part, to interfere. Recollect, sir, the Senators of the United States are not mere machines, and component parts of the Executive. They belong, also, to the States of this Union, and are responsible to them.

I hope some *Mason* will be found in that body to develop to the People the true design of this mission, which some gentlemen seem to be so anxious to conceal from the nation. No one knows better than the gentleman from Louisiana the effect of such a disclosure.

Mr. F. put it to every gentleman's common sense, whether he can believe that Ministers were to be sent to this Congress for the ordinary purposes of a foreign mission? The South American Governments send to our Secretary of State an invitation to attend this Congress. The Secretary of State is directed, by the President, to reply, that we will attend it. Their Ministers write back, and say, "this is all very well—we shall be happy to see you." Sir, I am as much attached to the cause of Spanish liberty as other gentlemen; yet, with me, my own country is to be preferred before all others. Suppose the famous Congress at Panama shall contemplate the conquest of Cuba or Porto Rico. I put it to the gentleman, whether he would consent to be a party to it? Whatever he may consent to, I certainly shall not. I am not going to compromit the peace of this country, and run all the risks of a foreign alliance. As for the Holy Allies, if they choose to remain quiet, and manage their own affairs in their own way, I have no objection to their doing so. I am not disposed to undertake to force them to be Republics. But, it appears by the arguments of the gentleman, that our Ministers are to produce some change in these People's religion—they are to be a sort of Missionaries, and to bring them over from the Catholic faith. Now, sir, unlike the gentleman from Louisiana, I would as soon they should be Catholics as any thing else. That is their own affair: it belongs to their own conscience, and we have nothing to do with it. But the gentleman is for teaching them the principles of toleration. Sir, the gentleman had better begin and send his Ministers to Maryland, where men are cut off from the enjoyment of civil rights, on account of their religious faith (unless some change has been made this Winter.) A gentleman near me, says the same is the case in North Carolina; and, in Tennessee, unless I am greatly mistaken, no man is allowed to hold any public office, who does not allow the existence of a God, or who disbelieves the authenticity of the Bible. And yet the Representatives of these very States tell us we must go to South America, to teach *them* toleration and religious liberty, when we dont practice them ourselves.

Another gentleman tells us, that we must go there to give efficacy to the message of the late President, Monroe, about not seeing, with indifference, the independence of these States assailed—which sentiment, it is said, every body approved. Sir, I was then in the House, and recollect that, amidst all the wild and enthusiastic movements

which then took place, although I agreed to the sentiment in the proposition, I rose in my place, and protested against the President's committing the peace of the United States by his declarations. But the case is now quite different: then, the People of Europe had just been successful against the Great Man of the World, and there was reason to suppose that they would be for pushing their triumphs on this side the Atlantic. Here, then, was cause enough why we should be inclined to defend the cause of South American liberty, because it might obviate the necessity of ultimately defending our own. But, even in such a case, I would not rashly commit the peace of my country.

Now, sir, as regards this call, I am disposed to make it, provided it is made so broad in its terms, as to embrace all the information which has been laid before the Senate on the subject. Nothing less shall I be satisfied with—the whole of it is indispensable. How can we, without it, know how far the Senate is to be castigated?

Mr. LITTLE rose, merely to say, that the gentleman from Virginia, who had just taken his seat, had been misinformed as to the fact in regard to religious toleration in Maryland.

Mr. FLOYD replied, if so, a change must have taken place there very recently.

Mr. LIVINGSTON then said, that he had been unwilling to interrupt the wit of the gentleman from Virginia—so much of it turned on the word "spectacle," that he had been loth to interrupt him, to inform him that he had never used the word "spectacle," at all, in the sense which that gentleman had attributed to him, and on which the whole wit of his matter seemed to turn. He had, indeed, said, what he believed every gentleman in the House, including the gentleman from Virginia himself, would respond to, that the scene which exhibited twenty-five millions of men, rising by one simultaneous effort, to burst the chains of political bondage, by which they have for ages been enthralled, was a spectacle fit to move and to gladden the heart of every benevolent man. Did the gentleman from Virginia think otherwise? He had never said that our Ministers were to be sent to Panama to be made a spectacle; and yet this was the sole idea which had given rise to all that species of wit which the House had now heard, and which his argument had afforded no ground for. But this was not all the unfairness of which he had cause to complain. His arguments, as well as his words, had been somewhat distorted. When I said, (observed Mr. L.) that, no doubt, the fate of Cuba would be a subject of consideration at that Congress, did I say or contemplate any thing which was to compromit our neutrality? Did I not, on the contrary, add, that our interference there might operate to convince the Spanish States that an invasion of Cuba, on their part, might be regarded in a very serious light by some of the great Powers of Europe, and might possibly operate to change the relation of those Powers toward South America? Was this to commit our neutrality? Was there any thing in this that contravened the idea held out by the President, in his message? So far from it, it would rather strengthen our neutrality. But the gentleman from Virginia had further represented him as saying that our Ministers were to be sent to Panama to convert our brethren of South America, from the principles of the Catholic faith. Sir, said Mr. L., I said no such thing: I never thought any such thing. All I said in relation to their religion was, that some of their present exclusive regulations were calculated to interrupt the intercourse of the citizens of foreign States, and our own citizens, among others, with these new Republics; and that the abolition of those regulations would be calculated to have the best possible effect on the commercial interests of those countries, and that, if a treaty should be negotiated, having this for its object, such a treaty would be highly beneficial to both parties. I did not introduce a single argument that cannot be shewn to be completely consistent with our neutral relations; and if I do not demonstrate this with respect to every one of those arguments individually, it is not because they will not admit of it, but because I recollect the hour of the day, and the time that has been already occupied in this debate.

Mr. McDUFFIE said, that he had all along believed, and that he now believed, that the public service did not require that the present resolution should be decided at all. This House cannot be called to act on the present subject, till an appropriation is demanded. He, therefore, regarded the resolution as premature. He was bound to suppose, that, if the call had for its object the enabling the House to make an appropriation, the information would not be withheld till called for, but sent voluntarily. It was necessary that the resolution should be understood, and on that subject he had something to say. With a view, therefore, to try whether the House was ready to hear him now, or would prefer hearing him to-morrow, he moved an adjournment.

The motion for an adjournment was negatived—ayes 73, noes 95.

And Mr. McDUFFIE proceeded. He was entirely satisfied with the decision which had just been expressed. So indifferent had he been as to the manner in which the question should be decided, that he had not even given his vote upon the question. It was but little he intended to say, and he would endeavor that that little should have a direct reference to the question before the House. What is the inquiry? Some gentlemen appear to think (said he) that the present proposition to amend, (as I refer for the purpose of amending) is applicable to the whole resolution. So, said Mr. McD., I at first believed, but I wish it to be understood that this is not the case. It refers only to striking out the restrictive clause from the last part of the resolution, which inquires as to the objects of our own Government in sending this mission. When we call for *correspondence* between this Government and foreign Powers, we do so under the invariable condition that the disclosure be, in the President's judgment, consistent with the public interest. So, when we call for correspondence, &c. touching the Congress of Panama, we do it under the same condition. But then comes a different question. What do you, the Executive, intend to accomplish by this mission? And this is the question from which it is proposed to take the restrictive clause. We are told that this will violate precedent. But I deny that there are any precedents applicable to the case. I call upon any member of the House to shew a single solitary precedent which has any application to it. In our intercourse with foreign Powers, the Executive considers a moral, if not legal obligation, not to disclose such things in regard to it. But in the present case, is there, or can there be, any such obligation to restrain him? It is Congress that must decide on this mission, if the nation is to be sent at all. It is the act, not of the President, but of the Congress of the United States: for I deny the power of the President to send agents to a tilting tournament, where they may be called to decide on questions which may compromit the United States on the question of peace or war. The gentleman seems to take it for granted that this is a question for the Executive to determine. I deny it: and I should hold myself, and should hold this House, faithless to our trust, if we consented to a mission, or do any act to jeopardise the peace of this country, before we have before us the information essential to the formation of a correct judgment of the matter. Is there any gentleman who will attempt to maintain that there are any principles of public policy which can, at any time, or under any circumstances, oblige the President to call on Congress to concur in an authoritative act, and not tell them they are unworthy to be confided in by being in possession of the whole grounds on which they act?

act? Can he require of this House an appropriation to send Ministers any where, and yet say to this House that the public interest forbids him to tell the House why and for what ends those Ministers are to be sent? Sir, are we to become the quiet tools of the Executive? If we ever could consent to send these Commissioners to this Convention, so long as the President withholds from us any part of the information we have a right to ask of him, we shall be unworthy of our trust.

I utterly deny that the question respecting this mission is a question for the Executive solely to determine. There is no gentleman who would treat the Executive branch of this Government, in its proper sphere, with more respect than I am disposed to do; and, if this were an ordinary case, and the President was now doing no more than sending a Minister to Colombia or Mexico, I should think we were entirely out of our place to ask him why he sent him.

But, Mr. McD. said, this is not an ordinary case, and those persons are not Ministers, in the usual acceptation of the term. The gentleman from Massachusetts tells us, that they may be sent to secure certain commercial objects. Sir, can we be so blind as not to penetrate the mist, which is attempted to be thrown about this mission? I will speak plainly on this subject. I will exhibit no mawkish affectation of a reluctance, which I really do not feel, openly to declare that, with the knowledge which I now have, my impressions are decidedly against the mission, and for this reason: I am not for sending Representatives of ours, not to a convention for a diplomatic conference, but to an assembly, having all the Federative characteristics of an Amphictyonic Council; for all who form a part of this Congress will have the character of Representatives of their respective Governments. Can the gentleman from Massachusetts know so little about the nature of this Convention, as to suppose, that our agents can go there to negotiate commercial treaties with these nations? Sir, those Republics might as well send their Ministers to sit and vote in our Senate. No, sir; if we wish to make treaties with these People, we have our Ministers there already. They have made some treaties: they can make others. But it is a vain delusion, to suppose that our Commissioners at Panama are intended to perform nothing more than the ordinary functions of foreign Ministers. Sir, it is a most extraordinary proposition, to send Ministers, who are to possess a new character, and to perform duties, which never were, and never could have been performed by agents of this country before; and yet refuse to communicate to this House the information necessary to its forming a judgment, whether it ought to consent to the mission or not. I, for one, say that, until the day of judgment, I will refuse my vote for an appropriation, to an Executive, requiring the sanction of this House to such a mission, and refusing to disclose all the objects proposed to be accomplished by it.

The gentleman from Massachusetts had insisted that the restrictive clause had a stronger, and a more appropriate reference to the first call in this resolution, than it had to the last. The whole ground of inserting this clause, Mr. McD. said, was mistaken: its insertion at all, is a mere act of courtesy, though in the present juncture, and after this debate, it may not be unimportant. We call on the President (said he) every day, to communicate information to this House, and nine-tenths of those calls contain no such clause whatever. I admit, indeed, that it is inserted, when we ask for the disclosure of correspondence with foreign Governments; but this is intended merely to protect the rights of foreign Powers, and to prevent the President from being called to do an act, which would, in its effect, be a violation of good faith toward the Government with whom the correspondence is in question. But, as to an inquiry, which involves ourselves alone, no such reason applies, and no such practice need to prevail.

But, asks the gentleman from Massachusetts, what do you mean to do with these instructions when you get them? Are you to criticise—to revise—to strike out? No, sir. The gentleman forgets, that we do not ask for copies of instructions, but only for the kind of powers which our Ministers are to possess, and the objects of the President in sending them. But the gentleman says, what will you do with them, when you get them? Sir, I will tell the gentleman. If the objects of the Government are such as I approve, I will vote for the mission; and if not, will not vote for it. But I, in turn, will ask the gentleman, what *he* is to do, without knowing the objects of the mission? Will any man vote for a mission, the objects of which he does not know? *Can* he vote for it, unless he knows all the objects? Sir, if the President, in this mission, has ten distinct objects in view, and communicates to this House nine of those objects, ever so distinctly, if one is withheld, I will vote against the mission And why, sir? Because that one may in itself be a sufficient objection to the whole matter: because that one may be an object, which, in its effects, may plunge this nation in a war. In this view, the amendment becomes important.

But we are told much about precedent; and if those who are to come after us shall follow our example, as we are called upon to follow that of our predecessors, I certainly would not set a bad one. What, sir! will the People of the United States permit us to vote for a foreign mission, when the President tells us that there is one object in that mission which we ought not to know?

Sir, I wish the President to know, from the terms of the call which we are to send him, what it is which this House really desires. We present the call, it is true, in the form of a request; but, if we send it with both these restrictive clauses, the President will, of course, conclude that it is our intention, and our wish, that he shall send us nothing which may not at once be published to the world.

Now, sir, I wish the President clearly to understand, that what the House desires, is to receive *all* the information, of every kind, upon this subject, which he can communicate, publicly or privately.

Mr. INGHAM now rose to address the Chair, when Mr. HEMPHILL moved that the House adjourn.

The motion was negatived, ayes 73, noes 81.

Loud cries for the question, were now heard from every part of the House; when

Mr. INGHAM again rose, remarking that he had heard such things before now. He promised, however, to detain the House but a short time. The argument against his amendment had already been ably met. Two points had been insisted on: In the first place, it had been said, that the proposition to strike out the second restrictive clause, evinced a want of courtesy to the Executive Department, and could be productive of no good effect, as the President would do just the same whether the amendment prevails or not. Mr. I. said, he had not the slightest disposition to be deficient in due courtesy towards the Chief Magistrate; but a previous proposition had been offered, containing nearly the same as this, in every thing but the second restrictive clause. At that time we heard nothing of want of courtesy; yet, the proposition, if his amendment prevailed, would contain the same restrictive clause which was at first proposed. He was, therefore, warranted to conclude, that all this tumult, about a want of courtesy, had been got up for the occasion; and that the arguments urged on that head, were after thoughts. As to the argument that the latter part of the resolution being intended to ask for what was extraordinary, the call ought, *a fortiori*, to be qualified, he did not admit it to be conclusive. He thought, on the contrary, that extraordinary circumstances justified an extraordinary call. He could see nothing in the argument. Before he sat down, he must say a word in reply to the gentleman from Massachusetts, who had thought proper to criticise, with some

severity, the remarks he had made in a former part of the day. He had supposed that this measure was admitted, by some part of the House, to be intended to have a reaction, through the force of public opinion, on the Senate; and he had thought that, in this respect, it bore some similarity to a resolution introduced by that gentleman into this House, some time ago. Both seemed to proceed on the supposition that the People were incapable of understanding their own business, and were to be moved in this or in that direction, by fine speeches. In consequence of this opinion it was, that he had remarked on the fate of the gentleman's resolution respecting the Greeks, and had said that it fell still-born. This, he thought, was as apt a description as, in his homely way, he could possibly give of it. The resolution lies now on the table: and there it is likely to lie: and, in consequence of this rash speech, he, together, he presumed, with one hundred and eighty others who had voted with him on that occasion, were to be consigned to the clods of the valley. The gentleman himself, said Mr. I. has become *my* undertaker, though *his* progeny had none. I am to be consigned, sir, to the dust, and am to lie under a clod, because, on that occasion, I spoke not. Sir, a laconic philosopher of Greece once said, that those who speak much and do little, have more fame abroad, than those who speak little and do much. If, however, the gentleman from Massachusetts, when a motion had been made by a worthy member of this House from Vermont, now no more, (Mr RICH) had had the courage to call for the Yeas and Nays, he would have heard at least *one* speech from me—yea or nay—on the proposition.

The question was now about to be put, when

Mr. KREMER said that the question was too important to be acted on at the present moment. It would be much better that the House should have day-light for that purpose. He, therefore, moved that the House do now adjourn.

The motion was negatived, Ayes 70, Noes 89.

Mr. DAVENPORT now called for the reading of Mr. INGHAM's motion, and it was read from the Clerk's table, accordingly.

Mr. HAMILTON said, that neither the impatience of the House, or the lateness of the hour, should prevent his replying, before the question was taken, to some remarks of the gentleman from Massachusetts, (Mr. WEBSTER) which had been rather of a personal character, and which, he thought, called for his brief notice. The gentleman has thought proper to adduce, emphatically, a charge of inconsistency against me, (said Mr. H.) under which he thinks he has secured my conviction. But I will make this matter plain, and my motives, too, before I have done with the subject.

The gentleman says, although I am voting to strike out the proviso, in his substitute for my resolution, limiting the quantity of information which the President may be pleased to give us, in relation to this mission, by the exercise of his discretion, that in the original resolution which I offered, there was precisely such a cautious provision. Yes, there was, and I will tell him how it got there, and how it was disposed of afterwards. When I drew out the resolution, many weeks since, at my table in this House, it was couched in terms embracing a comprehensive call, without any reserve or restriction. An experienced member, to whom I submitted it, advised me, in order to ensure the resolution a favorable consideration, to insert this customary qualification. I did so, contrary to my own views and wishes, and surely gave the most unequivocal evidence to the gentleman from Massachusetts—(for it put him to some pains to defeat it)—of my willingness to strike out the qualification, by adopting the amendment proposed for this purpose, by my friend from New York, (Mr. CAMBRELENG.) The House will recollect this was on the first day, and on the first moment the resolution was discussed—before scarcely any views had been disclosed in relation to it—that I assented to this motion. But the gentleman from Massachusetts says, as a further proof, I presume, of my inconsistency, that I either adopt or repudiate my resolution—nay, offspring, as he is pleased to call it—to suit my own convenience. Sir, I had a right to pursue this course. As it was not to suit *my* convenience, the House took the resolution out of my hands, recalled it up at a moment I deemed improper and unpropitious. This unprecedented course leaves me free either to vote for it or against it, as I may elect. But, when the gentleman so amended my resolution, as to offer his own substitute, it was time for me to repudiate. This unfortunate bantling of mine was then somewhat in the condition of those lost children who are seized upon by strolling gypsies. It was put under the compulsory guardianship of the gentleman from Massachusetts; and *I* began to tremble for its education. I saw that the gentleman was bent on *bringing him up a courtier;* that he was to be instructed in all the measured submission to authority, that he was to knock at the door of the royal palace, cap in hand, and humbly ask for a mere pittance—for just so much information as it pleased the President to give, in his all-wise, his abundant discretion—and just so little as might serve to fill up our shallowness. It was time for me to repudiate: for if I was compelled to take a son either by birth or adoption, I wanted a manly and an independent one.

Mr. H. said, fortunately, that it was not necessary for him to go further into a formal and minute vindication of himself, on the charge of the gentleman from Massachusetts, as by the kind interposition of his friend and colleague, (Mr. DRAYTON,) this office had been better discharged for him than he could perform it for himself. It was not, he was proud and grateful to say, the first act of friendship which he had received from his colleague, and if he had any knowledge of his own heart, it was not the *last* he should deserve.

But, Sir, before I take my seat, let me turn to another gentleman from Massachusetts, (Mr. EVERETT) [illegible] far more agreeable. That gentleman, (who rarely, for the first time, favored the House with a gracious [illegible] in which I trust we are often to be allowed to indulge made an appeal to my candor, conceived in a tone of [illegible] entire and friendly ingenuousness, marked by an [illegible] so exceedingly amiable and delightful, that I should, indeed, be faithless to the impressions which this appeal made upon me, if I did not respond to it in a spirit of equal frankness.

He put it to my candor to say, whether I will not allow to the friends of the Mission the same privilege which I must assume for myself, of changing their minds as to the proper time of calling for information under the resolution: that when I offered the resolution, the presumption of course was, that I was solicitous to have the information: now, it appears, under the present substitute of my resolution, I am opposed to it.

I will not affect concealment with my friend from Massachusetts. My opinions have undergone, substantially, no change, in relation to the objects of my measure. I say, and openly avow, that I was induced, originally, to offer the resolution from an impression that the measure of Panama was an entire reversal of the established policy of this country: that it was unwise, and dangerous in the extreme. This impression I derived from the correspondence of the South-American Powers, and all that I could read on the subject. I determined to have my resolution in such a situation as to enable me, in case the Senate passed the nominations, to act promptly on the call—that the House might interpose its strong arm and strong voice, if necessary, in time to prevent the further progress of this seemingly strange project. The public prints, or public rumor, told us that the ship of war that was to take out the

Ministers on this mission, was swinging at her moorings. How did I know, or any other member know, that, as the question of a subsequent appropriation was the one, and the only one which belonged to us, these Ministers might not instantly have been despatched? And where, then, would have been the use of the warning voice of this House? But the matter has turned out differently than was expected. The mission, by every apparent token, seems to encounter serious difficulty *elsewhere*. For the present, I am willing, for one, to leave the matter where it sticks, in the custody of the Senate, to be disposed of as they may determine. One thing, at least, my friend from Massachusetts will readily believe from this declaration, that it was *not one* of the objects I proposed, when I offered the resolution, to have it used as a coercive process on that body, and, therefore, I am relieved from all responsibility of supporting it.

The question was then taken on the motion of Mr. INGHAM to refer Mr. HAMILTON'S resolution to a Select Committee, with instructions to strike out the clause which reserves to the President the discretion of communicating so much of the information called for, as he may judge not consistent with the public interest to be communicated, where that clause applies to the powers to be given to the Ministers, &c.; and was decided by Yeas and Nays—71 to 98.

So the motion to recommit was negatived.

The question now recurred on the main resolution, as amended on the motion of Mr. WEBSTER, in the following form:

"*Resolved*, That the President be requested to cause to be laid before this House so much of the correspondence between the Government of the United States and the new States of America, or their Ministers, respecting the proposed Congress, or meeting of Diplomatic Agents, at Panama, and such information respecting the general character of that expected Congress, as may be in his possession, and as may, in his opinion, be communicated without prejudice to the public interest; and also to inform the House, so far as in his opinion the public interest may allow, in regard to what objects the Agents of the United States are expected to take part, in the deliberations of that Congress."

After ineffectual motions, to adjourn, and for a call of the House, the question on the adoption of the resolution, as amended, was finally taken by yeas and nays, and decided in the affirmative, as follows:

YEAS—Messrs. Adams, N.Y. Addams, Pa. Anderson, Bailey, Badger, Baldwin, Barber, Con. Barney, Baylies, Beecher, Boone, Brent, Brown, Burges, Campbell, Carter, Cassedy, Claiborne, Clarke, Cook, Crowninshield, Davis, Davenport, Dwight, Eastman, Estill, Everett, Findlay, Ohio, Forsyth, Fosdick, Garrison, Govan, Gurley, Hasbrouck, Hayden, Healy, Hemphill, Herrick, Hines, Hobart, Hugunin, Humphrey, Ingersoll, Ingham, Jennings, Ind. Johnson, N.Y. James Johnson, Francis Johnson, Kellogg, Kerr, Kidder, Lawrence, Letcher, Lincoln, Little, Locke, Mallary, Markell, Martindale, Martin, Marvin, N.Y. Mattocks, McDuffie, McKean, McLane, Del. McLean of Ohio, McManus, Merwin, Con. Metcalfe, Miller, N.Y. Miller, Pa. Miner, John Mitchell, Mitchell, Md. Mitchell, S.C. Moore, Ala. Newton, O'Brien, Orr, Owen, Pearce, Peter, Phelps, Porter, Reed, Rose, Ross, Sands, Soane, Sprague, Stevenson, Va. Storrs, Strong, Swan, Taliaferro, Taylor, Va. Thomson, Pa. Tomlinson, Trimble, Tucker, N.J. Tucker, S.C. Van Horne, Van Rensselaer, Vance, Varnum, Verplanck, Vinton, Wales, Ward, Webster, Whipple, White, Whittemore, Whittlesey, Wickliffe, Williams, James Wilson, Henry Wilson, Wilson Ohio, Wolf, Wood, N.Y. Woods of Ohio, Wright, Wurts, Young—125.

NAYS—Messrs. Alexander, Va. Alexander, Tenn. Allen, Tenn. Alston, Angel, Archer, Barbour, Va. Bassett, Blair, Bryan, Carson, Cocke, Conner, Deitz, Drayton, Edwards, N.C. Floyd, Hamilton, Haynes, Hoffman, Holmes, Houston, Isacks, Kremer, Lecompte, Mangum, Marable, McCoy, McNeill, Mercer, Merriwether, Mitchell, Tenn. Moore, Ken. Plumer, Polk, Saunders, Sawyer, Smith, Thompson, Geo. Wilson, S.C.—40.

So the resolution was agreed to, and the House adjourned to Monday.

MONDAY, FEBRUARY 6, 1826.

Mr. GEORGE W. CRUMP, a member from Virginia, elected in the place of Mr. RANDOLPH, appeared, was sworn, and took his seat.

RULES OF COURT.

Mr. F. JOHNSON, of Kentucky, laid on the table the following:

Resolved, That the Committee on the Judiciary be instructed to report a bill repealing so much of any and every law of the United States as the Courts of the United States have construed to delegate to, or confer on them, the power or authority to enact laws.

Mr. J. also presented to the House a copy of the Rules of Court, adopted by the Circuit Court of the United States for the District of Kentucky, and the decisions by which they were sustained, and moved that they be printed, and that the resolution, with them, be ordered to lie on the table.

Mr. WEBSTER called for a division of the question on this motion. He had no objections to laying the resolution on the table; but he objected to printing the decision and rules to which it referred. The whole subject was before the Judiciary Committee, by reference; they had procured copies of the decision and the rules; and, when the report of that committee came before the House, the committee would move that the whole be printed together.

Mr. JOHNSON observed, that his object in having these papers printed, and that of the committee, were, he presumed, very different; and he saw no reason why the intended printing of their report should prevent the present printing of this celebrated decision, and the rules which had been founded upon it.

Mr. WICKLIFFE said, it would, perhaps, be recollected that he had, some time ago, submitted a resolution on the subject of these rules. He had done so, with the intention of obtaining an expression of the views of this House in respect to the present rules for the process of the Federal Courts of Kentucky. This resolution had gone to the Committee on the Judiciary, and he had been waiting for some time, in expectation of their report. The Chairman of the Committee had now stated that they are making progress in the subject; and he could not, therefore, support the motion of his colleague, to print the rules at this time. He had risen with a view of expressing his solicitude that the Committee would act with as much promptitude as should be consistent with a due attention to the subject. He would not go so far as to say that the Federal Courts had legislated in this matter, but he knew that doubts were entertained of the validity of their decision in respect to it, some persons being of opinion that the sales which had taken place, and were going on, under the rules of Court, could not finally be sustained, while others were of an opposite opinion; and the continuance of this state of suspense, had a natural and unavoidable influence in depreciating the value of property concerned. He therefore intreated the Judiciary Committee to come to as speedy an expression of their views upon this matter as they could, consistently with their other duties.

Mr. WEBSTER replied, that all he objected to in relation to this affair, was the taking it for granted, as seemed implied in the resolution, either that Congress had con-

ferred on the Federal Courts any power to legislate, or that the Courts had legislated. He wished to bar any such conclusion at present. The whole subject would soon be before the House, and might be discussed, &c.

Mr. JOHNSON then consented to withdraw his motion to print the Rules; and, on his motion, the resolution, for the present, was ordered to lie upon the table.

Mr. GARNSEY offered the following:

Resolved, That the Committee on Roads and Canals be instructed to inquire into the expediency of authorizing the President of the United States to cause to be surveyed the Allegany River, from the city of Pittsburgh to the town of Warren, in Pennsylvania, and from thence to the Chauttauque and Casadaga Lakes, along and by the way of their outlets, so that said survey, with the estimates for improving those streams in such manner as to make them navigable for small steam-boats of sixty tons burthen, be laid before Congress at their next session.

Mr. GARNSEY said, the object of the present resolution he considered of great magnitude. For a trifling expense, compared with its utility, (said he) may be opened a water communication from the city of Pittsburgh to Lake Erie, a distance of one hundred and sixty miles, with the exception of nine miles only, along which a canal or railway, if necessary, may be made. In a commercial, mercantile, and manufacturing point of view, no object, requiring so small means to accomplish it, can transcend it in importance.

The resolution was agreed to.

APPROPRIATION BILLS.

On motion of Mr. McLANE, of Delaware, the House resumed the consideration of the Annual Appropriation Bill for certain Fortifications; and no further amendments being offered thereto—

The General (first) Appropriation Bill, "for the support of Government for the year 1826," was taken up, and read by clauses.

On some of these clauses observations were offered, and some amendments made, which are briefly noticed in the following paragraphs:

MISSION TO GUATEMALA.

Mr. FLOYD moved to amend the bill, by inserting a provision "for the outfit and one year's salary of a Minister to Central America." [The effect of this amendment, if it succeeded, would be to send a Minister, instead of a Chargé des Affaires, to Guatemala.]

Mr. FLOYD said, when our intercourse with the Governments of the South was about commencing, it seemed to be doubted, whether it was not proper, without waiting for Ministers from them, to send a Minister to each of them. This ceremony had, in relation to several of those Governments, been gone through. Last year, appropriations were made for the salaries and outfits of Chargés des Affaires to Guatemala and Peru, and Ministers of the first grade were not sent, because they had not sent Ministers to us. Since that time, however, a Minister had arrived here from Guatemala, and Mr. F. thought we ought to send a Minister there in return. This new Republic had given so many manifestations of a desire for the most friendly intercourse with us, that it was a respect due to her to send to her a Minister of equal grade with the one which she had sent to us. He was not prepared to say how far this rule should be extended, or how far the system of sending Ministers to those Governments should be continued. He had heretofore had occasion to express to the House his opinion that so many Ministers as we now have abroad would not be always necessary. After diplomatic relations were once established with Guatemala, he did not know that it would be necessary to keep a Minister there. At present, however, justice and courtesy appeared to him to require that we should meet on equal terms the advances made by Guatemala.

Mr. WEBSTER said, he wanted information on this subject, which he supposed it was in the power either of the Chairman of the Committee of Foreign Relations, or of the Chairman of the Committee of Ways and Means, to give. He had heard it said that it was the intention of the Government to reduce the grade of all the missions to South America to that of Chargé des Affaires. He hoped some gentleman would have it in his power to give the House information on this subject.

Mr. McLANE said, that the bill, as reported by the Committee of Ways and Means, was in conformity with the views of the Department of State, as understood by the Committee of Ways and Means. At the last session, or the session before, the Chairman of the Committee of Foreign Relations had introduced a resolution, instructing the Committee of Ways and Means to inquire into the expediency of reducing the expense of foreign intercourse. On that occasion, a letter had been addressed by the Committee of Ways and Means to the Department of State, and information had been received, in answer, that it was the intention of the Executive to reduce the grade of these missions as soon as it could be conveniently done—if not in that year, in the next year. Before this bill was reported, Mr. McL. said, he had an interview with the Secretary of State respecting these appropriations. I understood from the Secretary, said Mr. McL., that, according to the views of the Department, two grades of diplomatic agents had been established—that of Minister Plenipotentiary, and that of Chargé des Affaires, and that it was not contemplated to send a Minister of higher grade than the second to any other places than those named in the bill; and, according to this disposition, Peru and Guatemala were placed amongst those Governments to which Ministers of the second grade were to be sent. This was all the information, Mr. McL. said, which he was able to give on this subject.

Mr. FORSYTH said, that the resolution referred to by the gentleman from Delaware, had been offered by him, as a member of this House, and not in his capacity of a member of the Committee of Foreign Relations, or in consequence of any communication held by him with the Department of State. He understood, however, that it was supposed to be the intention of the Executive to reduce all our diplomatic functionaries in America to the grade of Chargé des Affaires. He was glad to hear it, for he was perfectly satisfied that we now have Ministers of the higher grade where the maintenance of a Minister of the first grade was perfectly useless. We have had one, for instance, for some time past, at Chili. What he has done, said Mr. F., I know not. I have not heard, however, any thing of a Minister being sent, in return, from that country to this. His own impression was, Mr. F. said, that there are points in South America where Ministers may be necessary; but he did not conceive that they were necessary at all points. Our relations with these Governments were not such as to require diplomatic agents of that grade to be sent to them. The principal argument in favor of sending Ministers was, he believed, founded on the idea of courtesy to the Southern Nations, which some supposed to require agents of that grade to be sent to open diplomatic intercourse with them. After this ceremony had been performed by the Minister to Chili, Mr. F. had supposed that he would be withdrawn, and a Chargé des Affairs sent in his place. Why this had not been done, Mr. F. could not tell.

Mr. FLOYD said, that no Ministers had been received here from Buenos Ayres or Chili, but to these Governments the United States had thought proper to send Ministers; and, of course, he should suppose, in a case where a Minister has been actually received from one of those Governments, a Minister would be sent in return. Central America, he thought, was an important State, from its peculiar position, and ought to be treated at least

with the same respect which she had tendered to us. How far it would be proper to *continue* a Minister there, he knew not. What was the intention of the President on the subject, the gentleman from Massachusetts probably knew at least as well as he did. This was a case, however, in which he thought every one might judge for himself.

Mr. TRIMBLE said, his individual feeling would induce him to vote for the proposition of the gentleman from Virginia, but he was not very sure that that would be the wisest course. He was very well satisfied that we ought, at all times, to keep a Minister in Mexico and Colombia of the first grade. Whether this was necessary at the Capitals of the other States, was a matter for consideration. He had heard, nôt as from the Chairman of the Committee of Foreign Relations, nor at this session of Congress, that some of those Governments thought it advisable not to have Ministers of the highest grade sent to them, from considerations having reference to their own peculiar situation, the state of their finances, &c. He took it for granted that, in cases where the Executive proposed to send to any one of these Governments a Minister of grade inferior to that of the Minister which they sent to us, the Department of State had ascertained, before hand, what would be acceptable to that Government. He presumed some such communication had taken place in the present case; and he should, therefore, be opposed to the amendment.

The question was then taken on Mr. FLOYD'S motion, and decided in the negative.

Some conversation then took place on the item of thirty thousand dollars, for contingent expenses of foreign missions abroad, the amount of which, Mr. FORSYTH thought unnecessarily large, in comparison with the appropriations of former years. Mr. McLANE explained the disparity, as being produced by the increased number of those missions, and the reduced amount of the unexpended balance of that fund in this year. Mr. WOOD, as Chairman of the Committee on Expenditures in the Department of State, bore testimony to the satisfactory manner in which those accounts were settled and kept, and to the regularity and precision of the receipts and vouchers, for the four years past that it had been his duty to have personal cognizance of the subject. No motion resulted from this conversation.

GHENT COMMISSION.

When the item of appropriation for the salaries of the Commissioner and Arbitrator under the first article of the Treaty of Ghent, and one half of the salaries of the Secretary, Clerk, &c. came up—

Mr. WICKLIFFE said, he did not know whether the inquiry was now in order, but he should be obliged to the Chairman of the Committee of Ways and Means, if he could give him information how much longer Congress was to be called upon to make appropriations for this commission—or what difficulty there was in the way of a prompt termination of the business before it.

Mr. McLANE replied, that he was sorry it was not in his power to afford to the gentleman from Kentucky the information which he wished. These gentlemen were engaged in performing the duties which had been assigned to them; and, he presumed, would bring them to a close as soon as they could. So long as they continued engaged in the discharge of these duties, the United States' Government was bound, by treaty, to make appropriations for their compensation.

No motion grew out of this conversation.

POSTMASTER GENERAL'S SALARY.

The item of four thousand dollars, for the salary of the Postmaster General, next coming under the consideration of the House—

Mr. NEWTON moved to strike out *four* and insert *five* thousand dollars, as the amount of salary for the Postmaster General. It is needless for me, (said Mr. N.) to state that that officer merits this increase of his salary; that, when he took charge of the Post Office, it was chaos—and that he has, by his talents and assiduity, reduced it to order; that he has augmented its income, and paid off its debts, at the same time that its operations have been greatly multiplied and extended.

Mr. COOK suggested that the compensation of the Postmaster General is fixed, by a permanent law, at four thousand dollars per annum, and that the appropriation proposed by the bill only conformed to the law. He was himself decidedly of opinion that the services of the Postmaster General have been such, and his labor such, as to entitle him to a better compensation than that which the law allows to him. The better way to accomplish this object, however, would be to introduce a bill on the subject. If it could be accomplished in the way proposed, he would cheerfully vote for it: for he had some knowledge, and so had every member of this House, of the importance of the services of the Postmaster General—they were not exceeded in value by those of any other officer under this Government. He was entitled to praise for them, and to the thanks of his country.

Mr. ALSTON said, it was certainly improper to attempt to augment the salary of the Postmaster General by an amendment to this bill: and he doubted very much, if the amendment were made, as proposed, whether the Postmaster General would derive any advantage from it: for the law defines the amount of his compensation, and the accounting officers will abide by that law, without reference to the amount of appropriation. Mr. A. said, he believed that the present Postmaster General is as good an officer as we have in the Government. That, however, was not to determine the question involved in this amendment. The question was, is the sum now allowed by law, an adequate salary for the office of Postmaster General? If so, let him receive it, and no more. The amount is what he was to receive when he accepted the office; but, because he had done his duty better than those who had gone before him, it was now proposed to increase his salary. Mr. A. did not think this a correct principle to act upon in regard to the compensation of public servants.

Mr. COOK made some further observations, indicative of his desire to vote for this amendment, if it could be properly introduced into this bill. He spoke of the evidence afforded, by official reports, and by his own personal observation, of his labors, of the devotion of Mr. McLean to his public duties. He believed, he said, that the Postmaster General performed more labor than any other officer under the Government, and labor as interesting to the country as that of any other officer.

Mr NEWTON said, he did not wish to embarrass this bill by any proposition likely to be questioned, and he therefore withdrew his motion: but he certainly should introduce it to-morrow, in the form of a distinct proposition.

PUBLIC BUILDINGS—CAPITOL, &c.

Mr. CAMPBELL said, he should be glad if the Chairman of the Committee of Ways and Means would state to the House the particulars making up the sum of one hundred thousand dollars, which the bill proposes to appropriate for the Public Buildings for this year.

Mr. McLANE, rising to give the required explanation, took occasion to suggest to the House the propriety of taking this matter wholly out of the jurisdiction of the Committee of Ways and Means. It had, heretofore, always been confided to the Committee on the Public Buildings, and he was satisfied that it was proper that it should be placed in the hands of such a committee. The

items composing the proposed appropriation, had been furnished in detail by the Superintendent of the Public Buildings—and he read them from a table which he held in his hand, as follows:

"For erecting 'offices' to each end of the Capitol, eighty thousand dollars; but, as they cannot be completed in one season, it is proposed to ask for this object, at present, the sum of $50,000

For completing the portico and steps 18,970

Deduct balance of last year's appropriation 5,494

13,476

For area wall and railing to West front 20,000

For repairs of Library and alterations for greater security 3,000

For sculptor's and carver's work in the Rotunto and Pediment, and for painting and gilding 11,250

For continuing the work on the ornament for a clock for the Senate 2,000

For improving the Capitol Square, including a footway on the outside of the wall 6,000."

This, Mr. McL. said, was all the information which it was in his power to afford in regard to this subject.

Mr. WICKLIFFE said, he was opposed to commencing any addition to the Capitol, at least until the building was finished on its present plan. He therefore moved to strike out one hundred thousand and insert fifty thousand dollars, so as to leave no appropriation for the commencement of any new work.

Mr. BARTLETT said, there might be a propriety in continuing the whole of this subject over to a future day. The Committee on the Public Buildings had the subject before it, and had called on the Architect for information respecting it. Mr. B. suggested the propriety of striking the whole appropriation out of this bill, leaving the subject for future consideration, that the project for ranges of offices, &c. might be deliberately examined and passed upon by the House.

Mr. WICKLIFFE said, he had no objection to take the motion of the gentleman as his own. My object, said he, is to put our veto on the erection of additional buildings, believing the buildings already sufficiently extensive: for really, he said, to a stranger, there was already, from its being a perfect labyrinth, almost as much difficulty to get *out* of it as some find in getting *in* to this House.

Mr. McLANE said, he should cheerfully assent to any course the House might choose to take to relieve the Committee of Ways and Means from this subject. It did not belong to them, but ought to connect itself with the Committee on the Public Buildings; and the Committee of Ways and Means, finding it embraced in the estimates from the Treasury, had most reluctantly entered into the consideration of it. For his part, he should be glad the House would strike out the whole item, and incorporate whatever appropriation for this object might be thought expedient, in a separate bill.

The question to strike the whole appropriation for the Public Buildings out of this bill, was then determined in the affirmative.

CLERK HIRE IN SURVEYORS' OFFICES.

Exception was next taken by Mr. WHIPPLE, to the item of two thousand dollars, for extra Clerk hire in the office of the Surveyor General of Missouri, Illinois, &c.; and, after some conversation between Messrs. McLANE and COOK, it was stricken out, apparently by consent, on the ground that there was no definite statement from the Surveyor General of the amount of extra Clerk hire which it would be necessary for him to disburse, in order to bring up the arrears of the business of the office on which he has lately entered.

And then the Committee rose, and reported progress, and the House adjourned.

TUESDAY, FEBRUARY 7, 1826.

The resolution offered yesterday, by Mr. WHITE, of Florida, calling on the Secretary of the Treasury for certain information respecting claims to land in East Florida, was taken up.

Mr. WHITE said, his object in introducing that resolution was to procure from the Treasury Department a report of the proceedings of the Commissioners of East Florida, so as to enable Congress to act upon the subject at the present session—an object equally desirable to the Government and the claimants. The reason that this subject was pressed before it reached here through the ordinary channel, directed by the present laws of the United States, was in consequence of his having learned that the Commissioners of East Florida, out of abundant caution, had not only reported the claims, with a general statement containing reasons for their admission and rejection, but had sent all the evidence, translations, and documents, upon which the abstract or register was founded, and on which their decisions have been given. It is obvious, that all that Congress want, is the Register of Claims, with the principles on which they have formed the decisions—this is all that has ever been required, or that any other Board has ever reported.

To re-examine now the evidence, translations, and documents, would impose upon the Committee of Public Lands all the duties and labor that this Commission was constituted to perform. So far as their jurisdiction extended, we must presume that there was evidence to justify the abstract, and the general report will enable the Committee to perceive whether the decisions have been made in comformity with the treaty, and laws, and ordinances, of the Spanish Government. It has now been nearly five years since the change of Government, and the territory is yet in that state of uncertainty, in relation to titles of property, so discouraging to the inhabitants, and injurious to emigration. I wish that report acted on at this session; and without this resolution passes, the honorable gentleman at the head of that Department will not conceive himself authorized to send them until a ponderous mass of useless documents shall all be copied.

The resolution was then agreed to.

UNCLAIMED DIVIDENDS OF STOCK.

Mr. LIVINGSTON rose to inquire of the Chairman of the Committee of Ways and Means, at what time that Committee would be prepared to report to the House upon the resolution he had had the honor to submit, early in the session, on the subject of dividends on the United States' Stock, remaining unclaimed in the Bank of the United States.

Mr. McLANE replied, that the Committee had had the resolution under their respectful consideration. As it was committed to them, they addressed a letter on the subject to the Secretary of the Treasury, to which, yet, they had received no reply; but they understood that the labor necessary to an answer was very considerable; that the reply was in progress, and that it would shortly be sent to them. As soon as it was received, the Committee would be prepared to report upon the subject.

Mr. KERR rose to present to the House certain resolutions of the Legislature of Maryland, on the subject of a Naval School. The President had observed in his Message, at the opening of the session, that such an institution was greatly needed, and would be of eminent utility to the naval service of the country—a sentiment with which all must concur who had reflected on the subject. The purpose of these resolutions is to present to the consideration of Congress the propriety of fixing the site of such a school at Annapolis; on the claims of which, from its beautiful and healthful situation, Mr. K. said

umber of remarks. It had already been tried as the eat of one institution for the instruction of youth, and as found well adapted as a place for a college; and he resumed it would be found to possess equal advantages s the place of a Naval School. A bill had been reported, oth in this House and in the Senate, for the founding of uch a school. And in the bill reported in this House, he choice of a spot was proposed to be left to the selec- on of the President of the United States. Yet, Mr. K. aid, he had viewed it as his duty to present to the House he resolutions of the Legislature of Maryland on the sub- ect; and he moved their reference to the same Commit- ee of the Whole to which was referred the bill for found- ng the school.

The motion was agreed to.

APPROPRIATION BILLS.

On motion of Mr. McLANE, of Delaware, the House hen went into Committee of the Whole on the several ppropriation bills for the public service of the present ear.

Mr. McLANE moved an amendment to the General Ap- ropriation Bill for the support of Government, going to ncrease the amount "for surveying the public land of he United States," from $69,351 to $74,171.

Mr. McLANE, (Chairman of the Committee of Ways nd Means,) explained the reason of the amendment he roposed, and which was founded on returns received at he General Land Office, from the Territory of Florida, ince the bill was reported, and from which it was found hat the sum reported was not sufficient to cover the ex- ense of the surveys which would be required during the urrent year, in that Territory.

Mr. WHIPPLE (from the Committee on the Public Lands) objected to increasing the appropriation; and vent into a detailed statement to show that a different lisposition might be made of the sum already in the bill, y surveying less in some of the States, thereby leaving sufficient proportion of the gross sum to be applied in Florida.

Mr. McLANE replied. He said that a very extensive ystem had been organized, and was in operation, for the urveying of the landed territory belonging to the Gene- al Government, under which numerous officers and gents were kept in employ; and it would be difficult to etrench the amount of surveys without altering this eneral system. Some doubt might be felt of the pro- riety of the system: on that point he should not ex- ress an opinion, as he did not profess to be accurately cquainted with the subject; but he was entirely sure hat whatever might be done in relation to the general ubject, no reduction could be spared from the sum on which he founded his amendment, for the coming year's urveys in Florida.

Mr. WHITE, the Delegate from Florida, stated, that as et, but 300,000 acres of the public lands had been sur- eyed in that Territory. The good land was much scat- ered, lying in insulated spots, and much other land must ecessarily be surveyed, or very little of the good land would be brought into the market. The amount hither- o surveyed contained, comparatively, little of the most ertile land. He dwelt upon the relative local situation f Florida, as part of the frontier of the Union, and the esirableness of having its advantages improved, and its erritory opened and settled; from the profitable nature f some of its productions, there was a prospect of the and being more readily taken up, than those which lie ar in the interior of the West.

Mr. VINTON said it was his opinion the motion ought ot to prevail. The bill proposes to appropriate between ixty-nine and seventy thousand dollars to defray the ex- ense of the surveys of the public lands, for the present ear, which he thought amply sufficient without any ad- dition to it. The sum proposed in the bill would pay for surveying something like six millions of acres, which was probably as much as would be sold for six or eight years to come.

The quantity of land annually sold was, he believed, between half a million and a million of acres. It is now about thirty years since the present land system has been in operation, and during all that time the whole amount of land sold by the Government has been less than eighteen millions of acres. The quantity surveyed and remaining unsold, exceeds, at this time, one hundred and one millions.

Mr. V. said, the quantity of land already surveyed would, he presumed, supply the market for forty years, and at the rate sales had heretofore been made, for more than one hundred years to come. He thought land ought to be brought into market fast enough to supply every demand, and so as to give the greatest encouragement to purchasers, and to the real settlement of the country, as it came into market. This could only be done by regulating the quantity offered for sale by the demand. So far from this being the case, the market was glutted with immense regions of land, to the great detriment, as he thought, of the Government, and the People too, who settled upon them. It was true, the country was *overrun* in this way, but not *peopled*. He believed this state of things had its origin in, and could be clearly traced to, the excess of the public surveys. No sooner is a tract of country surveyed, than it is forced into the market. The Executive is beset on all sides to bring the land into market, by the importunities of the people living in the neighboring country, who are always anxious to extend the settlement of it, beyond themselves; and by speculators, who take good care to hunt out the choice lands as soon as they are surveyed: and who, to answer their own ends, must get the land into the market, before there is any demand for it, or in such quantity as to put down competition. There is no resisting the importunity—it takes no denial, and the consequence has been, the Executive has yielded to it; and trusting to the specious and confident representations of advantage to the Government, and to the country, has brought quantities of land into market, for many years past, altogether beyond any demand—to the great loss of the Government, without adding any thing to the wealth, population, or convenience, of the country at large. This evil, he thought, had gone far enough, and that it was only to be checked by striking at the root of it: by limiting the surveys. He had no doubt it would go on, and grow more aggravated, as long as vast quantities of land continued to be prepared for sale, which the market did not demand.

And, for one, if this state of things could not be arrested without, he would abolish the Surveyor's Office, and put a stop to the surveys, until there was a real demand for an increase of land in the market. Forcing the market, to the extent to which it had been carried, resulted in the sale of the choicest land, at a great sacrifice, in the districts offered for sale, while the great mass of lands in those districts remained not only unsold, but a perfect drug in the market; and, however flourishing the country may appear while the choice lands are selling, as soon as they are taken up, it sinks into the general apathy and depression that pervades the whole country. Surcharging the market with land, is like glutting it with any other article, and followed by the same effects, without adding to the sale.

The sales will not and cannot go beyond the wants of the country. To the extent of those wants, lands will be sold as readily at their fair value, as below it.

I repeat, sir, said Mr. V., that, by forcing the market, you only diffuse, but do not advance the real settlement of the country. You reduce the value of lands to the Government, and, what is worse, you effectually keep down

their value in the hands of those who have purchased of the Government. All the improvements that the settler can make upon them, scarce adds to their value, as fast as it is depressed by the constant and increasing glut of the market. The effect of this was severely felt every where. The market was every where glutted, and even in Ohio, it was severely felt, notwithstanding her great population, and the length of time the sales had been going on there. The quantity of land in market in that State is far beyond every demand—the depression growing out of it very great. The quantity now in market in that State, where far greater sales have been made than in any other part of the Union, exceeds the whole amount of those sales. The quantity now in market is about seven millions six hundred and thirty thousand; the amount sold in that State, not in one year, but in about thirty years, is somewhat less than that sum.

The effect of going beyond the demand to so great an extent, has been, throughout the country, to bring down the value of the choicest lands to the minimum, which thus becomes the maximum price, while the great mass of lands every where, consequently and necessarily, sinks below the price at which it is held by the Government—thus giving a serious check to the sales of lands, and to the prosperity of the country. But it is said, the increase proposed by the amendment was intended to make surveys that are necessary in Florida.

If surveys are necessary there, the whole appropriation is under the direction of the Secretary of the Treasury, and he can direct them to be made in that Territory. Twenty-four thousand dollars of this appropriation is stated, in the estimate of the Secretary, to be for surveys in Florida, which ought to pay for surveying between two and three millions of acres. That quantity will, in all probability, equal the sales in that Territory these ten years. He founded his opinion on what had occurred elsewhere. In Illinois and Missouri, about one million of acres is all that has been sold in each of those States, and about twenty millions have been surveyed, and remain unsold, in each. He presumed the demand in Florida would not be greater than it had been in those States. In Michigan, less than two hundred and fifty thousand acres had been sold, and the amount surveyed and not sold, is better than four and a half millions. In Arkansas, a little more than thirty-two thousand acres have been sold since land offices were opened there. The amount surveyed and unsold, is near three hundred times that quantity—being between nine and ten millions. A similar state of things exists throughout the whole country. Nor did he think, Mr. V. said, from facts known to exist, and from what had taken place in Florida, that the quantity of land in market there, was not equal to the demand. A considerable quantity of land had been already surveyed in that Territory, and not yet sold. A great amount of British and Spanish grants had been, and were likely to be, confirmed, which were also coming into market, and would, of themselves, he had no doubt, exceed the demand for some years to come. In addition to this, a conclusive argument is to be derived from the fact, that a great quantity of the very best land in that Territory, or in the Union, about twenty townships lying near the Tallahassee, had been recently pressed into the market, and sold at a great sacrifice, and sold, too, to speculators, for what he believed to be about one-tenth of their known value. Instead of realizing, from those sales, from half a million to a million of dollars, as was expected, and had been represented would be the case, it had turned out that something like sixty or seventy thousand was the whole amount. If too much land had not been thrown into the market at once, this would not have taken place.

This state of things calls for a remedy; and, as he was satisfied it had grown out of surveying the public lands too fast, and then pressing them into the market, at the heels of the surveyors, by urgent recommendations and importunities that could not well be resisted by the Executive, and as the appropriation in this bill would survey six or eight times as much as would probably be sold during the present year, to say nothing about the hundred millions already surveyed and not sold, he was opposed to the appropriation to increase it.

Mr. BRENT said he was convinced, if the gentleman from Ohio gave the subject a little reflection, he could not but perceive, that the doctrine he had advocated would be productive of great practical partiality. It surely was not generous for States which had had the whole of their lands surveyed, to oppose the extension of the system to other States: it had the appearance of a desire that all emigrants who were desirous of purchasing public lands must be confined to those States. When the appropriations were proposed, under which the entire State of Ohio has been surveyed, no opposition had been made to them by gentlemen from other States. Seven millions of acres of those lands have been sold, and seven millions more are ready to be sold, in that State. In Louisiana only three millions have ever been surveyed, and these, for the most part, were lands that could never be sold; consisting of pine woods, or of tracts in the centre of wide prairies—but the good land had not yet been reached. Was it fair to talk of stopping the surveys, till the land already surveyed was sold? Would the gentleman wish to retard or to prevent the population of Louisiana? It was a frontier State, and it was important, not only to its own inhabitants, but to the Union generally, that it should be strengthened by a dense population; yet only one million thirty-nine thousand acres had yet been sold of the public lands; and even this quantity could not have been said to be sold—there were no public sales of land in that State—they consisted chiefly of re-entries and pre-emption rights. He thought the same justice should be shown to Louisiana as to other States.

Mr. WHIPPLE explained. He had not thought of opposing the survey, either of Louisiana, or of the Territories; but only proposed a different application of the sum already in the bill, so as to cover those objects. The sum constituted a general fund, disposable according to the discretion of the Land Commissioner; and it was not to be expected that he would order as much surveying in States where twenty millions had already been surveyed, as in Territories where only three hundred thousand had been surveyed. He agreed with the gentleman from Delaware, (Mr. McLane) that so long as the system was continued, the officers under it ought to be kept in full employment.

Mr. COCKE thought that the plan of the gentleman from New Hampshire, who had just taken his seat, was liable to some objection. He did not like the idea of leaving the application of the entire sum discretionary with the General Land Office; and he submitted whether it would not be better to insert a clause in the bill, by which the sum appropriated should be expressly applied to the survey of lands in Louisiana, Arkansas, and Florida, only. He had been informed that there existed an objection against extensive surveys on the other side of the Mississippi being made any long time previous to the probable settlement of the lands. He was told that the mounds made by the surveyor, on the prairies, resembled so nearly those thrown up by a species of ant, which are very numerous there, that one could scarcely be told from the other; and in the course of a few years the surveys would all have to be made over again.

If the sum is left in gross, a number of surveyors and their subalterns would be kept in pay, to little useful purpose. The land already surveyed in Ohio was enough to meet the demand for fifteen years to come; and the whole quantity was sufficient for at least forty years. He to the necessity of retaining our present surveyors, or

ount of their experience, he thought there could be little in it: the art was well and extensively known: there was no want of talent in the country; and he presumed whenever new surveyors were again wanted, there would be no scarcity of applications.

Mr. VINTON said, that, as the law now stands, the Commissioner of the General Land Office has a complete discretion entrusted to him in the application of the surveying fund, and is responsible for the manner in which he discharges his trust. His own object appeared to have been greatly mistaken. He had not moved, nor did he intend to move, to strike out the appropriation in the bill, but had only attempted to show that it did not need an increase. In reply to the gentleman from Louisiana, who had said that little land had been surveyed in that State, he said that the cause of this was, that so many grants and so many pre-emption rights had been given in that State, that claimants to land had not been able to perfect their location; and surveys could not be made till this was done. This was the reason why more land had not been surveyed. Three millions and a half of acres were now in the market in that State, when only one hundred and thirty-nine thousand had ever been sold. The pre-emption rights and grants were, of themselves, more than sufficient to supply the market. The same observations applied, to a considerable extent, to the Territory of Florida. Great quantities of the land in Florida had been confirmed by the Commissioners under Spanish and British grants. Mr. V. insisted that the sum in the bill was sufficient, and he quoted, in detail, a report from the Treasury Department, from which he argued that, in most of the new States, twenty times as much land had been surveyed as had been sold.

Mr. BRENT replied. The reason of this was to be found in the fact, that the surveyors were ordered to proceed regularly, and survey all the lands within certain limits. They obeyed, and in consequence surveyed large quantities of land, which not only had not yet been sold, but, from their quality, never would be. The same observation applied to Louisiana. The good land comprised in the surveys had, almost all, been already sold; but much was surveyed that was without value. An emigrant wishing to settle, looks of course for the richest land, and this he takes whenever he can get it. The poor land of course is left, and will be left unsold. The gentleman from Ohio had said that the surveys in Louisiana had been procrastinated, owing to the multitude of grants and pre-emption rights. He admitted the fact: but no matter what the reasons were, it was because those surveys had been procrastinated that he insisted they ought now to go on.

Mr. WHITE replied to the arguments of Mr. VINTON, which, he said, if all admitted, had nothing whatever to do with Florida, unless, indeed, the gentleman thought that the surveys in that Territory had already gone far enough. The limits of Florida comprised as much land as the State of Ohio, and he thought the surveys should proceed till the amount surveyed bore at least some reasonable proportion to what had been done elsewhere. The reason why the lands at Tallahassee produced so great a disappointment, had not been correctly given. It was not because the buyers agreed not to bid on each other, but it was because when they were on the spot, and ready to bid and to pay too, notice was then, for the first time, given, on the part of the Government, that the money of certain neighboring banks in Georgia would not be received in payment, and most of the bidders had no other money. The gentleman was greatly mistaken in asserting that great quantities of land had been confirmed under Spanish grants. The grants of the Spanish Government covered, in general, nothing but the poor lands, because the Indians, for the most part, kept possession of that which was more valuable.

Mr. LIVINGSTON observed, that the opposition to this appropriation proceeded altogether on mistaken ground. Gentlemen argued, that no more land ought to be surveyed, because so much is already in market. This would be a good argument, if all that is surveyed must, of necessity, be set up for sale; but no such necessity exists. The President of the United States has entire discretion on this subject, and need not throw a single acre more into the market than he shall believe the public good requires. The apprehensions of gentlemen were, therefore, altogether without foundation. He would propose to gentlemen this question: Would there be any impropriety in laying out, at this time, the whole of our lands? Can we know too soon, or too well, what it is we possess; not only the geography, but the topography of the public domain? Would gentlemen pretend to maintain that such knowledge was useless? To him the General Government appeared to be in the situation of a private individual, who has come into the possession of an immense landed estate. He wants to know the whole of it, what it is, and all about it; and, if he is wise, he will lose no time in obtaining this knowledge. When the whole is surveyed, and accurately known, the President can better use his discretionary power. With himself, the price of the land was quite a secondary object. The great object to be effected was, to open the country, and promote population, especially where it was needed for purposes of defence. A gentleman from Tennessee had said, that, owing to the nature of the country in Louisiana, if it should be surveyed now, the monuments made by the surveyors would speedily be destroyed. The fact was not so; and of this a sufficient proof was apparent in this, that the original monuments of the earliest surveyors in Louisiana, were still extant. There were marks in the cypress trees still quite distinct, which had been made more than one hundred years ago, and no difficulty was experienced in recovering, by such marks, the oldest lines. The reason why only the poorest land had been surveyed, was, that the surveyors had performed their task where it could most easily be done. This was in extensive prairies, the central parts of which were wholly unfit for settlement. The lands that were the most valuable presented the most difficulties in the survey, and the object which he had in view in advocating the surveys, was to counteract that very policy which, under the former Government of Louisiana, has left 3,000,000 of acres of land in that State, with a title unsettled, and which is, of course, uninhabited. No doubt settlers would, in the first instance, select the best lands, and would often get these at the *minimum* price; but the lands of a secondary quality would eventually be settled also, and both ought to be surveyed. The lands at public sale had sometimes been compared to a plate of cherries; the finest fruit would first be selected, but when that was gone, the best of what was left would be taken, and so on, until not a sound cherry would be left in the plate. Let our lands be surveyed—let our frontier be peopled; and, as to the price of the lands, rather than that they should remain in their present state, the United States would be great gainers by giving them away.

Mr. SCOTT presented a statement of the several land districts in the United States, together with the number of surveyors, and their salaries. He thought, unless Congress concluded to abolish the office, and withhold the salary from some of them, they ought to be kept in full employment. As to the reason why only the bad land had been surveyed in Louisiana, it was to be found in the fact, that the present price paid for surveying was not sufficient for surveying the good lands; that is to say, the alluvial and the cane-brake lands. For want of these surveys, the Office and the Commissioner cannot be furnished with any map; of course they cannot locate or issue patents; and, as no one township in that State had yet

been completely surveyed, it happened, of course, that land titles of twenty years' standing were as completely unsettled at this day, as when Louisiana was transferred to the United States. He was astonished at the course of argument that had been pursued by the gentleman from Ohio, (Mr. VINTON.) The Government is every year employed in extinguishing Indian titles; but to what purpose—to leave the lands wild as they were? To remain ignorant of all the local knowledge connected with them? Is it of no importance to have correct information as to the course of the streams? As to the quality of the soil? As to the mineral productions? As to the sites for military occupation? Because the Government surveyed, was it obliged to sell? Surely not. The President of the United States has this whole matter under his control, and he puts the lands in market where he perceives that the current of the settlement is taking a direction to produce buyers. If the gentleman thinks that there exists an evil on this subject, the remedy is not in stopping the surveys. Let him limit the sales—let him introduce a regulation by which only small quantities shall be set up at once. The Committee on the Public Lands have reported to this House a bill to raise the price of surveying lands in Louisiana, with the express view that the surveys in that State shall proceed, and that the valuable lands shall be brought into market. And shall we now stop the system, or check its course?

Mr. VINTON spoke in reply. He knew that, in theory, there was no necessity that sale must follow survey. But such was the anxiety of speculators and others who wished to buy, that, in practice, it had always happened. He had no wish to stop the surveying of lands in Florida; but enough was appropriated by the bill as it stood, to survey from two to three millions of acres of that country, while only one million had been sold in Illinois, and less than that in Missouri. I say, added Mr. V. supply your market: supply it fully: supply it liberally: but do not glut the market. You gain nothing by it: your lands sell as fast when held at their fair value, as when the price is reduced to the lowest possible point allowed by law.

Mr. COOK said that it was with utter dismay he had listened to the doctrines advanced by the gentleman from Ohio, (Mr. VINTON.) He certainly never expected to hear such sentiments advanced by a Representative from the West. Stop the survey of the public lands! If the gentleman has any fears on the subject, let the lands be brought more gradually into the market: but why stop the surveying of them? But I deny the whole doctrine of the gentleman: I deny *in toto* that the lands have been brought into the market too fast, or in too great quantities. It was the policy of our country to throw open our new lands, and give full scope to the enterprise of our citizens. Owing to the state of the new country, without good roads, or easy means of access, it must happen as of course that the land in the vicinity of the rivers and lakes would first be settled. But as these were soon taken up, it became necessary to survey the space between them, to run those surveys across the whole country, over hill and dale, prairie and wood land. This gave space and opportunity for the industry and the enterprise of the settlers. For his own part, he went for the whole doctrine, and avowed it as his opinion that the Government cannot throw open all its lands too soon.

What! asked Mr. C., will you hoard up your acres like so many rusty dollars in a trunk? Sooner than this, he would see the whole domain sold at a dollar and a quarter an acre, and even for less, if the law would allow it. He did hope that our elder sisters would not, at this time of day, rise under the banner of the gentleman from Ohio, and say, let us lock up the lands of the new States till all our own lands shall be settled. You have been providing homes in the West for a hardy yeomanry—the bone and muscle of your nation, and the best defence of your extended frontier—and now will you stop? Will you alter that policy which has changed the wilderness into a fruitful field? You have encouraged the tide of emigration—will you now stop it and turn it back? No matter if twenty millions of prairie lands have been surveyed in Illinois, is that a reason you are not to survey Louisiana or the Territories? Let us not compel the poor but industrious man to go with his little savings to the speculator, to derive a hard bargain, on unequal terms, but let him come to a parental Government, that can estimate his value, and will cherish his hopes. This will not interfere with the welfare of Ohio. She will still continue her march to grandeur and to wealth. But is she to proceed alone? Must all her sister States be stopped and checked in their career? I do trust, Sir, that the doctrines of that gentleman will not find supporters on this floor. Sure I am, they will not be supported by any gentleman who has a feeling for the West.

Mr. WRIGHT said, he did not rise to oppose any necessary survey of the public lands, or to interpose objections to surveys in any part of the country where they were called for, for any purpose of settlement. He had no feeling of hostility to the land system—he could have none to the settlement of the Western States. But some few considerations had suggested themselves to his mind, which might induce him to vote against the proposition before the committee, and to question the necessity of the amount proposed in the bill; which he would state.

The estimate in the Treasury statement for the service of the year, which he held in his hand, was for surveying the public lands, 53,000 dollars, while the sum proposed in the bill was 69,000 dollars, exceeding, by seventeen thousand dollars, the estimate. No reason had been given why we should appropriate to that service a greater sum than the Treasury thought necessary; and until he knew some satisfactory reason, he could not consent to such increase.

[Mr. McLANE said the gentleman was mistaken in the estimate, and directed Mr. W's attention to another page in the estimates of the Treasury, where the sum was set down at the precise amount mentioned in the bill.]

Mr. WRIGHT resumed. It seems, then, Mr. Chairman, I was in an error as to the estimate of the Treasury. I had not got the right place in the book. I am obliged to the gentleman's correction. But, Sir, I was not misled by the supposition that it is now proposed to add to the estimate of the Treasury Department. I am, however, re-told, the proposition to increase the sum is predicated upon a subsequent estimate, on after acquired information. It is not our business to take these estimates as conclusive, but to investigate them, and satisfy ourselves of their correctness, before we appropriate the money required. To the extent of the public exigency I am willing to vote and to give with a liberal hand; but I am unwilling to go further. Of the 120,000,000 of acres of land surveyed there remains unsold 101,000,000. Why, then, increase the quantity? Is it required, to accommodate our population? Is the land in market inadequate to the demand for settlement? I think there is a great abundance for every purpose connected with the wants of the People, or the settlement of the country. Why, then, survey more? I have heard no reason urged by any gentleman, nor seen any evidence to satisfy me, it is necessary. Of the 21,000,000 surveyed in Illinois, only about 1,000,000 has been sold, and 20,000,000 remain on hand. Of the 3,000,000 acres surveyed in Louisiana, only 150,000 acres have been sold. Does not this shew that there is no demand for greater surveys? If not, why is it that a great a proportion of the lands surveyed remain unsold? If the gentleman from Illinois, from Louisiana, or from any other of the ten States and Territories extending west, will inform the House, or state in his place, that, to advance the prosperity of his State or Ter-

ory, or to answer any demand for actual settlement, it is ecessary to survey more land, I will go with him, and ith a liberal hand appropriate funds to satisfy such deand to the greatest extent. The sending surveyors nto your country, to run and mark lines through it, does ot help to settle it, nor bring to it any population. As the nd is wanted, I would open it for settlement. It is suposed we should proceed in the surveys, because we have numerous corps of surveyors under salary pay, and we hould complete the work as soon as possible, and discontinue the salaries. The salary officers connected with the ublic surveys, are not provided for in this appropriation, ut are provided for in another part of the bill. The sum ere asked for, is merely to pay the surveyors and assistnts, who are not salary officers, or under pay, except hen employed, and whom we are under no obligations o continue in employ.

The gentleman from Illinois, (Mr. Cook) and others, re pleased to term this an Ohio opposition—an attempt n the part of Ohio, who has had all her lands surveyed, o chan e the system, and prevent the settlement of the ewer States West. Is it so, Sir? What interest could Ohio have to retard the settlement of the West? Or has Ohio received advantages from this system, which she eeks to withhold from her sisters? In the whole period, rom the commencement of your land system, there has een surveyed in Ohio, 15,233,032 acres, of which *one-alf* have been sold. In the much shorter period since he organization of the Illinois territory, there has been urveyed there 21,669,818 acres, of which *one twentieth* art has been sold. Nearly the same relative proportion vill be found correct as to the other States. This shows hat the early and late surveys in Ohio, were required, nd called for by the actual wants of the settlers, while the urveys in the other States have not been so called for, or he lands so brought into market would have been taken p in greater quantities The documentary evidence we ave, the facts before us, are against the position assumed y gentlemen, and it is incorrect that Ohio is opposed to he growth of the other Western States.

You are again told, Sir, by the gentleman from Illinois, (Mr. Cook) that these extensive surveys are a part of the and system of the Union, from which so many benefits ave resulted to the whole country, and particularly to the West, and you are emphatically asked, why change this ystem? The gentleman, to prove his assumption, adverts to the large appropriations for surveys, from 1818, down to this time. Sir, the settlement of your Western lands was restrained during the late war, and the surveys were wholly suspended. After the return of peace, there was an extraordinary press of population to the West, and it was found necessary to increase your appropriations, that you might augment your surveys of public lands, to answer the demands for actual settlement. You changed your policy, and increased your appropriations from time to time; and what is the result? You have gone far in advance of the demand, and you have now surveyed, in the market, unsold and unsought, one hundred and odd millions of acres. Does not this satisfy you that it is time to inquire into the propriety of continuing your *increased* appropriations longer? How is it as to our proposing to change the system? Is the gentleman from Illinois correct, in supposing the policy pursued since 1818, is alone to be looked to, to determine what the system is? Or is it not equally proper to recur to the policy characterizing the whole period, prior to that time, to ascertain what the system is? I think the policy pursued before 1818, determined the system, and that pursued since, is an innovation. The quantity of lands lately surveyed, has been shown to be more than the urgent demands of the country required. Let us then inquire where more lands are wanted, and make the necessary appropriations to survey there, and there only.

Mr. CAMPBELL said, he thought his colleague had used too strong a phrase, when he had required gentlemen to state the existence of an "urgent demand." He thought the policy which had been pursued, was the true one. What would, at this day, have been the situation of Ohio, of Indiana, of Illinois, of Missouri, of all our new States and Territories, if the policy had prevailed which was now urged by his colleagues? They maintain that the population is to advance in a solid mass, with undivided front, and the surveys are to advance no faster than to meet the immediate and pressing demand. But this doctrine does not suit the genius or habits of American settlers. Adventurous spirits would break through this phalanx; and, if no surveys were made, would settle without them. On gentlemen's system, the fifteen millions of acres which have been surveyed in Ohio, would have more than sufficed to satisfy the whole demand of all the settlers of the United States. Would gentlemen wish to confine all the emigrants to the State of Ohio? Some of them wish to go North, towards the Lakes; some to go West, to the Mississippi; others to settle with their slaves, on the cane and cotton lands of the South. All these various tastes should be met and gratified. Large quantities of land should be surveyed in all the new States. There was enough between the Ohio and the Mississippi, to satisfy all the emigrants from the old States; but that was not the question. These emigrants wish a choice, and they ought to have it. Gentlemen speak with apparent regret of the great advantage enjoyed by the early settlers. Well, Sir, and why should they not enjoy every advantage that can be given them? Are they not our pioneers? Do they not brave all the perils, and undergo all the privations of the wilderness? Have not some of them to carry their bread upon their backs for one hundred miles? And when they have put up their cabin, do they not often find themselves twenty miles from any mill, where they can grind their corn? Who encounter more than they do? Who are more worthy of the fostering care of a parental Government? And let it not be forgotten, that, when two or three families have thus ventured into the midst of one of your tracts of public lands, they form a little *nucleus*, round which other families gather, and that thus the value and sale of your lands is effectually promoted. The gentleman from Illinois has very truly stated, that advancing population first stretches itself along in the vicinity of lakes and navigable streams. But if the system of his colleagues had been adopted, it would not, by this time, have reached the Lakes; in fact, it would have scarcely travelled beyond the banks of the Ohio river.

In the Territory of Florida, a large body of land should immediately be opened. The soil of that country is peculiar. The spots of good land are intersected, and often surrounded, with great quantities of sand and swamp. To reach the good lands, the surrounding land must also be surveyed. This had been done in Ohio. There was much land in that State which he would not receive as a gift: he would not tell his name to have the warrants.

Mr. C. thought the machinery of our present system ought not rashly to be stopped; but that the surveyors ought to be kept in full occupation. The system was liable to but one objection: it was true, that the marks on trees would, in the course of time, become very obscure; and it might be true, that the mounds, erected on the prairies, would, by some means, become obliterated; but the latter evil was comparatively of small consequence, as nobody would think of settling in the middle of an immense prairie, so long as they could purchase any where else: yet it was on these wide prairies that a great proportion of our surveys had been made. Upon the whole, he was of opinion it would not be wise to change our system. It had succeeded admirably thus far; it had opened fields of enterprise, over which our population had multiplied

in a manner not only to surpass our own expectations, but to astonish Europe.

Mr. CONWAY observed, that he should not have taken any part in the debate, had he not conceived the interests of his own Territory to be involved; and he felt himself called upon to account why a greater quantity of land had not been sold within its limits. A great quantity might now be sold if it were in the market. In 1817, Government adopted the policy of sending the Indians to the West. A large tract was then ceded to the Cherokees; and in 1820, another large tract to the Chocktaws, both within the limits of Arkansas. This produced a prevalent impression that that Territory was to be converted into an Indian country—an idea which effectually checked the tide of emigration. The Government has since changed this system. It has extinguished the Indian title to seven millions of acres of land; and now the tide of population is again setting in with great strength and rapidity. They are pouring into a Territory which is now, and will be, probably, for fifty years to come, a frontier of the United States, as well to the Mexican Government as to the Indian tribes. The policy of strengthening this frontier, by population and settlement, was too obvious to need illustration. To arrest the surveys, would be effectually to prevent the progress of settlement. Gentlemen have said that the market is glutted, and that the lands can be sold only at the *minimum* price. And what is the *minimum* price? One dollar and twenty-five cents an acre. And is not this the full value of unsettled lands? What is the average value of lands in Virginia and Georgia, fully cultivated, and with all their buildings? Only from five to ten dollars. Now, in Arkansas, ten dollars an acre is the regular price paid for clearing alone, besides the $1 25 for the land. The market, therefore, cannot be said to be glutted.

Other Governments give away their lands: ours exacts all that it can get. Ours wants to withhold the land from settlement, till its citizens are willing to pay an enormous price. The Province of Texas has given away, in grants, as much land as is contained in the whole Territory of Arkansas, and has, thereby, drawn away a multitude of our valuable citizens. More than 20,000 have left the Western States for that country. The Mexican Government seduced them by lands given gratis, while we wish to grind them by exacting the highest price we can get. The Mexican Government pursues this policy with anxiety. It wants our citizens: it prefers them to all others; and the effect of its wise policy is draining the Western country.

It was the opinion of the late Secretary of the Treasury, that we should proceed vigorously and unremittingly, till we had completed the survey of the whole of our public lands, and then free ourselves entirely from the expense of the salaries of our surveyors. Why did the Government go on to survey so largely for Ohio? This was a liberal policy. We only ask its continuation, and its extension to Missouri and Arkansas. It may, to be sure, operate to draw from Ohio a part of her population. But we need it more than she does; and, in proportion to the reluctance with which she parts with it, is the joy with which we receive it.

If the surveying system is to be checked or abandoned, the Territory of Arkansas may be expected to yield but li[illegible] the Treasury. As it is, the Territory is settling with rapidity; the white population in Arkansas is between twenty and twenty-five thousand; and though, when existing treaties were carried into effect, the Indian population would be, in the Territory, and on its borders, from forty to fifty thousand, yet the roads and rivers are covered with emigrants from this side of the Mississippi, who will soon convert the fertile soil into fields, and fill what is now a wilderness with happy and prosperous settlements. He hoped the appropriation now asked for would be given.

Mr. JENNINGS, of Indiana, made some remarks, which were not distinctly heard by our Reporter. He was understood to say, that much of the argument of the opponents of the appropriation went rather against the sales than against the survey of our public lands. The great part of the land in the States was already surveyed, and the question seemed now chiefly to have respect to the Territories. Such arguments as had now been urged were not formerly heard from Ohio. He compared the condition of Indiana with that of her neighboring States, and argued that, as the surveys must be made at some time, and as the Government was possessed of abundant means, it was most proper that they should proceed now. He thought the debate had wandered far from the subject really before the committee.

Mr. McLANE agreed with the gentleman from Indiana in the last sentiment. The debate had certainly left the subject of his motion almost out of sight, but he had felt unwilling to call gentlemen to order. The question was not now about the propriety or impropriety of the policy of the Government in relation to its public lands. That was a subject of vital importance, but not now to be discussed: for, however some gentlemen might regret the course which had been pursued, he was entirely of opinion that it was now too late to stop or to draw back. The arguments of one of the gentlemen from Ohio, (Mr. CAMPBELL) were, he thought, conclusive; but he would not enter into the general question. The point to be determined is, whether the House will now increase the appropriation, so as to cover the estimates for Florida. The House, yesterday, agreed to the sum in the bill for this object; and the present addition involved no new principle, but was founded on a correction of the estimates. And supposing the arguments of gentlemen ever so conclusive against throwing great quantities of land into the market, or against the necessity of further surveys in the States, they had no bearing whatever on the case of Florida. Settlements in a new country must, of necessity, be sparse, and we could only tempt these hardy settlers to settle our wilderness, by offering them a choice of good land at a low price.

Mr. WHIPPLE complained that his arguments had been misrepresented, and went into an explanation. He objected to appropriating on the estimates of the Land Office, because they were, in fact, nothing more than the estimates of surveyors, who were interested in the expenditure of money. He alluded to a recent development of the state of things in Arkansas, where it had come to light that the surveyor had laid out barren lands for the location of tracts of our soldiery, merely to get the work done cheap, and to receive the pay, and, in consequence of which, had been dismissed from office. It appears that he had given contracts to his own minor children.

[Mr. CONWAY demanded the name of the individual to whom the gentleman alluded. Mr. W. declined giving the name upon that floor, but the documents would show very clearly to whom he referred. Mr. C. replied, that the person to whom he supposed the allusion pointed had no children, minors or of age, and never had. Mr. W. said, the contractors were minors, and of his family—whether his sons or not was immaterial.]

The present sum in the bill, Mr. W. said, would pay for surveying 30,000 miles of line; and he asked if it could be distributed so that fifteen or sixteen thousand should be assigned to each Surveyor-General, if it would not be sufficient for the present year?

[After some explanations between Messrs. WHIPPLE and SCOTT, the question was put on the amendment of Mr. McLANE, and carried.]

On motion of Mr. WRIGHT, the bill was further amended by striking out the sum of $1,000 "for compensation to the Reporter of the Decisions of the Supreme Court," as the appointment of the present officer ends by law on the 26th March, 1826, and the propriety of continuing or modifying the duties of the officer is before the Committee on the Judiciary, who have not yet reported on the subject.

On motion of Mr. McLANE, the committee then rose, and having obtained leave to sit again,

The House adjourned.

WEDNESDAY, FEBRUARY 8, 1826.

DUTIES ON DISTILLED SPIRITS.

Mr. CONDICT presented the following resolutions for consideration:

Resolved, That it is expedient to augment the impost on all imported spirituous liquors, and to levy an excise duty on all such liquors distilled in the United States.

Resolved, That the revenue accruing from excise duties shall constitute a fund to be applied *exclusively* to purposes of education and internal improvement; the amount paid by each State and Territory to be expended within the limits thereof, in such manner as the State or Territorial authority, with the consent of Congress, may from time to time direct.

Mr. CONDICT moved the reference of these resolves, together with sundry memorials, looking to the same object, to a Committee of the Whole House, with a view to that free discussion of the subject of the resolutions, which their importance appeared to him to require.

Mr. McCOY objected to this course, preferring that there should be a previous examination of the subject by a standing committee.

Mr. COCKE considered the subject of so important a character, as to require a reference of it rather to a select than to a standing committee.

Mr. McLANE approved of the suggestion of the gentleman from Tennessee, on account of the mass of business already on the hands of the Committee of Ways and Means.

Mr. COOK suggested that, as this proposition appeared to be based on the idea of protecting the manufacture of domestic spirits, it appeared to him that a reference to the Committee of Manufactures would be the proper disposition of it. The question on the reference to the Committee of the Whole was decided in the negative;

And, on the suggestion of Mr. CONDICT himself, the resolutions were referred to a Select Committee.

MILITARY APPROPRIATION BILL.

On motion of Mr. McLANE, of Delaware, the House again went into Committee of the Whole, Mr. CONDICT in the Chair, on the Annual Appropriation Bills.

The Committee laid aside the General Appropriation Bill for the support of Government, for the year 1826, there being no further amendments proposed, and took up the bill making appropriations for the Military service of the United States, for the year 1826.

Mr. MALLARY made a strenuous effort to introduce an appropriation of fifteen thousand dollars for the erection of an Arsenal at Vergennes, in the State of Vermont: a report of the War Department having been made, in which an opinion was expressed unfavorable to this proposition. Mr. M. endeavored to repel the arguments of that document, (which were in preference of enlarging the Arsenal at Watervliet, near Albany, in the State of New York, it being in a safer situation, and commanding speedy access, by the Canals, to every part of Lake Champlain,) by shewing that Vergennes, which lies about half-way between the Southern extremity of that Lake, and the British lines, was an eligible site for a depot of arms; which might, in case of an invasion by the British, (who are prepared and in strong Naval force at the lines, having, besides a strong fortress, a frigate newly finished, and many other vessels, while we have not a gun mounted on the whole Lake, nor a vessel of war of any kind afloat,) be greatly needed, before there would be time to furnish them from Watervliet. He dwelt on the exposed situation of the shores of the Lake, two hundred miles in extent, and of the manufacturing and other establishments in the vicinity; on the small expense required to erect the Arsenal; the ease with which it might be defended; the want of arms among the militia; the narrow pecuniary resources of the State; and the brave conduct of the inhabitants, in the last war, as well as that of the Revolution.

The proposition was opposed by Mr. HAMILTON, (Chairman of the Military Committee) who insisted on the policy of having our National Arsenals removed from the reach of an enemy's forces on our frontier; and dwelt on the facility with which arms could be supplied, by means of the canal.

Mr. MALLARY, in reply, stated the particulars of roads and distances—and appealed to the experience of the last war, to shew the suddenness with which an irruption could be made on the Lake.

He was asked in relation to the duration of Winter, and the continuance of ice on that Lake and its vicinity; and also, as to what disposition had been made of the quota of arms supplied to Vermont, by the General Government.

He replied to both inquiries, and when urged to shew why the proposed Arsenal was more needed on the Vermont side of the Lake than the New York side, adverted to the density of the population, and to the facility of conveying arms across the Lake, if needed on the other side.

He was supported by Mr. ALLEN, of Massachusetts, who spoke, from a personal acquaintance with the country, earnestly in favor of the measure.

But, finally, the House refused to grant the appropriation; the vote upon it being, ayes 47, noes 88.

Mr. NEWTON (Chairman of the Committee of Commerce) moved to reduce the appropriation for completing the repairs of Plymouth Beach, from twenty-five thousand dollars to thirteen thousand one hundred and eighty-four dollars: and supported the motion by a letter from the Collector of Plymouth, and one from Colonel Totten, of the Engineer Corps, from which it appeared that an experiment had been made with fascines, or bundles of brush, covered with stones, which were found to answer the purpose of collecting and embanking the sand; and, if the work should be completed on this plan, the expense would be only about thirteen thousand dollars: whereas, if frames of timber, filled with stone, should be employed, as at first proposed by the Surveyors and Engineers, the expense would be twenty-five thousand dollars.

The discussion on this subject was conducted by Messrs. McLANE, NEWTON, HOBART, REED, TOMLINSON, and DWIGHT, and ended in the adoption of the amendment.

Mr. COOK moved to amend the bill in that clause, which appropriates one hundred and ten thousand dollars for the continuance of the Cumberland Road, by inserting, in lieu of it, the following:

"For the continuation of the location and construction of the Road leading from Canton, in Ohio, to the permanent Seat of Government in Missouri, to be applied, under the superintendence of the Commissioner appointed by virtue of the provisions of the first section of the act, entitled "An act for the continuation of the Cumberland Road," approved March 3d, 1825, one hundred and ninety thousand dollars."

Mr. COOK explained the reason of introducing this amendment to be a change which had been resolved on by the War Department, in the manner of continuing this road: instead of going on at once to finish the road as it

proceeded, they had concluded it was more advisable to do no more at first than *grade* and bridge the road, leaving it to the effect of a Winter's frost, and settling, before they laid on the *metal*, as it was called, or covering of small stone. On this plan, a greater extent of road would, of course, be gone over in the same time, than if the road were completed as it went. On this mode the road might as well advance to Columbus as to Zanesville; it could be completed for one-third the price per mile which it had cost on the Eastern side of the Mountain; and one hundred and ninety thousand dollars could as well, and economically, be applied within the year, as one hundred and ten thousand dollars. The money would, in fact, be only a loan to the States through which the road passed, as provision was made for re-paying the whole expenses out of the two per cent. fund of the proceeds of the public lands.

Mr. POWELL resisted this latter idea: he did not, however, oppose the appropriation; on the contrary, was strongly in favor of the progress of this work.

The motion of Mr. COOK did not succeed; the ayes being 56, and the noes 74.

A motion was afterwards made by Mr. McCOY, to strike out the whole appropriation, but it was negatived, without debate, by a large majority.

An appropriation of seven hundred and forty-nine dollars was added, for repairing some of the bridges on the Eastern part of the road.

Mr. HAMILTON, (Chairman of the Committee on Military Affairs) moved to insert the following item in the bill:

"For the establishment of a School of Artillery practice at Fort Monroe, six thousand five hundred dollars."

Mr. H. went, at considerable length, into an argument to shew the importance of having Light Artillery properly trained. He presented the views of the late Administration in favor of the plan of establishing an extensive School for Artillery Discipline, as an adjunct to the Military Academy at West Point. He dwelt on the effects of this arm of war in the late European battles, especially at Jena, and its consequent adoption by the British army.

He was sustained in the amendment by Mr. PETER, who stated, in an impressive manner, a variety of facts in illustration of the value and importance of Flying Artillery, from experience in this country, under General Wilkinson, Captain Gibson, and others; and in Europe, in the French Armies, and subsequently in those of Lord Wellington, in the Peninsula.

Mr. DRAYTON took the same ground, and supported the motion of his colleague in an extensive speech, in which he enforced the arguments already used; alluded to the system of the King of Prussia; insisted on the necessity of practice and training; the propitious circumstances of profound peace, abundant resources, and skilful officers; the small amount of the appropriation asked; the necessity of highly educating every portion of our small army; that, when war should arise, it might speedily be augmented, and furnished with capable officers and subalterns, &c.

The motion was opposed by Mr. VANCE, between whom and Mr. HAMILTON some conversation took place. Mr. V. insisted, that, instead of dragging the piece by horses to a distance from a target, the target might as well be removed by a boy to the proper distance from the piece—that unless it took the same time to teach a horse as a man, horses were not now needed—that a large sum had formerly been asked by the War Department for this object—but, finding that the House had decidedly refused it, they had reduced the amount to its present small dimensions—but that, if this were granted, it would be only an "edging in," "a climbing up" to more in another year.

Mr. DWIGHT also opposed the appropriation. It had been considered and rejected in the Committee of Ways and Means as unnecessary. Fortress Monroe was one of the worst spots that could possibly have been selected for such an experiment. Sharp winds were frequent, and the vicinity of the Fort was a bank of loose sand—so that none could ride without danger to his eyes—the House had already given a decided expression of its opinion on this plan—and had rejected it whenever offered.

The question being taken on Mr. HAMILTON'S motion for amendment, it was rejected without a division.

The residue of the bill having been gone through, the Committee rose, and, having obtained leave to sit again on the bill providing for the repair of the Cumberland Road, the several amendments to the General Appropriation Bill were agreed to by the House.

And then the House adjourned.

THURSDAY, FEBRUARY 9, 1826.

Mr. JOHN C. WEEMS, a member from Maryland, elected to supply the vacancy occasioned by the resignation of Mr. KENT, appeared on the 7th instant, was qualified, and took his seat.

APPROPRIATION BILLS.

The several amendments to the Military Appropriation Bill, agreed to in Committee of the Whole, were read; and, having been concurred in by the House—

Mr. MALLARY renewed, in the House, the proposal he had offered in Committee of the Whole, for the erection of an Arsenal at Vergennes. He repeated and enforced the arguments he had before employed: adverting to the liberality with which Vermont had always voted for objects of defence and of internal improvement in other States, and even in the remotest extremity of the Union, as well as the small share of the public resources which had been assigned to her benefit, only four thousand dollars having ever been appropriated for that State, which was expended in the erection of a light-house.

The question being taken on Mr. MALLARY'S amendment, it was carried, ayes 74, noes 57.

The bill was then ordered to a third reading to-morrow.

The amendments to the Fortification bill, agreed on in Committee of the Whole, were then read, and the House having taken them up in order, the appropriation for purchase of land on Throg's Point was agreed to—ayes 81, noes 51.

Mr. FORSYTH observed, that, in the course of the debate on this bill, something had been said about insinuations cast out by him: to which he had replied that he had ventured no insinuations, nor made any charges, but the gentlemen employed in carrying into effect the system of fortifications. On farther consideration, however, reflecting that there were many new members present, on whose minds an erroneous impression might be left, he called for the reading of one sentence from a report made to this House at the last session. It was then sent to the Clerk's table the report of the Committee of Claims, on the petition of Gilbert C. Russell, assignee of Samuel Hawkins, who was the assignee of Roswell Hopkins, from which the following passage was read:

"Although Tillotson and Governeur were the securities, and no responsibility incurred by Joseph G. Swift, the Agent on the part of the Government for making the contract, there was an agreement between Hawkins on the one part, and Tillotson and Swift on the other, whereby the former was to account with the latter for one-half of the nett profits."

The bill was then ordered to its third reading this day.

The fortification bill having been read a third time—

Mr. TATTNALL then rose and said, that, as the resolution he had offered, calling for certain information on the subject of this bill, had been frequently referred to

the course of the debate, and as it appeared that motives had been attributed to him, by some gentlemen, which he was far from feeling, and as others had maintained that his resolution called for information which was already in possession of the House, he trusted the House would listen with indulgence, for a few moments, to the remarks he wished to offer in his own vindication; and he hoped this the rather, as, at the time of the debate, he had been confined to his bed by illness. He now again reiterated what he had declared when he introduced his resolution, that he neither was, nor ever had been, in the slightest degree, hostile to the system of defence reported by the Board of Engineers, and now in a course of execution. On the contrary, he was among its most decided and zealous advocates. How could he be otherwise? The system itself was an admirable one: it had been reported by a Board, at the head of which was the most distinguished Engineer, probably, in the world. Even on principles of economy, he was friendly to the system. He avowed himself an economist, and it was for that very reason that he advocated it. From the commencement to the close of the late war, the country had been in almost a defenceless state, and every manœuvre of the enemy threw the whole coast into a state of perturbation and alarm.

The system of defence reported by the Engineers completely remedied this evil. It did not, indeed, provide for making our sea-board, like that of France, an iron-bound coast, lined with castles; with us this was impracticable. Nor was it needed. The prominent points could be protected at a far less expense, and, from the nature of our coast, this was all that was required. He would not, at present, add any thing to this frank expression of his views and feelings in relation to the system. He had read, with great pleasure, the lucid and able speech of the Chairman of the Committee of Ways and Means in relation to it, and he entirely agreed in every sentiment he had uttered. He differed from him in nothing but in the position that the information which he had asked, by his resolution, was already before the House, and much more. Had this been the case, he would certainly have been culpable in introducing the call; but he was positive that, in this, the gentleman himself would, in the end, perceive he had been mistaken, and that no part of the information he asked for was in possession of the House.

The first object sought by his resolution was a list of all the works intended to be erected in the completion of the plan. The Corps of Engineers, in their survey and reconnoissance, had passed rapidly over the country, and had not then had time to fix minutely upon every work that would be necessary—nor had they at any time since given a detail of all the forts it will be requisite to erect. The report states principles to be adopted, and prominent points to be defended—but gives no list of the fortifications which are to be built on those points. And it by no means follows, that, because some of the points are arranged as belonging to the first class, that, therefore, all the works of every description, at such points, must be completed before any works are commenced on those points which are placed in the second class. In illustration of this remark, Mr. T. referred to instances in which, already, some works have been commenced which belong to a subordinate class, while the first class is yet incomplete. In order to form a judgment as to which works ought first to be commenced, it was desirable and necessary to have a complete list of *all* the works intended. No such list is before the House.

Another object of the call was to obtain a list of all the fortifications which had been erected up to the present time. He asked for this, because, from information which he had received, there was reason to do more than to suspect that some works had crept in among those of the first class, which had not been reported as such by the Engineers. His object was, to shew the necessity of caution, and to prevent the recurrence of any such irregularity in future. This was not before the House. A part of it, it was true, might, with great labor, be collected from the documents, but a very imperfect list could thus be formed.

A farther object he had in view by his resolution, was, to obtain a list of works completed before the report of the Engineers was adopted. By that report some of these works were to be retained, others to be abandoned; and it was necessary to know which, in order that money might not be wasted in repairs on forts, which were to be given up as useless.

The last object was an estimate of the cost of all the works which have been erected, and of all those which are to be. This, of course, is not before the House: for no complete list has yet been given of what works are intended to be built.

From this brief review, it would be seen that the inquiry he had proposed, was not an idle call for what we had already. Not a single object of all those he had asked for, was within the reach of this House; and, in his view, they all had an important bearing on the subject of the bill.

It was due to his character, and to that estimate of it which he thought gentlemen were in fairness bound to make, that he should explain the motive which had led him to introduce the resolution.

Several gentlemen had broadly insinuated that he had been induced to offer it, because he wanted to obtain fortifications for Savannah. It was, unhappily, but too true, that Savannah, once the third commercial port on our coast, and now in order the fifth in our country, had been greatly neglected, and left so defenceless, that the laws of the Union had been openly violated in its harbor, without the means of preventing it; but, gentlemen did him great injustice, if they supposed that he had indulged any private or local views in treating of the general interests of the country. If it should appear that other points were in greater need of defence, he said, most cheerfully, let Savannah wait for her turn. And, in fact, he had last session opposed an appropriation which had for its object the building a fort at that place; because he thought that, if erected as proposed, it would be of no more utility, than if placed on the top of the Alleghany Mountains. It was only justice to himself to say, that in judging of public and general interests, he never permitted himself to be influenced by any other than general considerations. He was sorry that any gentleman should have judged him so harshly; and he regretted it particularly in relation to a gentleman from Massachusetts, (Mr. DWIGHT) who commonly sat near him; but he could assure gentlemen they had done him injustice, if they supposed it was Savannah, and not his country, that he had had in view.

The bill was then PASSED, and sent to the Senate.

And then the House adjourned.

FRIDAY, FEBRUARY 10, 1826.

CASE OF PENELOPE DENNEY.

The bill for the relief of Penelope Denney, which had, at the motion of Mr. MALLARY, been laid on the table; having, on motion of the same gentleman, been again taken up for consideration—

Mr CAMBRELENG moved to amend the bill, by striking out the words "out of any money in the Treasury, not otherwise appropriated," and substituting, in lieu thereof, "out of the Navy Pension Fund."

Mr. REED, though not opposed to granting the pension, objected to taking it from the Navy Pension Fund, and was proceeding in some observations, from which it was manifest that he had confounded the Navy Pension Fund with the Hospital Fund.

Mr. CAMBRELENG observed, in support of his amendment, that, as the subject had already been presented to the notice of this House at a former session, he would not, at this time, detain the House farther than to say, that the person for whose benefit this bill had been introduced, was a venerable, helpless, and destitute woman, whose son had been killed in battle by the pirates, while he was engaged in the naval service of the country. He was her only son—and he had long supported her, by dividing with this aged parent the pay he received as a quarter gunner: all she asks is, that this pittance may be continued for five years; in the expectation that, as she is now very old and infirm, she may, before the expiration of that term, be released from her dependence on human compassion.

The object of the amendment is to change the source from which this pension is proposed to be paid, from the Treasury of the United States to the Pension Fund—a fund derived wholly from the naval exploits of our brave tars, and to which Denney, the son of the petitioner, had largely contributed by his services in the war against the pirates—(a war which brought into this fund upwards of fifty thousand dollars.) The pittance asked is only eight dollars a month; and should it continue to be paid during the whole period of five years, it will fall very far short of what her son had individually been the means of contributing. The bill would have passed long since, but hitherto its advocates had been divided on the question, whether it ought to be paid out of the Treasury or out of the Navy Pension Fund. He had ascertained that, since the last report made on this subject, three years ago, the amount of that fund had been augmented by a difference of one hundred thousand dollars; in support of which statement, Mr. C. adverted to the documents, extracts from which he read in his place. He concluded by expressing an earnest hope, that gentlemen would not resist a bill which had such strong claims upon the favor of the House.

Mr. LITTLE objected to the amendment. He thought it would be a violation of the public faith to take this pension out of the Navy Pension Fund; which had been pledged by the act of 1800, for the relief of the wives and children of those who died in battle, or who were disabled by their services in war. If this pension was to be granted at all, (and he did not oppose the measure) it ought to be taken from the Treasury.

Mr. WICKLIFFE did not profess to be well acquainted with the nature of the Navy Pension Fund, and rose for the purpose of inquiring from the gentleman from Maryland, (Mr. LITTLE) whether the public faith was not pledged by the law creating that fund, that, if it should ever prove insufficient for its object, the deficiency should be made up out of the funds of the Treasury: for, if that were the case, it appeared to him to be of little moment, whether this pension were paid from the one source or the other. The fund, it appeared, was now ample, and, should this pension even have the effect, in the end, to render it deficient, the deficit would ultimately be made up from the moneys of the United States.

Mr. LITTLE making no reply, Mr. CAMBRELENG answered, that such was the fact; the public faith was so pledged; but there was no reason for charging the pension, at this time, on the Treasury; because the Navy Fund was abundant. If every departure from the pension act of 1800 was a violation of the public faith, then the public faith had been violated by every pension given since the last war; because these pensions extended to widows and *children*—but the law of 1800 made no mention of children.

Mr. LITTLE called for the reading of the ninth section of the law of 1800; and it was read accordingly.

The question was then put on the amendment of Mr. CAMBRELENG, and carried in the affirmative—Ayes 69, noes 40.

Mr. WILLIAMS then said, that, even in its amended form, he could not vote for this bill. His objection to it was now the same as he had stated it to be on a former occasion. He objected to the principle, which was, in fact, little other than would warrant the granting of a pension to every person in the United States. The public faith was pledged, as had been correctly stated, to make good every deficiency in the Navy Pension Fund: and the principle of the bill went to ensure such a deficiency. He thought Congress had carried the pensioning principle quite far enough already. If this bill passes, can any gentleman tell to what length it may not be carried? Suppose the occurrence of another war; thousands of cases, like the present, may grow out of it: and, if you provide for one case, you are bound, in justice, to provide for all; and thus the nation will be overwhelmed with claims which may not be resisted, and which will drain the Treasury.

Mr. WOOD, of New York, was in favor of the bill. In reply to the objection of Mr. LITTLE, in respect to a violation of public faith, he went into a history of the several acts creating this fund, and afterwards granting pensions from it. The act of 1800 provided that, where our vessels of war should capture a prize of superior force, the whole value of the prize should be divided among the captors; but, when they should capture a vessel of inferior force, one half only of its value should be divided among the captors, and the other half should go to the creating of a fund for the relief of the widows of the slain: this was denominated "the Navy Pension Fund." It was intended to encourage, by rewarding, the naval enterprise of our seamen. But did that act debar the Government from rewarding it in any other manner? In the act of 1813, five years' half pay of any seaman, who fell in battle, was granted to his widow; and, in case he left no widow, then to his children. Did this act interfere with the previous law of 1800? Was it any violation of the pledged faith of the nation? Certainly not. And if it was as much so as the present act would be a violation of it. The first law extended the provision to the widow: the second act said, in case there was no widow, it should go to the children. This bill, in a case where there is neither wife nor child, gives it to an aged and helpless mother. The principle is precisely the same. It is directed to the same feelings in the breast of the donor. A sailor, who, having neither wife nor children, has shared his wages with a feeble, dependent, widowed mother, would feel, in the parting moment, as great anxiety for her fate, as those who had helpless wives or children could in theirs. He was as much opposed to pensioning, on a wide extended scale, as the gentleman from North Carolina; but he apprehended no such consequences as that gentleman seemed to do, from the granting of this pension, in circumstances so peculiar.

Mr. McCOY said, the gentleman from New York was in error—the law of 1813 being in strict conformity with that of 1800, which provided for seamen and marines and for their widows and children; but the present bill extends much farther: it goes to the mothers of the deceased; and, if it carries, the next step will probably be to pension their fathers; then, he supposed, their uncles next, their aunts; and so on to cousins, and to all kin. It was not to the amount now granted that he had any objection; but it was to the principle. Once admit it, and there was no stopping. He thought the pension system had gone quite far enough. We are a young government, and our pension list is already of very considerable magnitude. He felt for Penelope Denney, he believed, as much as any of the gentlemen who are in favor of the bill; but, if we give to her because she is poor,

must follow up the principle, and our Navy Pension Fund would soon be swallowed up; and if we are to extend our bounty to all that may be termed hard cases, even the Treasury will be insufficient to meet the demand.

Mr. BARTLETT rose to correct what he considered a mistaken impression of the gentleman from Virginia, who had just taken his seat. That gentleman seems to think that this bill will open the door to a vast number of other cases; but it does not appear so to me, (said Mr. B.) He says if we are to pension every one whose case is hard, and are to provide for all poor persons in any way connected with our sailors, the Navy Pension Fund will soon fail. Very true, sir; but this case does not turn on any such principle, or necessarily involve any such consequences. This is the case not of merely a poor woman: it is the case of the sole relative of a brave seaman, who fell in battle—his aged mother—and whose only support was the half of his pay, which, for a number of years, he had devoted to her maintenance. When this gallant tar was about to depart on the expedition in which he gloriously fell, he went to the Navy Office, and left directions, that, during his absence, one half of the pay which should become due to him, should be regularly paid to her. And the bill does no more than continue to her this slender stipend which she would have received had her only son not fallen in the defence of his country. Under such circumstances, he could see no danger of extending the pensioning principle beyond reasonable points. Certainly, if the object of the pension law was to encourage enterprise and to reward bravery, this bill falls strictly within its aim. It does not embrace the class of all poor or distressed persons—but of those only whose entire support depended on a life which has been sacrificed in our defence. He would go all lengths in guarding the bill by such provisions as the gentleman might think needful; but its principle was certainly just and proper.

Mr. McCOY replied, that the gentleman from New Hampshire had mistaken what he had said: he never supposed it was seriously intended that Congress should pension all poor persons; but their poverty was the ground on which the pension system was founded. By the gentleman's own showing, he would not have voted for this bill if Mrs. Denney had been rich: then it must be because she is poor that he is in favor of it. That a man should support his mother when she was helpless, was nothing so very uncommon. This was the duty of every man.

Mr. STEVENSON, of Pennsylvania, said, the bill before the House proposed to grant a pension of about one hundred dollars annually to the widowed mother of a gunner, who, whilst in the service of the United States, was killed in an action with pirates, and in the very hour of victory over them.

It was admitted, that, if this man had left a wife or child, they would, under the laws, have been entitled to a pension, to the amount proposed by this bill to be granted to the mother of the slain; but it was objected, that a pension ought not to be granted in the ascending line, as this would widen the extent of claims. It was stated, too, that the affection of a sufferer for wife or child, and the reciprocity of that feeling, so near and dear are those ties, is the reason for granting them a pension, and to them alone. And yet, sir, said Mr. S., you have heard of wives that have been unfaithful; you have heard of children that have been ungrateful; but did you ever know a mother's love to be withheld from her offspring? Sir, the feelings of a maternal heart endure forever. They twine around their progeny from lisping infancy to the latest moment of existence. No misfortune, no degradation, no crime, that chance or change can know, will separate the maternal feelings from the innocent being she lulled in the cradle or nursed at her breast. If, then, the feelings and obligations of affection and service are to be respected or rewarded, surely this widowed wife of a Revolutionary officer, this bereaved mother of an only son, and only child, slain in the service of this nation, may ask for support from that People for whom the one fought and the other died.

But, I am told of the danger of the precedent of granting a pension in the ascending line. Sir, we cannot go far back—the insatiate grave still sweeps its generations to the earth. But, if precedent is dangerous, there is nothing portentous in this, compared with a recent one, when half a million in money and in land were lavished on an aged visitant; enabling him, from the bounty of the State, to enrich all his connexions in the ascending and descending line. I do not say whether this was right or wrong. I speak of the precedent: but I must remark, that the person thus liberally provided for, was only wounded in your service; whereas, the only offspring of this widowed wife of a Revolutionary officer, was killed in your recent battles.

Sir, it is true, the petition of Penelope Denney is presented in a still small voice. The aged, humble mother of a gunner in your Navy approaches you; a timid, bereft, and sorrowing supplicant. No national pageants announce her approach, dazzling the senses, and captivating the judgment. The tongue of the son, who should have commended her to your care, is mute. He died in the conflict, to secure your citizens and your commerce. Could he have reminded you, in his parting hour, that the being to whom he had directed half his pay to be given, whilst he lived, was near and dear to him; could he have requested you to respect his memory, by supporting his humble parent; the prayer would have been granted. And are there no tongues to plead the cause of this aged mother? Are there no hearts to feel for her? Yes, Mr. Speaker; there are tongues that can and will plead more forcibly than mine. There are hearts that will feel as kindly—and there are those who will award to Penelope Denney a decree that will soothe her age, and cheer her with the evidence of a nation's sympathy.

Sir, grant this pension, and you inspire confidence and fidelity in your seamen. The blood of Denney was shed to secure safety to your flag. His intrepidity may have eventuated in saving millions in national expenditure, and from piratical capture. He died, at least, in active battle, to suppress the most cruel system of piracy known to the history of nations. I respect the motives of those gentlemen who resist this claim. I am aware they stand for their country, and fear to depart from cold principles of policy. But, sir, the glow of national feeling and gratitude may be extinguished, and with it the incentive to the statesman's devotion and the soldier's ardor, by too rigid an enforcement of the precepts of chilling reason.

Mr. BUCKNER observed, that he was satisfied there was not a gentleman on that floor who would not feel pleasure in granting the pension proposed in the bill, if he thought he could do it with propriety. For himself, he had been as much opposed to its passage as others now are, until the amendment of the gentleman from New York (Mr. CAMBRELENG) was proposed: but, in his view, there was a wide difference between taking it out of the Treasury and out of the Navy Pension Fund. It was true, the act of 1800 did pledge the public faith, to make good any deficiency in the Navy Pension Fund, in the objects for which it was intended. But, he asked if there was any reasonable probability that any such deficiency would have to be made up. The fund, it appears, is abundant: it is not only sufficient for its objects, but there is a large and an accumulating surplus, which the law allows to be applied to other objects of an analogous character. He could see no objection to allowing the pension out of this fund: it was a violation of no pledge given in the act of 1800. The gentleman from Virginia, (Mr. McCOY) was certainly mistaken in his recollection of that act; it con-

tained no provision even for the widows of seamen slain. And the mode of legislation, from 1800 to the present day, shows that no such pledge could have been understood: for every act has been in contravention of it. The principle was afterwards extended, in 1813, to widows and children: and since then, a still further extension has been allowed, by making the provisions of the pension law extend to persons on board Revenue Cutters, as well as those actually in the Navy. This was only a slight extension of the principle—nor does the present bill contemplate more than a very slight variation of it. There might be a stronger and closer connection between husband and wife than can bind any other persons: but here was a mother as helpless and as dependent as his child would be—and the same encouragement to entering the service would be held out, by relieving the one as the other.

The gentleman from North Carolina (Mr. WILLIAMS) had suggested the danger of such a precedent, in case another war should take place; but he thought the contingency of another war was, of all arguments, the strongest in favor of the bill—because it would enlarge the Navy Pension Fund more than any thing else could do, although, as it is, that fund has been growing.

Mr. WEEMS observed, that this case had frequently been before Congress, and was a much more important case than, at first glance, it would appear to be. Dependent as we are on the patriotism of the country for its best security, it was requisite that, in the hour of her distress, her brave youth should know that they may depend with safety on the gratitude of the country to take care of an aged mother, when they themselves have perished in the cause; and, although he was as unwilling as any gentleman to give his sanction to open the coffers of the United States improperly, he could see no danger arising from the present case. Gentlemen opposed the bill on the ground of the precedent it would set. Precedents, no doubt, have weight, and are entitled to consideration; but they have not the power of law. He had never yet heard that the People of the United States are *bound* by the force of precedents in their acts of legislation: but even granting that such precedents formed the law of the land, he could see no danger or injury that could follow the passing of this bill. How many aged mothers may this House expect to come before them, in circumstances like those of the present petitioner? Few, indeed. And the number must be too trifling to be productive of any evil consequence. The Government has in its hand sufficient resources; and if he could be convinced that this old lady is entitled to the trifling boon she asked, he should be decidedly in favor of granting it to her. His object, however, in rising was, to get information. He was not willing to open the Treasury for any such a class of persons as had been referred to by the gentleman from Virginia. He had no idea of providing for uncles and aunts, nor for the sisters of the deceased, who would generally be young, and able to form establishments for themselves. And if gentlemen could distinctly show that such effects must necessarily follow, he should not vote in favor of the bill; but, in providing a trifling pittance for the aged mother of this brave seaman, he could, for his own part, see no danger.

Mr. WORTHINGTON said, it had had not been his intention to trespass again on the patience of the House; but, from the course the debate had taken, he was impelled by a paramount sense of duty, to submit some further views on the subject. He was convinced by nothing he had heard, that the bill now under consideration, ought to pass; but, on the contrary, he was fortified in the conviction, that it would be dangerous and inexpedient to give it sanction. Sir, said he, instead of guarding the portals of your Treasury with Cerberean vigilance, you are about to throw them open to every person who knocks for admittance.

If you once establish the precedent that the mother of a seaman or soldier who is killed in our naval or military service, is entitled to the same paternal care of the Government, that *he* would have been had he survived his wounds, you at once hold yourselves bound to the same extent in favor of any other relatives who may have been dependent upon him for support. But, would this principle be correct? Why do you grant military pensions? It is for this reason: a soldier or seaman is disabled in the service of the State, and, in consequence of this disability is unable to procure the means of subsistence. The Government, in that case, to prevent him from perishing, makes provision for his support. This is, or ought to be, the basis of all pensions, except, perhaps, as it regards the warriors of the Revolution—with them I would be more liberal. But, sir, instead of granting a pension to a disabled seaman, we are about to allow the *mother* of one who was killed in battle, the same that would have been allowed to him had he survived. Instead of granting a military pension, the one contemplated by the bill is a *non descript*, one *sui generis*, being neither civil nor military; but, if either, it resembles more a civil than a military grant, and, if you pass it, may be the entering wedge to the granting of civil pensions. Sir, it is already contended, by some of our newspaper editors, that our ex-Presidents ought to be pensioned for life; and I should not be surprised, if this bill should pass, to see, by and by, our pension list so swelled, as not only to embrace the pensions just alluded to, but also the ex-Vice Presidents, ex-Heads of Departments, and, as in England, all our ex-Ambassadors. Looking to these consequences, will the People of this country countenance the support of the present proceeding? Will they suffer themselves or their posterity, to be weighed down by taxes upon taxes upon the principle of this bill?

Sir, cases of this character go on gradually and imperceptibly, and, before we are aware of it, fasten on us like an *incubus*, oppressing all our efforts. They appeal strongly to our sensibility, and are calculated to bear on action the most sublimated feelings of the human heart. Hence the danger of being led away by cases of this description. But policy, the cold and unfeeling dictates of policy, ought alone to be our guide. Sir, I know not Penelope Denney, but I know where she resides. She is an inhabitant of the grand and magnificent city of New York. Will that city of the ocean suffer this old lady to languish in want and misery?—*Credat Judeus Apella*—I cannot believe it for a moment.

Mr. REED, though not opposed to granting the petition, objected to taking it from the Navy Pension Fund. He was proceeding in some observations, from which it was manifest that he had confounded the Navy Pension Fund with the Hospital Fund.

Mr. CAMBRELENG having apprised him of this, he withdrew his opposition.

Mr. PEARCE said, the question had been asked why gentlemen opposed to the bill, who is Penelope Denney? Sir, I knew nothing about Penelope Denney until I came to this place, and all I now know of her I have learned in this House; and from what has been disclosed by documents submitted to our inspection, and from the statements that have been used, I am prepared to vote against the bill. In order to form a right estimate of the propriety of such a vote, it was necessary to advert to the facts of the case.

The son of this venerable petitioner was a seaman employed on board one of our national vessels, in an expedition imminently hazardous, in which he had to encounter not only the blood-hounds of the Ocean, but the pestilential influence of a pestilential clime. It appeared, in evi-

that this sailor was brave, was valiant—and were there no other proof of it, a sufficient evidence was found in the fact, that Denney was one of the few selected by the gallent *Allen* to accompany him in one of the boldest and most dangerous enterprises of the piratical war. The sequel shewed that the selection had been made with judgment, and that Denney was well calculated for the service on which he was sent. Though no more than a quarter-gunner, he gave the most signal proofs of a heroic spirit. He fell in the ensuing battle. But, before he went on this his last expedition, he settled an arrangement with the Navy Agent at New York, that half of his pay should go to the support of his aged and widowed mother. What his feelings were, on her account, in the latter moments of dissolution, is not hard to conjecture. It is true, he did not, like the brave Allen, survive his mortal wound for five or six hours; he was killed outright, and no time was left him to commend his helpless mother to the protection of that country for which he shed his blood. He had not even time to put up that petition which so well becomes us all, "God be merciful to me a sinner." He died, and, with him, perished her entire support, her only staff. His death deprived her of bread. It is true, sir, that this venerable matron can go to the authorities of the City of New York; can throw herself on their compassion; and beg from them what she ought to receive from us—a poor pittance, to keep off starvation. But, if the claim be just, is it for this House to say, go and depend on the charity of the City of New York?

I trust, sir, there is a feeling here, which revolts from such language, in such a case. I trust there is on this floor a disposition to protect this petitioner, though she be feeble, old, and poor, without wealth, and without influence. Sir, if Penelope Denney had been rich—if she had had any thing to bestow, we should never have heard her name, as a petitioner, before this House; but she has no friends. There are none who partake of her hospitality, or who are interested in securing her good will. Destitute and helpless, she depends alone on the justice of her country.

But the precedent—there, say gentlemen, lies all the danger. Sir, I am now to learn, for the first time, that Congress is bound by precedent, in legislation. I know, or, that, in our Courts, regard must be paid to preceding decisions, and that there they have the force of law; but never heard, until now, that the body which makes the law is to be bound in the same manner. But, granting it so, what danger results, when we find another man, who has mingled his blood with the melting lava of the cannon's mouth, and who, dying for his country, without wife or child, left the mother whom he had supported, to the charity of the world? We may admit the force of the precedent, and hold ourselves bound to give, without any fears for the Treasury. It is not a body of priests, it is not a wealthy or overgorged aristocracy, for whom we are asked to provide support out of the public resources: it is the poor pittance of eight dollars a month, for a poor old widow. Gentlemen tell us, that if we grant this pension, we must go on in the ascending, as well as the descending line, and pension all the relatives of those who die in our service. Sir, I believe there are but few men who leave, when they die, more than five or six grandmothers, and granting the evil to be ever so frightful, it is one that at least will be of rare occurrence. We are asked whether Penelope Denney ever served in our Navy, and what military service she has rendered, that she is to receive a pension? Sir, she never had the opportunity of serving in the Navy, nor of proving her courage in the performance of military service. But, judging from the son, which she had given to her country, I have no doubt that if the hour of extremity had presented itself, she would have done what the famous Mrs. Bayley did, in like circumstances—she would have furnished her under petticoat for the service of the country: I mean for the purpose of making cartridges. But do gentlemen ask what she has done? I answer, she has nurtured and reared a man, who, after exhibiting the most heroic valor, willingly shed his blood for the protection of the peaceful commerce of the United States.

Is it not fair and just that she should share in that which he died to defend? Nay, sir, in that which he actually earned by his toil? For his personal contributions to this Navy Pension Fund, has contributed to this nation ten times as much as the whole amount of her pension, if paid for the full term for which it is asked. But, sir, on the ground of precedent, have we not seen that the act of 1813 differed from the act of 1800: that it altered and extended the provisions of that act: that it introduced to the benefits of public bounty a new class of the relatives of the slain?

Then, sir, we have a precedent. But this House now does legislate, and has always legislated, according to the peculiar circumstances of the cases which come before it. If this brave seaman had been wounded and crippled only, he would have come under the benefit of the act. If he had been slain, and left a widow, she would have come under the benefit of the act. He had no wife, but left a dependent mother. Must she be denied? Will you put the claims of a married man above the claims of another, who has performed the same services, because he is single? Will you speculate on the privations of those who serve for you and die for you? Is this the justice—is this the equity of this House? Is it in this manner that you will reward the services of those who fight your battles? Is it by acts like this that you will encourage others to step into the places of the slain? Sir, as representing in part the commercial interests of this country; and representing, as I do, many of those whose relatives were butchered by those pirates; and apprehending, moreover, that the service of the country will be endangered by the denial of so just and so touching a claim, I am prepared to go all lengths in support of this bill.

Mr. STORRS observed, that, as the bill had been reported by the Committee on Naval Affairs, it might be considered as incumbent on him, from the relation he sustained to that Committee, to state the views under which they reported it to the House. Those gentlemen who considered this as a question affecting the Treasury were certainly mistaken in their apprehension of the case. We are not asked to put our hand into the Treasury; and, as to the violation of any pledge, a little examination of the matter would shew that this also was a mistaken idea. All prizes taken by public vessels of the United States, belonged, in the first instance, to the Government. With a view to encourage the valor and enterprise of those engaged in our Naval service, the Government gives a certain proportion of these prizes to the captors. The remainder it reserves for other purposes, and determines that it shall constitute a separate fund, which, from its application, is ordinarily denominated the Navy Pension Fund. It is manifest, therefore, that the fund out of which this pension is proposed to be paid, has not been raised by taxes, but has been earned by the seamen themselves, by their own valor and blood. Those, therefore, who are against the bill, are, in fact, against the Pension Fund; for it is to grant such pensions that the fund is provided. Congress are, in fact, only trustees for the better distribution of that which the Navy has earned by its own valor. We have distributed it, in the first place, to the widows and children of those who were killed in the public service. But why? On what principle? Because their widows and their children were, during their life time, dependent for their support on those who have been slain. We give them a pittance to preserve them from want, and continue that pittance for five years. Now, is it not obvious, that where there is no wife or children, but that another near relative was completely dependent on the

deceased for support, the giving a pension to that relative is no violation of the principle of the law, but is in strict accordance with it? Denney had no dependent but his mother, and the granting her a pension does not extend the principle at all. When gentlemen talk of precedent, they must remember that precedent relates solely to principle. One case is a precedent for another, only when the same principle is involved, and only for that reason. Now, this case is precisely within the principle of the act already passed, and therefore can be productive of no evil as a precedent. But this is not all. Here is a poor sailor, actually engaged, when he died, in supporting his helpless mother. How many such cases are likely to be presented to us?

Are they so extremely common as to justify alarm? Do gentlemen apprehend that the Treasury is to be exhausted when we ask nothing out of the Treasury? For himself he would give the pension if it were only for the sake of the example. It is the case of a sailor; of a common sailor; not of an officer, who comes off with all the glory and with much of the prize money to boot—but of a sailor, one of those who do the business; who perform the fighting by which the glory of the nation is enhanced, and its glory secured, and who, when he died, was in the actual performance of a deed of fillal piety, as well as of devoted patriotism. He confessed that the case was one which took a strong hold upon his feelings—from all he had learned of it, he did not doubt that the feelings of Denney were chivalric. Now, suppose that when this noble tar was stepping on board his vessel to go on this his last cruise, a person had stepped up to him and said, "Jack, you are going on a cruise in which you may fall; and remember, if you are killed, Congress will refuse to continue any support to your old mother!" I have no doubt that, for the honor of this House, Denney would have knocked him down.

Mr. FORSYTH called for the reading of the act of 1814, passed for the benefit of Mary Cheever.

And it was read at the Clerk's table.

Mr. GARRISON offered an amendment, which went to make the whole sum allowed to Penelope Denney, two hundred dollars: to be paid in semi-annual instalments of fifty dollars; and the question being taken, it was rejected without debate.

Mr. WILLIAMS said, he rose for the purpose of inquiring from the gentleman from New York, whether Mrs. Denney had any other sons now living?

Mr. CAMBRELENG replied, that he had already repeatedly stated, that Denney was an only son. He would now again state, on his own authority, that she had no other son.

Mr. WILLIAMS then sent to the Clerk's table the affidavit of Mrs. Denney, in which she declares that she has no other son on whom she can depend, which expression Mr. W. considered as equivocal.

Mr. CAMBRELENG then made some farther explanations, tending to shew, that there was no wilful equivocation in the affidavit.

Mr. WEEMS said, that, during the late war, he had lived in the vicinity of the Chesapeake Bay, and had there had an opportunity of witnessing the multiplied and various excuses offered by those who were urged to turn out in the service of the country. He earnestly wished that the present case might not so issue as to increase those excuses. He had risen, however, chiefly for the purpose of asking the pardon of the gentleman from Rhode Island, (Mr. PEARCE) for having unwittingly interrupted him before he had concluded his remarks. He thanked that gentleman for the correct description which he had given of the achievements of this brave quarter-gunner, and he begged, in addition, to say, that if gentlemen gave away all the Treasury, and had not charity, it would avail them nothing.

This noble tar had been carried, by his patriotism, into the most hazardous part of the service, all of which was full of peril, and when arrived in the midst of it, his conduct had been such as did him honor, and would have done if he had been a Commodore. He hoped that this case would not furnish another stain for the statute book. There were already too many of those stains—he had himself known one of the veteran soldiers of the Revolutionary War, who had been placed upon the pension list, and, by great economy, had purchased a little tract of ground among the pines in his neighborhood, which he intended to cultivate, but who, in consequence of being stricken off the pension list, was obliged to part with it, and afterward died in extreme want. He came to this House prepared to do the most ample justice to persons in such a condition, and he would do it as soon for the helpless mother of a poor quarter-gunner, as for the wife or the child of the first officer in the Navy. Gentlemen had asked whether Penelope Denney had ever served in the Navy of the United States? He hoped and trusted in God that the country had enough of women in the Navy. If they only did mischief when they got there, he hoped they would be kept out of it. Gentlemen, too, had asked what services Penelope Denney had ever rendered to the country. He would answer, she had given being to that noble spirit, who, after serving the country in toil and in danger, and in shedding his blood in its defence, was now, he trusted, in the paradise of God. The nurturing and training of such a seaman, was one of the most important benefits that could be rendered to the country, and he felt it his duty—he felt conscientiously bound to vote in favor of the bill.

Mr. WILLIAMS said, that, from the explanation given by the gentleman from New York, (Mr. CAMBRELENG) he now understood that that gentleman, when he said that Mrs. Denney had no other son, spoke on his own responsibility, but not from his own personal knowledge: that, though the affidavit, as worded, might be true, yet there was a difference between having no son on whom she could depend, and having no son at all. He again insisted on the danger of the precedent; that this was a new case was evident, from its being brought here. If it had been provided for by the law of the land, the petitioner need not come to Congress and ask a special law for her benefit. And he again asked, if gentlemen were prepared to go the full length of the principle they seemed now disposed to sanction. For his part, he did not think that those who fight for their country on the *sea*, were the only persons entitled to credit, or to the public munificence. He could not see why those who fought our battles on the land were not as well entitled to both; and he called on the gentleman from New York, to point out the difference in principle, between granting a pension to the mother of a deceased seaman and the mother of a deceased soldier.

The gentleman from Rhode Island (Mr. PEARCE) had said, that precedents in legislation were not binding. That gentleman might not consider them so, yet he could hope that he had some regard for his own consistency. How would he be consistent with himself, in denying a pension to the mother of a soldier, while he granted it to the mother of a seaman? A great deal of feeling (as was to be expected) mingled itself in the discussion of this question; but a legislative body were not to be guided by feelings alone, in making the laws of a nation.

A gentleman from Maryland, over the way, (he believed he was from Maryland, but had never had the pleasure of seeing his face before,) had introduced the case of a Revolutionary soldier in his neighborhood, who, in consequence of having his name stricken from the pension roll, had been suffered by his neighbors to die in extreme want. If the gentleman, when at home, had displayed the same feelings of compassion towards those who are old and deserving of pensions, which he had manifested here, he presumed, that old soldier would not have died of want: he

case, like the one now before the House, was a case to be relieved by private munificence.

A gentleman from Kentucky, (Mr. BUCKNER) had said that he would not vote this pension, if it were to be paid out of the Treasury, but should vote for it because it was taken out of the Navy Pension Fund. But did not the gentleman recollect, that this Navy Pension Fund, though now considerable, must, unless it should be recruited by another war, be eventually exhausted; and that all its deficiencies must be supplied out of the Treasury? By the regulations of the Hospital Fund, those seamen who, after being some time in the Hospital, are found to be incurable, are dismissed, that their places might be yielded to others who may be benefitted. These destitute sailors have no other resource to look to, but the Navy Pension Fund. If that fails them, they have no other relief. Now, it is very possible, that the very sailor who contributed to form that fund, may be turned out, incurable. And will gentlemen let him lie and perish in the street, and the dogs come and lick his sores, while the very fund he created is given to persons who never were in the Navy, and who are entirely distinct and separate from it?

The gentleman from Rhode Island says, that this bill must pass, because the petitioner has a just right to the pension. Sir, a just right? Why then, is there no *claim* before us? It is a new case, sanctioned by no law, or this bill would not be before the House. The gentleman, too, has said, that the service in which Denney fell, was a service of peculiar danger. Sir, all military service is dangerous. Those who enter it, enter it as such. They court danger, and go to meet it; and he who does not, is not fit for the American Army, or worthy of the American Navy. I acknowledge that if a new principle of pensioning is to be introduced, the present is a fair and proper case to begin with. None could be better calculated to interest the feelings of gentlemen, and to array their feelings against their judgment; but as I do not wish to extend our pension system, I am compelled by duty to resist the bill. Supposing any other relation of Mrs. Denney had supported her instead of her son; or, to make the case stronger, supposing she had been supported by a stranger, and that stranger or relation dies in the public service, would gentlemen pension in that case? She would then be destitute, as much so as she is now. She would then have become destitute by the death of a person who died in our service: and yet, is there any gentleman who will maintain, that we ought to pension her, under such circumstances? If we ought, I see no limits to the pension system. And if we ought not, what is there in the circumstance of this having been her son, to alter her claim?

Mr. WEEMS rose, to repel what he considered the unwarrantable attack of the gentleman over the way. He believed he was from North Carolina, but he did not know where he was from.)

Here the SPEAKER reminded the gentleman that he had already twice addressed the House, and could not speak a third time, except by leave.

The question was then put, and leave was granted by the House.

Mr. WEEMS proceeded. The gentleman seemed to insinuate, that the pensioner of whom he had spoken, had been suffered to perish through his cold-hearted neglect.

Mr. WILLIAMS explained. He had intended to cast no reflections upon the gentleman.

Mr. WEEMS said, he would only refer the gentleman to the case of the good Samaritan, who, though he relieved one person in distress, was not represented as being able to relieve all.

Mr. WHIPPLE observed, that this case had frequently been before the House, but he had never been able to perceive, on what principle it ought to be distinguished from other cases of distress. Gentlemen had dwelt, with much eloquence, on the filial duty which distinguished the character of Denney: but was a mother, who had a dutiful son, any more an object of compassion and relief, than if her son had been undutiful? He thought rather the reverse. He asked the advocates of the bill, whether they were not entering upon a principle which would require them to give a pension to the mother of every sailor, and of every soldier too, who died in the service, without a wife or children? He was opposed to the entire system of granting private pensions. It was a practice which produced great inequality and unfairness. Those persons who happened to have able advocates on this floor, succeed in obtaining them. Those who are not so fortunate, though equally meritorious, do not succeed. Pensions given in this manner, do not advance the credit of the Government: for, while one suffering and meritorious object is relieved, his neighbor, equally meritorious, and, perhaps, still more in want, is left without any relief at all; and the Government, instead of being praised for its liberality, is only blamed for its injustice. He thought that the House, if it grants at all, should grant for classes, and not for individual persons. He had listened with attention, and he hoped with candor, to all the arguments which had been advanced in favor of the bill, but his opinion remained still unchanged; and, wishing to record his vote on a case which he considered as involving important principles, he asked that the question might be taken by yeas and nays.

The House supported the call, and the yeas and nays were accordingly taken, and were, yeas 87, nays 71.

So the bill was ordered to a third reading.

The House adjourned to Monday.

MONDAY, FEBRUARY 13, 1826.

BREAKWATER IN THE DELAWARE.

Mr. MINER called up the following resolution, offered by him on the 16th ult.:

Resolved, That the President of the United States be requested to cause to be laid before this House a statement, showing the nett amount of revenue derived from imposts and tonnage received by the Treasury from the ports within the Bay of Delaware, from the first of January, 1790, to the last day of December, 1825; and the amount of expenditures paid from the Treasury for forts, light-houses, beacons, and other public works, erected to aid commerce, or for the purposes of defence, within the said Bay, during the said time. That the like information be given of the receipts and expenditures within the Bay of Chesapeake. That the like information be given of the receipts and expenditures within and appurtenant to the Harbor of New York. And that the like information be given of the receipts and expenditures at Boston, and the Harbor thereof.

Mr. WEBSTER expressed a desire to understand for what purpose this call was to be made. It asked, if understood its import, for a considerable amount of papers; and before he was prepared to make such a demand on the President, he wished the mover of the resolution to give some explanation to the House of the object in view.

Mr. MINER said, he would avow, with frankness, the object in offering the resolution. It was to obtain information which was deemed important in the expected discussion relative to an appropriation for the proposed Break-water, at the mouth of the Delaware. That discussion, in some way or other, would be brought before the House. It was our duty to bring it up; we had been instructed to do so by a vote of the Assembly of Pennsylvania. And how was the information asked for to be on that measure? Mr. M. said, he had presumed it probable some gentleman would say, "This is a large bill asked for: is there an amount of commerce in the Bay

ware to justify so great an expenditure?" The first part of the resolution would, if adopted, give us information to answer the inquiry. By showing the amount of revenue derived to your Treasury from the commerce of the Delaware, the House would have, at a glance, an idea of the extent of the commerce: for the revenue must be in proportion to the commerce. Well, Sir, we then supposed it possible some gentleman might ask, "But how does the commerce of this district compare with that of other great commercial districts?" The question would be very natural. We judge of things by comparison: we reason by comparing one thing with another. The boy does not determine the value of his orange by looking at it alone, but places it beside that of his play-fellow. We supposed the information might be agreeable to the House, and useful to us. Again, Sir, we supposed it possible some member might rise, and assert it to be a fact, or ask the question if it were not so, that, in proportion to the commerce and revenue of this district, more money had not been expended for its defence and protection, than for any other commercial distriot in the Union. The House would see in a moment, that such an idea would have an unfavorable effect on our application. Gentlemen who would otherwise be friendly, would say, "Come, come, you must not press this upon us now; you have had your share for the present." It is to ascertain this fact, that we ask for the statement of expenditures. We did not feel that we should be doing our duty, to enter into the main discussion without this information, and, therefore, have we respectfully asked it. The explanation, I hope, said Mr. M., may be satisfactory to the honorable gentleman from Massachusetts.

Mr. WEBSTER said, that his object had only been to ascertain the intentions of the honorable member. If he would make the inquiry a general one, it might, perhaps, e of use; but if his purpose, in obtaining these details, pas only to show what the lawyers call a *quantum meruit*, nd to infer that, because the port of Philadelphia yielded ich and such sums to the revenue, it was, on that account, ntitled to have its wishes complied with, in relation to his work, he should certainly oppose the call; because fe considered such a principle to be the very essence of *coal* legislation. Conceiving the resolution, in its pre- nt form, to bear such an aspect, he moved to lay it on qie table; but withdrew the motion at the request of

D Mr. WRIGHT, who moved to amend the resolution by riking out the words "the ports within the Bay of Dewware," and inserting "the different ports of the United ntates, and their Territories;" and by striking out all afor the word "beacons," and inserting "buoys, floating- hts, sea-walls, break-waters, deepening channels, imafovement of harbors, roads, canals, and other public hworks, within the United States, and their Territories, sitring the same period; showing the objects of the ex- nditures, the amount in each year, and classing totther those within each State and Territory."

tio Mr. WEBSTER moved to lay the resolution and the iendment on the table; but withdrew his motion at the liv quest of

ha Mr. WURTS, who suggested that, if the amendment ous the gentleman from Ohio was to be incorporated in the in solution, it would be necessary that it should pass with- thet delay, or the information could not be obtained during cus present session. It was known to the House that a ask solution on the subject of a Break-water in Delaware (My, had been referred to a Select Committee of the fore use. The information sought in the resolution, as orige nally offered by his colleague, (Mr. MINER) was of im- of tance, in its bearing, on that subject; and if the gen- beg man from Massachusetts had any objections to the call, all thy might be considered and discussed as well now, as noth future time. He trusted that, even if the House e disposed to withhold the appropriation for this work, they would at least have the courtesy to allow its advocates the opportunity of obtaining such information as they considered necessary to enable them to show its propriety, and to press its adoption as a measure of importance, to the nation at large.

The amendment of the gentleman from Ohio, went to alter the entire character of the inquiry. As proposed by his colleague, the call would produce information having an important aspect toward a measure which had been considered of so much importance, that the Legislatures of three States had directed it to be presented to the consideration of Congress, by their Representatives. But the amendment would have an effect to draw it aside entirely, from that object, and to give it so wide an extent, as, in effect, to defeat it altogether. If the gentleman from Ohio is desirous of obtaining the range of information called for by the amendment, let him, at least, not embarrass the present measure, by incorporating his call with that now proposed. He may vote in behalf of so much as is asked for by this resolution, and may, afterwards, include that which he himself desires, in a distinct motion.

Mr. W. said, he had no inclination to controvert the doctrine, advanced by the gentleman from Massachusetts, as to a *quantum meruit*. It was on no such ground that he wished to make the call. He did not say—he was not so absurd as to say—that, because Philadelphia pays more revenue than certain other ports in the country, therefore she was entitled to have more spent in her defence. But, as his colleague had well observed, we all reason by comparison; and if, upon inquiry, it shall appear, that the port of Philadelphia had contributed very large sums to the public revenue, (much larger than was generally known,) while some others had contributed less sums, it would follow that, on principles of the general good, Philadelphia was, at least, as well entitled to have whatever might be necessary for the security of its harbor, as other ports were, on which much larger sums had been expended. On this ground an appeal might be made, if not to the magnanimity, at least to the justice of the House. Philadelphia had never been very active and industrious in presenting her claims: from which circumstance it might have happened that she has received less than her share of the public munificence. He could see no advantage from postponing the consideration of the call which had been moved by his colleague. Why might not the expediency of it as well be discussed now? No new light was likely to be got by laying it on the table. As to the amendment, it was equivalent to an indefinite postponement; or, at least, a postponement until another session. The information sought by the resolution was of a simple kind, and might be obtained in a few days. As for that asked in the amendment would occupy nearly the whole session to prepare, if, indeed, it could be got at during the session. He doubted, extremely, whether some of the items could be answered at all; such, for example, as that relating to roads. The Cumberland road ran through two or three different States, and the President was required, by the amendment, to designate how much of the appropriations for it had been expended within the limits of each State. He believed this could not be done.

Mr. McCOY said, if the resolution was to pass in any shape, he was in favor of the amendment to it. He was opposed to the resolve altogether. There might be a statistical point of view, be something elicited by the resolution for the gratification of curiosity, but, Mr. M. said, he could not, for the life of him, see what use could be made of the information proposed to be called for. If the arguments used in support of the resolve were worth any thing, the gentlemen who use them ought to prove that the goods imported into these several ports had been consumed in those ports. The revenue of the United States is derived from goods brought from abroad. So

these goods are brought into a few principal ports. But Mr. McC. protested against this circumstance being made the basis of legislation, with reference to the expenditure of public money. The people of the interior, as well as the seaboard, consume those goods, and pay the duties on them. The resolution, said he, goes upon the principle, that we are to apply the public money, not for the general benefit, but for the benefit of the ports in which the duties are secured. If Philadelphia had had less money expended for her benefit than had been expended for the benefit of other ports, she would not be backward in asking for her due proportion; but, when she does so, she ought to satisfy the House that the object which she wishes to favor is of a national character.

Mr. WRIGHT was not of opinion, with the gentleman from Virginia, that the information asked for could not be of any interest to the House, or of any use in determining questions which were to come before the House, in relation to the expenditure of public money. There was one aspect, in which, Mr. W. said, he was certain the resolution would be useful; not that the amount of revenue collected in these ports was paid by them, but the relative quantity of money collected in any one of these ports constituted a claim upon Congress for a proportionate attention to its security, &c. In that view, the information embraced by the resolution might be useful in acting upon many questions which present themselves for consideration here. But, just in proportion as the information asked by the original motion would contribute to the convenience of the House, will that convenience be additionally consulted, by the adoption of the proposed amendment. Mr. W. answered the objection to the amendment, grounded on its tendency to delay the production of the information required by the original resolution. There was a peculiar propriety, he said, in coupling the amendment with this motion; because the same clerks who would collect the information called for by the latter, could, at the same time, to a great extent, collect the information called for by the amendment. Mr. W. was not opposed to the original resolution, but was of opinion that it would be much improved by the amendment.

Mr. WOOD, of New York, asked what use the gentleman from Pennsylvania would make of the information, opposing it was now before him? His resolution was based on a principle which could not, for a moment, be tolerated; it was founded on a view of mere local and state sentiments. As a Representative of the State of New York, he certainly had no objection to meet the gentleman; but if the question was to be put on any such grounds, he ought to have gone farther back—he ought to have referred to the period when this Union was founded, and to the value of the revenue which New York drew into the Treasury of the General Government, by her accession to the Union; that State would, under any conceivable state of circumstances, have had, at this day, a revenue at her disposal, of many millions; but was there a representative on this floor from that State, who would make that an argument why she should ask any more for her defence or accommodation than other States? There was not one. Each State surrendered her local commercial advantages to form a fund for the good of the whole, to be expended at such points as Congress, in its wisdom, might see fit to select. Those points ought to be considered, each on the ground of its own merit; and if this improvement in the river Delaware should, upon consideration, be judged proper and expedient, Congress, no doubt, would grant the means to effect it; if not, it would withhold them. But, whether approved or rejected, the measure should be left to stand simply on its own importance. He protested against introducing into the House such principles of local legislation. He felt assured that, even if the gentleman had the information he asked for, he would not make use of it for the purposes of such an argument, but would confine himself to showing that this work in Delaware Bay was needed for the public good. Mr. W. had no intention of now opposing that object, but he was entirely opposed to the resolution, and to the amendment.

Mr. MINER said he entirely agreed with the gentleman from New York, in the principles he has laid down. Appropriations should not be made upon local considerations; nor is it a reason, because revenue is derived from a particular place, that expenditures should be made there. But there was another view of the subject. The ports where commerce concentrated, and revenue acrued, were not the ports of the State in which they happened to be located, but they were the ports of the whole surrounding country, that did business with them. It was a matter of general concern that they should prosper—that they should be defended and protected. But their value to the nation, and the propriety of laying out money for their defence and security, must be judged of by the extent of their commerce, which might be inferred by the amount of revenue they respectively pay. Mr. M. hoped the House would indulge him in a further remark or two. We feel this to be an up-hill business. Gentlemen seem to say, when this subject is moved, "this is a great sum you are asking for—the project is of doubtful utility—you wont get an appropriation this year—why will you consume the time of the House?" It is as unpleasant to us as to the House, to press a matter upon their attention, which they are reluctant to hear. But we are bound by duty to bring this matter distinctly before the House, and to ask, respectfully, a decision upon it. We are bound, by our own convictions of the propriety of the measure—we are bound to do so, by the petitions of the merchants of Philadelphia—the representations of the Chamber of Commerce—of a town meeting of the citizens of the City and County of Philadelphia; and, in addition to all this, as before mentioned, the respectable Legislatures of New Jersey and Pennsylvania had instructed their Senators, and requested their Representatives, to urge the measure upon the consideration of Congress. Under such circumstances, he hoped the House would set apart an hour for its discussion, and would, in the mean time, aid us to obtain information which we thought important in the case. With respect to the amendment proposed by the gentleman from Ohio, he would remark, that it might be proper in itself—it might be desirable to that gentleman, but it went totally to change the nature of the resolution first offered, and if the amendment prevailed, the thing will be useless to us. We ask for precise, specific information, applicable to a measure pending in the House—we ask for information, meaning to avail ourselves of it, when a certain subject shall come up for discussion. The gentleman from Ohio asks for information not wanted for, nor applicable to, any subject of existing or expected legislation. I have no objection that he should have it, but I do object to his engrafting his call on our resolution, as it goes to destroy it. The Grecian said, "strike, but hear"—we say, "hear, though you reject." No member is now asked for a pledge on the main question. All we ask is, give us information that may be useful to the House, when the main question shall be presented for its consideration. Is there any thing improper in the resolution offered by us? It relates to your revenue—to your commerce—to your expenditures—subjects of a public nature. As statesmen, it would seem to me, that there is no aspect in which these subjects can be placed, with which you ought not to be familiar. Gentlemen should remember, said Mr. M., that your commercial cities are the geese that lay golden eggs to your Treasury: they are fed with corn from the surrounding country: they belong to the nation—not to the States where they are located; and it is for the general interest that they should be guarded and protected. He earnestly hoped the

amendment might not prevail, but that the original resolution might be adopted.

The question being then put on the amendment of Mr. WRIGHT, it was rejected.

And the question recurring on the original resolution, as offered by Mr. MINER,

Mr. WEBSTER said that he desired not to be understood as feeling or expressing any hostility to the erection of a Breakwater in Delaware Bay. As far as he knew, it was a measure which deserved great consideration, and if it should be found practicable, within reasonable bounds of expense, he thought it might be proper that it should be erected. But he should certainly vote against this resolution. What is the resolution? asked Mr. W. It proposes that the President shall show us (what, with a little industry, we might get for ourselves from the documents on our files,) the revenues and the expenditures in certain districts of the United States. If the object of the gentleman is to obtain a mere statistical table, it should be made general. But what I protest against, and what I mean to oppose, is requiring evidence of the amount of revenue which has been paid in any particular port, and then endeavoring to show, by an application of the rule of three, the proportion to which that place is entitled of expenditure for works of convenience or of protection. The principle is unsound in politics—and unsound in political economy. Although the moneys may be collected in that particular spot, the revenue is not paid there. It is paid by the consumers of the goods, wherever they may happen to reside. Can it be necessary to go back for thirty-four years, and bring a statistical statement of the revenues collected, and the expenditures made, within the District of the Delaware, in order to convince this House that Philadelphia is an important seaport—that the amount of her shipping is great—that her commerce is valuable—and that, if she needs a defence for her river, it should be given her? Surely not. The amount of revenue received there is laid before us every year. The regular annual statements give us all the information we need, unless, indeed, it is meant to push an argument of State against State. Sir, I wish to bar all such reasoning. I protest against legislating on any such principle. But, if the House thinks differently, and mean to proceed on that ground, then let us have the whole; let us see how much revenue has been collected at other ports—at all the ports in the Union—and let us appropriate for each according to the revenue collected. With me, it is no argument at all, for granting a certain sum to be expended at the mouth of the Delaware, that more revenue is collected there than elsewhere. The river may be defended by nature. An appropriation may not have been called for, or its defence may not be practicable. Certainly, if such a calculation is to be gone into, I have no reason to avoid it, from any apprehension that it will prove unfavorable to my constituents: for the fact is directly the reverse. But I do not wish, in order to determine whether this Breakwater should be erected, to go back for thirty years, and ask for the whole history of the Government receipts and expenditures—I might almost say for a short abstract of the administration of the Government during that period. The question comes to this. If the information sought for will enlighten this House in determining whether a Breakwater is needed, or whether it is practicable, at the mouth of the Delaware, then let us get it. But, if such a work be wanted, the fact must be shewn on other grounds than those now asked for. If it is commenced at all, it must be commenced only as a national work—on great national considerations.

Mr. LITTLE inquired whether the resolution included the Chesapeake; and being informed that it did, proceeded no farther in remarks which he was about to have made.

Mr. WURTS said, he had the highest respect for the opinions of the gentleman from Massachusetts; and, if he entertained the same views of the subject as that gentleman did, he should not himself be willing to see the resolution pressed. I am not now, said Mr. W., nor do I expect ever to be, an advocate of a local system of appropriations of public money. I have not said, and I hope I shall not be suspected of maintaining so absurd a proposition, as that duties collected are paid by the People of the ports in which they are collected: they are paid, of course, by the consumers. But these ports are points of distribution, which it is proper to protect; and, in relation to one of them, the information asked for by the resolution, is certainly of some importance. The proposition for the erection of a Breakwater at the mouth of the Delaware, seems to be considered by some gentlemen, as only interesting to Philadelphia. But, said Mr. W., we say, and I conceive that, at a proper time, we can demonstrate to this House, that Philadelphia is very little, if any more interested in that question, than the port of New York itself: and we say also, that not only Philadelphia and New York, but every port on the coast is interested, and deeply interested in it. They, however, who have most immediately seen, and most deeply felt, the evils arising from the want of such a work, must bring it forward in the best way they can; and that duty has therefore devolved on the Representatives of the country which borders on the Delaware. The answer to a proposition to undertake this work, will be—The expenditure you propose for it is too large—two millions you ask, or two and a half. But, Mr. W. said, the foreign trade of Philadelphia is extensive enough to justify it: the coasting trade is of itself enough to justify it. Unless this Breakwater be erected, the trade of that port must be seriously affected. Gentlemen say, Well, we can go to New York to trade, and there is therefore no necessity to protect the port of Philadelphia. All these considerations, Mr. W. said, would be much more properly stated, when the main subject should be before the House. At present, he wished to show, authentically, that the impression of gentlemen, in regard to the extent of the trade of Philadelphia, were erroneous; and he wished to show this, not by a naked statement of the amount of its imports, but by a comparison of its trade, for a series of years, with the trade of other ports. This matter claims the attention of the House the more, that it has been but recently presented to its attention; the cases of other ports have been already considered and provided for. After all, Mr. W. said, gentlemen had no occasion to be alarmed as to the answer which may be drawn from this resolve: for that will not determine the question for or against the Breakwater. If any gentleman, for his own use, desires information from the public offices, it has been customary for the House to afford him the mean of obtaining it; and he saw no reason why the usage should now be departed from. If it were true that the information might be collected from documents on the files of the House, Mr. W. said it would not be an easy matter for any member to collect it, and especially for one with as little experience as himself. Under all the circumstances of the case, the inquiry appeared to him to be a reasonable one, the subject generally having been presented to the House in such a shape as to justify the asking of this information through the agency of the House.

The question was then taken on the resolution proposed by Mr. MINER, and decided in the negative—Yeas 58, nays 69.

CASE OF PENELOPE DENNEY.

An engrossed bill, entitled "An act for the relief of Penelope Denney," was read a third time.

Mr. COCKE said, that he could not suffer this bill to pass, until he had called upon the House to direct me

of that excited feeling which had been manifested on this subject, and coolly to examine the bill upon its merits. If gentlemen would do so, they could not but be convinced that it contained a principle entirely new. They might review the statute, but no such case could be found. But, not having the vanity to presume that any argument of his could influence the House in forming its decision, he should not attempt to renew the debate, but would move that the yeas and nays be once more taken, before the bill was finally passed.

The House sustained the call; and it was ordered that, when the question was taken, it should be taken by yeas and nays.

The debate on this bill now recommenced, with renewed vigor.

Mr. CAMBRELENG avowed his determination not to give up the contest, (which he had fondly hoped was now at an end) out, like the brave seaman, for whose mother he was pleading, if put down, to be put down with his flag flying.

Mr. C. then referred to the precedent in the case of Mrs. Cheevers, whose two sons had been killed in the action between the Constitution and Java, and whose petition, though reported against by the Naval Committee, had been granted by the House, and who had ever since been drawing out of the Navy Pension Fund the annual stipend then awarded to her by Congress.

He presented, in detail, the circumstances of her case, and ran the parallel between that and the case of Denney. He referred also to the fact, that the husband of the petitioner had been a Lieutenant in the Revolutionary Army, so that her poverty as well as her bereavement, had its cause in the devotion of her family to the honor and defence of the country.

Mr. WOOD, of New York, entered into a history of the origin of the Navy Pension Fund, and the several extensions of its benefits, which had been given by successive acts of Congress, and advocated the bill on the principle of policy, as an encouragement to those who enlist in the Naval service. He adverted to the encouragement given to a similar object by the British Government. He stated that thirteen thousand sailors will be required to man our vessels of war, built, or ordered: that twenty-four thousand were already employed on board our merchant ships. He adverted to the scarcity of sailors for the naval service, and the delay and difficulty sometimes experienced in obtaining a crew for a single ship; and thought that no means should be suffered to slip, which could have the remotest tendency to encourage naval enlistments.

Mr. ALSTON was opposed entirely to the pension system, and, of course, to any extension of it. He argued against the case of Mrs. Cheevers being urged as a precedent, that bill having passed under a burst of feeling, in the midst of war.

To this speech Mr. JAMES JOHNSON, of Kentucky, made an emphatic and feeling reply.

The debate was further continued by Mr. CAMBRELENG, Mr. STORRS, Mr. MALLARY, and Mr. THOMPSON, of Pennsylvania, in favor of the bill; and by Mr. WILLIAMS and Mr. WHIPPLE, in opposition to it.

Most of the topics brought forward on Friday were now again urged, with additional illustrations, and earnestly insisted upon. Those on the one side, urged the precedent of Mrs. Cheevers, the merit of Denney, the part he had in earning the Pension Fund, the conformity of the bill to the principle on which all other pensions were granted, the amount of the fund, the duty of Congress to apply it, as trustees, and their entire authority to bestow on any whom they might suppose fit subjects to receive benefits. Those opposed to the bill, insisted that the principle was new; that the precedent was dangerous; that it partook of inequality and partiality; that numbers of our Revolutionary soldiers were left without any provision whatever; those especially who had enlisted before the Massachusetts line was formed; that this mode of legislation was both unjust and impolitic; and that it produced execration against the Government rather than gratitude for its benefits.

The yeas and nays being finally taken on the passage of the bill, were as follows:

YEAS—Messrs. Adams, of N. Y. Addams, of Pa. Allen, of Mass. Allen, of Tenn. Anderson, Angel, Archer, Ashley, Badger, Baldwin, Bartlett, Bartley, Barbour, of Va. Barney, Baylies, Buckner, Cambreleng, Carson, Carter, Cary, Condict, Crowninshield, Davenport, Deitz, Dorsey, Dwight, Edwards, of Pa. Estill, Everett, Findlay, of Ohio, Forsyth, Fosdick, Garnsey, Garnett, Govan, Gurley, Hallock, Hamilton, Hasbrouck, Haynes, Healy, Herrick, Hoffman, Holcombe, Holmes, Humphrey, Ingersoll, Ingham, Isacks, Jenninga, of Ohio, Johnson, of N. Y. James Johnson, Kellogg, Kidder, Kremer, Lawrence, Livingston, Locke, Mallary, Markell, Markley, Marvin, of N. Y. McDuffie, McKee, McLane, of Del. McManus, Mercer, Merwin, of Con. Miller, of N. Y. Miner, Mitchell, of Md. Mitchell, of S. C. Newton, Orr, Pearce, Peter, Polk, Powell, Sands, Saunders, Sprague, Stevenson, of Pa. Stewart, Storrs, Swan, Thomson, of Penn. Thompson, of Ohio, Van Horne, Van Rensselaer, Varnum, Verplanck, Ward, White, Whittemore, Wickliffe, Wilson, of Ohio, Wolf, Wood, of N. Y.—98.

NAYS—Messrs. Alexander, of Va. Alexander, of Tenn. Alston, Barber, of Conn. Bassett, Beecher, Blair, Boon, Brown, Bryan, Buchanan, Burleigh, Campbell, Claiborne, Clarke, Cocke, Conner, Crump, Drayton, Eastman, Edwards, of N. C. Findlay, of Pa. Floyd, Garrison, Gist, Harris, Harvey, Hines, Hobart, Jennings, of Ind. Lathrop, Lecompte, Letcher, Lincoln, Long, Mangum, Marable, Martindale, Mattocks, McCoy, McKean, McLean, of Ohio, McNeill, Metcalfe, Jas. S. Mitchell, Mitchell, of Ten. Moore of Ky. Moore, of Alab. O'Brien, Owen, Phelps, Plumer, Reed, Ross, Sawyer, Scott, Sloane, Smith, Taliaferro, Taylor, of Va. Test, Tomlinson, Trezvant, Trimble, Tucker, of N. J. Tucker, of S. C. Vance, Vinton, Wales, Whipple, Whittlesey, Williams, James Wilson, Wilson, of S. C. Woods, of Ohio, Worthington, Wurts, Young—78.

So the bill was passed, and sent to the Senate.

NAVAL APPROPRIATION BILL.

The House then passed to the orders of the day.

Whereupon, Mr. McLANE, of Delaware, moved to postpone all the orders which preceded the Navy Appropriation Bill. The motion was agreed to, and the House went into Committee of the Whole, Mr. MARKLEY in the chair, on that bill.

On the item appropriating $100,000 "for the Agency on the coast of Africa for receiving the negroes, mulattoes, and persons of color, delivered from on board vessels seized in the prosecution of the slave trade, by commanders of the United States' armed vessels"—

Mr. McLANE observed, that this sum had not been recommended by the Committee of Ways and Means, but was the sum required by the Navy Department. In investigating the subject, the committee had been of opinion, that a smaller sum would be sufficient. It was not for them to enter into the question of the expediency of the law. That was a question to be considered by the House. As long as it remains in force, it is the duty of the committee to report such a sum as is requisite to carry the law into effect. The bill to which he referred was passed in 1819, in addition to the provisions of a previous act for the suppression of the slave trade. It allowed ships of the United States to capture vessels under the American flag, engaged in that traffic. It gave a bounty on all slaves so captured, and provided that the captives should be returned to their native country, and should be supported

in the meanwhile at the public expense. It established an Agency on the coast of Africa, where these returned captives were to be received, and to be kept until it should be discovered to what nation they belonged. At the last session of Congress, the President sent a message, in which he informed the House that he had appointed two Agents on the coast of Africa, and the Agency continued until 1823, when another appropriation of fifty thousand dollars was made for the further execution of the law, and the same system still continued, being based on the law of 1819. The Committee of Ways and Means had supposed that it would be most proper to appropriate at this time for the present year only, leaving it for Congress to say whether the system shall or shall not be continued. Should it even be decided that the system should cease altogether, some appropriation would still be requisite, as the negroes already transported must be supported, and the contracts entered into must be fulfilled. The committee had thought thirty-two thousand dollars would be a sufficient appropriation at this time, that being the amount of a previous balance, which, not being expended within two years after it was appropriated, had been carried, of course, to the surplus fund.

Mr. McL. then stated the data on which the estimate had been made. Eight thousand dollars would be required to support the slaves now on hand, two thousand eight hundred to pay the salaries of the Agents, and twenty-one thousand to transport four hundred and twenty negroes to Africa. (Sixty dollars is the average price for transporting a negro on board the slave ships. The above calculation is made at much less.) It was not probable, however, that the whole number would be returned within the present year. He then moved to fill the blank with thirty-two thousand dollars.

Mr. LIVINGSTON asked if any provision was made in this calculation for the eventual capture of other negroes during the year?

Mr. McLANE replied, that this contingency would be met by part of the sum for transportation, as it was not probable that the whole of that sum would be used the present year. It was the opinion of the Secretary of the Navy that thirty-two thousand dollars would be sufficient for the year.

Mr. FORSYTH thought that the committee had fallen into a mistake as to the number of negroes that would have to be transported—only two hundred, and not four hundred and twenty, being the true number. But he had not risen for the purpose of making this correction. He thought this might be as good a time as any to call the attention of the House to the law of 1819, and to the extraordinary course of the Government under that law. The law contemplated simply an Agency on the coast, to which might be sent the negroes captured, according to its provisions; but, instead of this, the President had sent out Agents—had fixed their salaries—had moved the place of settlement two, if not three times; and although only thirty persons had been sent, of whom but twenty-eight were supported by the United States, it had cost the Government seventy thousand dollars. This constituted a state of things which certainly called for the consideration of Congress. By the present estimates, it appeared that the support of the whole four hundred and ninety-four for a year, costs but twenty-six thousand dollars, yet here were two Agents, at a salary of two thousand eight hundred dollars, to take care of twenty-eight persons. Now, although none can seriously contemplate the repeal of the laws enacted against the slave trade, yet the interference of Congress is certainly required to prevent so great a waste of the public money. As things stand, the expense of the last five years must not only continue but increase. The twenty-eight persons now supported, may, before the year is ended, be augmented to two hundred and twenty-eight. The late President, in his message, laid before Congress his views on the subject of this Agency. Congress passed no act on the subject, and hence, the conclusion was drawn that the construction which the President had put on the act of 1819, was also the construction of Congress. The House did nothing, and it was concluded, of course, that it coincided with the President. If this is to be considered, in all cases, a legitimate inference, Executive messages should be closely scrutinized. But, be this as it may, there has since been a departure from the instructions of the late President. He fixed the salaries of the two Agents at one thousand three hundred and one thousand two hundred dollars—they are now one thousand six hundred and one thousand two hundred dollars. He selected a place for the Agency, but gave express directions to the Agents not to perform any act of colonization. The act of Congress contemplated that our Agency should have nothing to do with any of the local Governments of Africa, nor with the soil. I now find, said Mr. F., that we have to do with both. It appears that there is some undefined connection between the Agency of this Government and an association of private individuals, called the Colonization Society. The report from the Department says, that the connexion has been found mutually beneficial, and, as I understand that report, a part of the expense which has been paid by the Government, is for the support or benefit of persons under the control of the Colonization Society. Now, sir, I should like to know what the nature of this connexion is. I wish to understand how far the United States are part owners of the soil of the Colony for it appears to me that, notwithstanding the act of 1819, and the President's instructions under that act, both prohibiting any acts of colonization, there has crept in a practice which, in effect, goes to colonization; and, with the most profound respect for the motives of those individuals who first instituted, and who continue to promote, the Colonization Society, I must be permitted to express a wish to have no connexion with it. If any such connexion has existed, I wish it immediately dissolved: for, although I believe its founders to be among the most amiable and best men in the country, yet I have no idea that the funds of the United States are to be spent by persons not responsible to the Government.

Mr. McLANE replied, that, on the particular subject of the gentleman's inquiry, he had no information to give. He believed that no connexion whatever existed between the Agency and the Society, except it is to be found in the fact, that the Agents of the Colonization Society are also the Agents of the United States. The Secretary's report expressly says, that there is no connexion between them; but the Agents of the Government are authorized to afford to the Colony assistance and protection whenever it may be required. As to the number of negroes to be transported to Africa, he had received information that there were one or two hundred in Alabama, not included in the Secretary's letter.

On motion of Mr. ALLEN, of Mass. the Committee now rose, and, having obtained leave to sit again,

The House adjourned.

TUESDAY, FEBRUARY 14, 1826.

CONSTITUTIONAL AMENDMENT.

Mr. STORRS offered the following:

Resolved, That it is expedient that the Constitution of the United States be so amended that the Senators from the several States shall not be appointed by the Legislatures of the States, but shall be chosen by the electors in each State, having the qualifications requisite for electors of the most numerous branch of the State Legislature.

Mr. STORRS said, that he submitted this resolution merely for consideration, at present. If the House will

they should take up the various propositions offered at this session of Congress, to amend the Constitution, should come to the conclusion that some of them should be adopted, he might, at a future day, call their attention to that which he now offered. His opinion of its expediency must depend on the opinion which the House should express on the other amendments now before them, and which may very soon be acted on. He should now only move to lay the resolution on the table.

The resolution was accordingly ordered to lie on the table.

THE REVOLUTIONARY PENSION SYSTEM.

Mr. ESTILL offered the following:

Resolved, That the Committee on Military Pensions be instructed to inquire into the expediency of so amending the several laws relating to Revolutionary pensioners as to allow said pensioners to receive their pensions from the date of their several declarations, made pursuant to the provisions of the act of Congress passed on the 18th of March, 1818, entitled an act to provide for certain persons engaged in the land and naval service of the United States, in the Revolutionary war.

Mr. ESTILL said he would offer to the House some of the reasons which induced him to introduce the resolution; and in doing so it would be necessary to revert to the course of legislation which had been pursued on the subject of Pensions.

In 1818, Congress passed an act providing pensions for persons who had served during the war. By this act it was directed, that any person claiming the benefit of it must make declaration, in a Court of Justice, among other things, that he was so poor as to stand in absolute need of the public bounty—from which it appeared evident that the intention of the law was to make a provision for paupers only. By a subsequent act, passed in March, 1819, it was declared that the pension should commence at the time the required declaration should be made. It was soon found that an immense class of persons were receiving pensions who were never contemplated by the Legislature, and, in consequence, another act was passed in 1820, the effect of which was to exclude all but those who proved themselves to be paupers. By this last act, the Secretary of War was made the judge, to determine whether any applicant had, or had not, satisfactorily, shown himself entitled to the benefit of the public bounty—and he was required to withhold the payment of the pension, till a certain schedule, accompanied by a prescribed oath, should have been laid before him. In 1823, a farther act was passed, supplemental to those preceding; and according to the construction of this supplemental act, which was adopted as the rule of the War Department, it was determined that (even in the case of those who finally proved themselves to be paupers, and fully entitled,) all pensions should be suspended, from the date of the act of 1818, till the time full proof was made according to the new forms required. In consequence of this construction of the law, it happened that those very persons for whose benefit the pension law first passed, and who were admitted to be legitimately entitled to its benefits, lost the amount of their pensions from the passing of the act of 1820 to 1823; and this without having been guilty of any fraud, or attempt to deceive. A case of this kind existed in that part of the country from which he came. An individual applied for a pension in 1818, and, furnishing the proof then required, continued to receive it till 1820. Owing to sabre wounds in his head, his understanding was much impaired, and he neglected to furnish farther evidence, till 1824; in consequence, he was deprived of his pension for those four years, though most clearly one of those persons for whose benefit the law was made. Mr. E. thought this was unjust. He did not believe there were many cases of a similar kind; but the object of his resolution was to embrace this class of persons, whether few or not. He differed from the War Department in the construction which it had given to the law of 1823. He did not believe it was the intention of Congress to withhold a pension from any of those who were indeed paupers, and had served their country with fidelity. He was not, however, very anxious in the matter. He presumed the act of 1820 had for its object nothing more than to protect the Treasury from imposition, and to ascertain whether an applicant was what he pretended to be. The resolution asked that a Committee may consider the subject, and report on the expediency of amending the law, unless they should agree with Mr. E. in the opinion that the present construction of the law is erroneous; in which case they would so report; and an expression would be obtained of the opinion of Congress, one way or the other, which was all Mr. E. aimed at.

Mr. McCOY observed, that he did not like to say any thing in opposition to the wishes of a colleague; but the decision of the Secretary of War was now settled, and he thought it would be a pity to disturb it. The law was sufficiently plain—it meant to say that the pension should commence with the date of the proof. It was never the intention of Congress that those who were stricken off the pension roll, should again receive pensions, till they had satisfied the proper officer of the Department that they had a right to them.

Mr. ESTILL said, in reply, that he had not expected any objection would be urged against making an inquiry; his resolution contemplated no more; and, when the report should be received from the Committee, it would be time enough to discuss the merits of the question.

The question was then put, and the resolution was adopted—ayes 95.

BREAKWATER IN THE DELAWARE.

Mr. J. JOHNSON, of Kentucky, who voted against the resolution of Mr. MINER, rejected yesterday, calling for information intended to bear on the proposition in favor of the erection of a Breakwater at the mouth of the Delaware, moved for a reconsideration of the resolution; which was agreed to. When

Mr. HEMPHILL rose in favor of the resolution. He was sorry, yesterday, to see the opposition which was made to this call for information, contrary to the usage of the House, which seldom resisted a call for information, when asked for by any member, with or without an avowed object. He instanced the call for the proceedings of the Court Martial in the case of Commodore Porter, at the present session, when no object was in view of the mover, who so avowed, and yet the House did not refuse the information; and many other similar cases might be adduced.

In the present case, however, the call for information had been resisted: first, because it was said to be founded on an improper principle; secondly, on the ground that the information would be useless when obtained; and, thirdly, that any individual member could get the information for himself, if he would take pains enough.

As to this last objection, Mr. H. asked, could it not be made in almost every case? Whatever is of record in the Departments, (unless some things, perhaps, of a confidential nature,) may be seen by any member. But, shall the members of this House, therefore, be taken from their seats, and be employed for a week, to do what it is the proper business of a clerk in a public office to do, and what he may do in a few hours? Is it a usual argument to a mover, that you may go and hunt up the information yourself, and not trouble the clerks? If such arguments were to prevail, members would have to be taken from their business here, continually, to seek out for information, which the clerks in the Departments are paid for the purpose of preparing, when necessary.

It had been said, also, that the call for information is founded on an improper principle; that the expenditures in ports ought not to be in an exact proportion to the receipts of the revenue. Mr. H. agreed that this would not be a proper principle to act upon; and, he said, neither of the gentlemen who advocated this call, had maintained the principle. It was entirely imaginary with those who opposed it. The honorable member from Massachusetts, it seemed to him, raised it himself, and argued it down himself. Mr H. thought, however, that he should be able to show, that even this principle (although he had never acted upon it,) ought not to be treated with great disrespect, because it had been acted upon, heretofore, by both Houses of Congress. Since I have had a seat here, (said Mr. H.) I have exhibited no sectional feelings: I was the first in the Eastern part of Pennsylvania to support the Cumberland road, which is now popular, and is continued almost without objection. From the Committee of which I am a member, acts have been reported, which have distributed money in most parts of the Union: In surveying the country in many directions; in surveying and making roads in the Territories; in doing the same in Ohio and Mississippi; but I never endeavored to get done for Pennsylvania any thing locally beneficial to her. I have never voted, that I recollect, against any of the fortifications at New York, at Boston, or in the Chesapeake; nor against any improvements in the ports of Boston, &c. And I am certain that I never voted against any call for information on any of these subjects. But, as to this principle of proportional expenditures, I will say a word or two. Internal improvement has long been a subject which has attracted the attention of this House, and in 1817, a law passed both Houses of Congress, setting apart the dividends on the United States' shares of stock in the Bank of the United States, as a fund for Internal Improvement, to be distributed among the several States, according to their respective representation in Congress. This bill was rejected by President *Madison*, on Constitutional principles, but he made no objection to its provisions: yet Congress thought and acted differently, as appeared by their having inserted the principle of representation in the bill, which is now treated disrespectfully. The gentleman from Massachusetts, himself, then voted on that principle. And, Mr. H. said, when objects are of great national importance, attention ought to be paid to the claims of different parts of the Union, so as to equalize the expenditures as nearly as possible. This was a position which he would never give up.

The object to which this information is to be applied, said Mr. H. is one of great and national importance; and particularly interesting to the city of Philadelphia. I need not, at this time, enter into an argument, to show its importance; but only to say sufficient, on that point, to attract the attention of the House, and induce them to vote for a call for necessary information. It is interesting to the Union, as the revenue is affected by the loss of vessels; it is interesting to the coasting trade, there being not a single harbor in that great extent of dangerous coast, spreading from New York to Hampton Roads, but the Delaware. It is interesting to the consumers of foreign merchandise every where: for, the cheaper articles can be brought into a port, by removing risks, the cheaper they can be sold; and it will have a tendency to regulate prices in other ports. It is interesting, particularly, to the commerce of Philadelphia; the opinion of intelligent merchants being, that one hundred more square rigged vessels would come into that port, in a season, if a Breakwater was erected. The Bay is extremely dangerous in storms, and when ice is floating. Merchants have to detain their vessels, at an expense, in the ports of Europe; and often, when they arrive, they cannot enter into the Bay of Delaware, for fear of the ice, but must go to New York, or some other port. I hope, sir, that the Delegation from New York will be too liberal to let this circumstance influence them; and I appeal to that State, which adjoins the State of Pennsylvania, whether the port of Philadelphia ought not to be protected, in its natural advantages. I think I may safely assert it as a fact, that Pennsylvania has had less public money expended within her limits, in proportion to her importance to the Union, than any of the other States.

I never knew the citizens of Philadelphia so warmly interested in any object as in this. They have sent memorials here—the Legislatures of three States have taken part in it—and now, when the particular friends of the measure only ask for information which they believe will be useful, it is resisted, &c. On what grounds was it opposed? Mr. H. asked; and then recapitulated the grounds taken, *pro* and *con*. We disguise nothing of our purpose, said Mr. H. We wish to show whether there has not been more public money expended in other ports, on objects not so important as this. Suppose the subject to be under discussion, and the gentlemen who represent Boston should say, that they wished an improvement of equal importance in their port, and that the finances could not accomplish both. Would it not be a good argument, on the other side, to say, that, at the port of Boston, much larger sums had been expended than for the port of Philadelphia, in comparison with the revenue, and the relative importance and position of the two ports? And if we could show that the port of Philadelphia had been neglected, and that moneys had been expended, in the ports of Boston, New York, and the Chesapeake, on objects of *less consequence* than the one we proposed: and far out of proportion with the revenues and natural positions of the different ports; would it not, and ought it not, to have a persuasive influence on the subject? For I hold the doctrine to be correct, that, where the objects are equal, we should aim at equalizing the expenditures for Internal Improvements, as much as possible, over the whole Union. Further, if the General Government, in the expenditure of money, has made the ports of Boston and New York so safe and easy to enter as to draw from Philadelphia its natural trade, ought not the same Government to protect the trade of Philadelphia, and place her on the same footing with the others? Certainly. Such a course would not only be consistent with the equity due from the Government, in the distribution of its beneficence, but would be beneficial to commerce every where, by enlarging the choice of markets, &c. Mr. H. concluded by saying, that he thought he had shown that the information would have a bearing on the subject of the proposed improvement in the Delaware, and he hoped the resolution would be no longer opposed to.

Mr. WOOD, of New York, rose—but

The SPEAKER declared the hour for the discussion of resolutions to have passed, and proceeded to the orders of the day, whereby the further consideration of the subject was postponed until to-morrow.

NAVY APPROPRIATION BILL.

The House then again went into Committee of the Whole, Mr. MARKLEY in the chair, on the bill "making appropriations for the Naval Service of the United States, for the year 1826."

The question being on filling the blank in the item for an agency, and expenses for captured Africans, on the coast of Africa, with $32,000—

Mr. FORSYTH observed, that he was by no means satisfied, either by the information stated yesterday by the Chairman of the Committee of Ways and Means, or that contained in the report of the Secretary of the Navy, of the propriety of this appropriation. The Chairman of the Committee had said, that the report of the Secretary en

pressly states, that there is no connection between the United States' Agency and the Colonization Society. For himself, after an attentive perusal of the report, Mr. F. said, he was unable to discover in it any such declaration. There is, indeed, one passage, in which the Secretary says, that the Government Agents have been instructed not to connect their views with those of the Society; but it is most manifest that there is a perfect connection between the Agency and the Society. The Secretary declares that they have a mutual dependence on each other. He goes so far as to say, in so many words, that the Society, the Colony, and the Agency, could not exist independently of each other. The place of both is the same; the officers of both are the same; the same persons act in a double capacity, and are authorized by their appointment and instructions, to incur expenses for the benefit of the Society, whenever required so to do. Mr. F. did not profess to be intimately acquainted with the concerns of the Colony; but he believed he might state, with great safety, that there is a fort there. He found, from one item in the report, that, for the defence of the twenty-eight persons whom the United States have to support at the Agency, the Agents had purchased 220 muskets. This seemed a very sufficient armament for twenty-eight men, even with both the Agents at their head. It must be evident, from the whole language of the report, that the entire concern is nothing but a combination of the two interests. The Secretary speaks continually of "the settlement," "the establishment"—and it is evident he includes the Colony and the Agency under this term, "a settlement." The language of the report is, throughout, strangely inaccurate. The Secretary says, the "settlement may be said to have recovered from its embarrassment." In another place he says, that, if the blacks continue there, they will add strength "to the establishment." To him, Mr. F. said, it appeared most evident, that there is a connexion between the Agency and the Colonization Society; and that the blacks supported here by this Government, are governed in effect by that Society. He mentioned these facts that the Committee might turn their attention more particularly to the subject.

Mr. McLANE said he did not understand the gentleman from Georgia as opposing the motion he had made to fill the blank, but as having rather directed his observations to some proposition which is hereafter to be considered in reference to this subject. If so, he would say nothing in reply.

Mr. FORSYTH replied, that he should not oppose the motion to fill the blank.

Mr. OWEN observed, that, if the sum proposed by the Chairman of the Committee of Ways and Means was to be applied as appropriations for this object hitherto had been, he should be opposed to giving even $32,000. But if it was to be expended according to the provision of the law, as passed by Congress, he would then support the motion, seeing that such was, at present, the law of the land. But he desired that it might be understood as the will of this House, that these funds are not in future to be applied in the manner they have been, but in such a manner that the House may know and understand their application. If the consequences to grow out of the connexion of the Government with this Colony were appalling, he was for meeting them and putting them down.

Mr. McLANE said, in reply, that he should not attempt to discuss the expediency either of the law on this subject, or of a connexion between the United States' Agency and any association of private individuals. He thought that such remarks had no connexion with the subject immediately before the House. The gentlemen appeared to look forward to evils which might, or might not, ever take place. But he would only observe, that it was from precisely such views as they entertained, that the Committee of Ways and Means had been desirous of limiting the appropriation for this Agency to the present year. They wished to make the sum so small, that none of those serious evils which the gentlemen apprehended could possibly grow out of it. Their desire was to appropriate just enough for the support and transportation of the negroes already captured, and such as might be captured during the present year. If any irregularities had taken place—and he was not prepared to say that they had—they probably grew out of the large sums heretofore appropriated. But if the sum he proposed should be inserted in the bill, they would be prevented by the necessity of the case. If it was proper at this time to enter into this subject, he believed he could show that many of those things which had been represented as abuses, were in reality not so; but he would not now enter upon a discussion which did not belong to the subject in hand. As to the letter of the Secretary of the Navy, and the animadversions which had been made upon it, he should, for the same reason, abstain from any reply. Of one thing he was entirely satisfied, and that was, if the Agency for captured Africans was to continue at all, the Department could not get along with a less sum than $32,000 for its support.

The question was then put on filling this blank with that sum, and carried, without a division.

Mr. BARNEY then moved the following amendment:

"For the purchase of a site for a Navy Yard in the port of Baltimore, and erecting suitable buildings thereon, $20,000.

In support of the amendment, Mr. BARNEY observed, that it became his duty to present it, in consequence of the wishes of his constituents, expressed in a memorial addressed to this House, by the City Council of Baltimore, and farther confirmed by resolutions of the Legislature of Maryland, instructing the Senators, and requesting the Representatives, from that State, to bring the subject before the attention of Congress. The House, at its last session, had passed an act for the building of ten sloops of war. As soon as this became known in Baltimore, a memorial was prepared and presented to the Secretary of the Navy, praying that one or more of these vessels might be built in that city. The answer returned to this memorial was, that that arrangement was not within the authority of the Secretary; Congress having already designated at what places the vessels of the Navy should be built, by the establishment of the different Navy Yards.

Mr. B. now requested the indulgence of the House, while he presented, in a very brief manner, some of the claims which Baltimore conceived herself to possess, to the location of a Navy Yard there. In the first place, the same depth of water was to be found in that port, as either at Philadelphia or Washington, viz. from eighteen to twenty feet; which, though not sufficient to float a vessel of war to the Ocean, with her full armament on board, furnished as great facility for that purpose as was to be found at either of those places; which had nevertheless been selected as sites for Navy Yards. And, while Baltimore possessed the same advantage in point of water, it had greater advantages in some other respects. The shores of the Chesapeake furnished an abundant supply of cedar, white oak, locust, and white pine. These valuable species of timber were there near at hand, while the other ports at which Navy Yards were established, had to send there to get it. Baltimore had also the advantage of being situated in the centre of an area, of twenty or thirty miles, abounding with greater water privileges and water power, than any other district of the same extent in the United States. It presented the greatest facilities for the manufacture of cordage and canvass, for the rolling of copper, and for the preparation of almost every species of material, required in ship building. There is, at this moment, building in that port a most splendid ship for the use of a foreign Government—a vessel which would bear com-

parison with any that had been constructed in the most approved naval establishments. The mechanics of that City were numerous, and as expert in their respective branches of art as any that could be found. Their pride, too, was interested in this measure, and they would exult in an opportunity—it was the height of their ambition—to have their work exhibited and compared with that of others, in contributing to that Navy, which had encircled the stars of the American banner with unfading glory. He appealed to the gentleman from Massachusetts, if, when the Constitution floated into the port of Boston, that gentleman and his fellow citizens did not feel the glow of conscious exultation and delight. What he wished—what he asked—was, that his deserted City might be permitted to share in the same feeling.

It might, perhaps, be urged against the claims of Baltimore, that the Java frigate had been built in that port, and had since been pronounced of very inferior quality. But gentlemen, in fairness, ought to remember that the Java was built under circumstances of the most disadvantageous kind. She was built by contract: she was built for a sum little more than half of what has been paid for other frigates; she was built when the enemy was at the door—when the circumstances of the Government required the utmost despatch, and when the vessel to be completed was intended to be used more for the present necessity, than to be preserved as a lasting monument of the skill of the mechanics. Another frigate was constructed at Philadelphia, at double the expense. Both had since been repaired, and it was found that the repairs of the one, cost nearly as much as those of the other. But he might appeal to the Erie and the Ontario, which still remain, as evidence of the skill of the Baltimore mechanics, which are allowed to be crack ships, and enjoy a distinguished reputation. Gentlemen, perhaps, were startled at the idea of the expense of a new Navy Yard; but let them recollect that a Navy Yard can be established at Baltimore, with less expense to the Government than at any other place. It is already a naval station. Officers of the Navy constantly reside there, engaged, it is true, in the recruiting service, but still they are there. Already there exists, in that port, buildings erected by Government at the time of the construction of the Constellation frigate. These are, at present, private property, but it will not require more than twenty thousand dollars to restore them to the Government, and to put them on a footing to render benefit to the nation. As to the capacity of Baltimore to its own defence against an enemy, the experience of the last war furnished, of itself, the most conclusive evidence. The City was attacked—attacked by a powerful and successful enemy—attacked at an hour when all hearts were dismayed by their barbarous triumph in the destruction of this City; and the first ray of hope that broke upon the gloom, beamed from the triumphant repulse of that enemy at Baltimore. It might be said, that there were already two Navy Yards within the Chesapeake; but what is the Chesapeake Bay? It is an inland Ocean, whose wide expanse is able to embrace all the Navies in the world. When the extent of this Bay was taken into view, and the connection of its various branches, with the most important portions of our country, the argument he had mentioned would be found to possess but little weight.

Having briefly touched on some of the advantages which would result from the establishment of a Navy Yard at Baltimore, Mr. B. said it would be proper that he should state some of the disadvantages under which that City at present labors. Her Representatives might appear before the House, and might almost demand a redress of grievance at its hands. It is known to all, that Baltimore is a commercial depot, and it must be acknowledged by all to be the true policy of this Government to build up, by every proper means, the interests of commerce. But Baltimore might complain that the officers of the United States' Navy are continually and sedulously occupied in drawing away her seamen (of all other things the most important to a commercial City,) even before they can enter the port on their return voyage. It is well known that our seamen are not migratory, as to the ports from which they ship themselves. They do not pass from port to port in search of employment, but commonly ship themselves in the same harbor to which they have returned from their last voyage. This is known to the recruiting officers, and it often happens that seamen, arriving at Baltimore, are engaged for the Naval service before they set their feet upon the wharf. Commerce is thus crippled by the policy of the Government. And, as to ship building, no sooner has an enterprising individual collected together a few mechanics, with a view to prosecute that business, on a respectable scale, than his men are immediately tempted away by the prospect of superior prices at the Naval stations of the Government. A union of such disadvantages must be sufficient to break down any commercial City whatever. Yet it never had been the habit of Baltimore to indulge in the language of complaint or murmuring. She had submitted quietly to the privations of her situation, and, even in the severest seasons of non-intercourse and embargo, this Government always heard from that City the cheering voice of a friend. She has paid many millions into the Treasury, and now asks only that a small portion of that wealth should be returned to her which she had been the means of collecting for the country at large.

Mr. B. said, he had thus, he hoped, brought the subject fully, though feebly, before the view of the House. The whole sum for which he asked was but twenty thousand dollars, and he felt persuaded, if it should be granted, that the result, while it would be eminently beneficial to Baltimore, would be not less conducive to the Naval interest of the United States.

Mr. STORRS (Chairman of the Committee on Naval Affairs) hoped that the gentleman from Maryland would consent to withdraw the amendment which he had now offered. On the motion of that member, the Naval Committee had been directed to inquire into the expediency of establishing the Navy Yard in question, as well as some others, proposed by other gentlemen. These various projects were now before the Committee, and under consideration. In relation to this, as well as some of the other propositions, the Committee had referred to the Navy Department for information, and he would put it to the gentleman, whether it would not be better to wait, before acting on the subject, until the Committee shall have reported to the House. An opposite course might operate to injure the very object the gentleman had in view; and, besides, Mr. S. said, he felt some doubt whether the amendment was strictly in order, so long as the same subject was before a Committee of the House.

Mr. BARNEY, in consequence of this suggestion, withdrew his motion for amendment.

Mr. STORRS then said, that he had been directed by the Naval Committee to move the following amendment:

"For surveying the harbors of Savannah and Brunswick, in Georgia; and Beaufort, in South Carolina, [illegible] thousand dollars."

Mr. S. said, that the views of the Committee were, in substance, these: That it might be important, at a future day, for the Government to have a Navy Yard at some point South of the Chesapeake; and, if so, it was desirable that a survey should be made of the different harbors on that part of the coast. Such surveys might also be of importance to the commercial and to the navigating interests of the country. The sum of eight thousand dollars would be sufficient to cover the whole expense of the surveys now proposed, and perhaps would prove more than sufficient for the object—in which case the balance would go into the surplus fund.

Mr. BARNEY moved to amend this amendment by inserting therein "Baltimore, in Maryland;" and increasing the proposed appropriation from eight thousand dollars to twelve thousand dollars.

Mr. STORRS observed, that the harbors proposed in his resolution had not yet been surveyed at all. Whether the harbor of Baltimore had been surveyed as particularly as was desirable, he did not know—the House would know when they had received the report of the Secretary of the Navy on the subject. But, with respect to those harbors embraced in his motion, he had had personal communication with the Department, and he knew they had not been surveyed. The Government has a fleet in the West Indies, which needs a rendezvous in one of the Southern States. The necessity, therefore, for these surveys, was pressing—it was immediately pressing. But, as to Baltimore, he did not conceive this to be the case. If it was a fact that the harbor of Baltimore had not been surveyed, the gentleman would state it to the Committee.

Mr. BARNEY replied, that all he wished to accomplish by the last amendment he had offered, was, that a subject of so much consequence should receive a full examination. He did not know that so large a sum as that he proposed, would be required to authorize the survey, in addition, of the harbor of Baltimore. Perhaps a smaller sum might be sufficient. He hoped that the opposition already manifested to an appropriation towards a Navy Yard at Baltimore, would not be extended to a measure intended merely to obtain information.

Mr. McLANE said, he had no disposition to embarrass the proposition—his only difficulty arose from the manner in which these amendments were proposed. He believed it to be a rule of order that no subject referred to one of the Committees of the House, could be brought into a Committee of the Whole, in the form of an amendment to a bill. He did not say that the present was precisely such a case; but he thought the reason of the rule equally applied. One Committee should not interfere with another. The Committee of Ways and Means had examined the estimates from the Department, and had prepared a bill in conformity with them. Now, another Committee, which has had none of those estimates before it, proposes an amendment to the bill. Every other committee of the House may do the same thing, and, if an appropriation bill is to be encountered by every new project, which may have been matured before other committees, but of which the Committee of Ways and Means had had no opportunity to judge, he did not see how that committee was to get along with any of the bills it became its duty to report.

Mr. STORRS said, that the subject of his amendment had not been strictly before the Naval Committee, and no vote had been taken upon it; but, if the House thought the measure was necessary, and the necessity of it was pressing, they would not, on that account, refuse to make provision for it in this bill.

A discussion, as to the point of order, was further prosecuted by Messrs. POWELL, DWIGHT, STORRS, and McLANE, which resulted in Mr. STORRS' withdrawing the amendment.

Mr. LITTLE now renewed the amendment which had been offered by Mr. BARNEY. He said, that, in supporting the proposition of his colleague, he felt it his duty to submit some considerations to the House, which he would do in as brief a manner as possible. He flattered himself they would do him the justice to believe that, in desiring to see this proposition adopted, he was actuated much by a regard to the interests of the Union at large to those of his own immediate constituents. At an early period of the Government, Congress had passed a law for the building of a number of vessels of war, and Baltimore had been selected as the place for building one of them, which was now engaged in actual service. The advantage of such an arrangement to the Government must be evident. Facility in the construction of any thing which immediately refers to the defence of the country, always must be important. There were, in Baltimore, a great number of mechanics of all descriptions, especially of Naval architects. If a Navy Yard should be established there, and the purposes of Government should at any time require an extra number of mechanics, the population of Baltimore can always furnish them. Whilst, on the other hand, should it be necessary at any time to dismiss a considerable portion of the persons employed, no such inconvenience will result as in places, such, for example, as Washington, where the public mechanics, if dismissed, must be thrown altogether out of employment. In this City, the Government is in some sort bound by humanity to retain workmen in its employ during intervals in which they are not absolutely needed; but there, a mercantile public is always at hand and ready to employ and to reward their industry. It is always an object worth the attention of the Executive, that those points selected as sites for the building of our Navy, should, as far as practicable, be secure from exposure to the approach of an enemy. This security is enjoyed by Baltimore in an eminent degree. The events of the recent war put the truth of this position in a very strong point of view. It was known to every body, that when the enemy approached this City, there was in fact a race between the forces of the enemy and our own Government in the destruction of public property. The Navy Yard was fired by our own officers, and such was their assiduity and success, that one very valuable vessel, then at that place, was entirely destroyed. This would not have happened if the Navy Yard had been stationed at Baltimore. This same enemy did approach that City—

Here Mr. DWIGHT rose to order, insisting, that, as this subject was already before a committee of the House, and had not yet been reported on by that committee, it was not in order to introduce the same subject in the form of an amendment.

The CHAIR decided the amendment to be in order, from which decision Mr. DWIGHT appealed.

On this appeal a discussion arose, which occupied the House for nearly an hour.

The decision of the Chair was opposed by Messrs. DWIGHT, McDUFFIE, MALLARY, McCOY, and CAMPBELL; and advocated by Messrs. LITTLE, BASSET, FORSYTH, and COOK.

The SPEAKER closed this debate, by expressing it as his opinion, that the decision of the Chair was incorrect. The principles of order did not admit of the same subject being referred for consideration at the same time to different committees. If it were so referred, the report of one committee might be made, and the decision of the House taken on it, and then the report of another (perhaps of an adverse tenure) would come in, and a new decision must again be had, and so on as often as the report of any committee should be received. The Committee of the Whole was but a committee of the House, though a large one, and before any subject could be discussed in this committee, which had been referred to any other committee of the House, the committee which had charge of it must first be discharged from its consideration. As this subject was now before the Committee on Naval Affairs, upon a memorial from Baltimore, if gentlemen wished to bring it into Committee of the Whole, they must first move to discharge the Naval Committee.

Mr. LITTLE, though still retaining his original view of the subject, consented to withdraw his proposal to amend.

Mr. COCKE moved the annexed proviso, to come in after the following item:

"For the pay and subsistence of the officers, non-commissioned officers, musicians, and privates, and washerwomen of the Marine Corps, one hundred and seventy-six

thousand one hundred and fifty eight dollars and ten cents:" "Provided, that no brevet officer of the Marine Corps shall receive the pay and emoluments of his brevet grade, unless he be on duty, and have a command according to his brevet rank, and that no allowance shall be made to the Paymaster and Quartermaster of said Corps beyond the compensation provided by the act of 16th April, 1826, entitled 'An act authorizing an augmentation of the Marine Corps, and for other purposes.'"

Mr. COCKE observed, that, on examining the act establishing the Pay and Quartermaster Department, it would be found that the officers are entitled to a certain amount of additional pay, besides what they receive in the line of the army. But, on comparing the directions of the law with the estimates furnished by the Committee of Ways and Means, it would appear either that the laws had been disregarded, or that those estimates were incorrect.

[Here Mr. C. read the second section of the act of 1814, and observed, that if there was any other act on the subject, he had not been able to find it.]

On looking at the estimates, we find for a Lieutenant Colonel Commandant, seventy-five dollars per month: for one Lieutenant Colonel, sixty dollars per month: (This latter, he presumed, must be a Brevet Colonel:) and for Paymaster, fifty dollars per month. Now, it would be found that this officer received, in fact, the pay and perquisites allowed to a Major of Infantry, which gives him at least five hundred dollars more than the law will justify. The Quartermaster is a Lieutenant of the Corps, and his pay is estimated at sixty dollars, and the perquisites of his grade, from which it will appear that he receives the same pay as a Major of Cavalry. If this was so, it presented a case which ought certainly to be remedied.

Mr. McLANE observed, that he had no intention to oppose the amendment, provided it did not interfere with the third section of the same act.

Mr. COCKE replied, that his amendment went a little further, and was intended to prevent the officers of this Corps from receiving the pay of their brevet rank, unless their command is the same.

Mr. BARTLETT said, that, though not opposed to the principle of the amendment, he should vote against it, as appended to the present bill. He hoped that the gentleman would bring it up by a distinct resolution, and would recommend a revision of this whole subject, by a committee of the House. He had long been of opinion that some such revision was necessary: for, any man who would look at the statutes, and compare their provisions with the pay which the officers actually received, would find himself involved in a wilderness of inextricable difficulty. His own objection was not to the pay which the officers received, but to the manner in which the amount of it is determined. He was in favor of giving them a direct allowance in money, but of striking out all discretion in the Department, as to perquisites, and other means of emolument. By this latter system, it had come to pass, that, while an officer of the Navy, engaged in actual service at sea, received sixteen or eighteen hundred dollars a year, an officer of the same rank, who staid on shore, and did nothing but superintend a Navy Yard, received emoluments to the amount of three or four thousand dollars a year. This surely was a state of things that called for revision, and for reformation. Some different rule appeared to be observed on the subject of pay, than that which was prescribed by the statute. He would, therefore, send the whole subject to a committee: but he was opposed to the present amendment, because it was pointed exclusively at a Corps, in which ambition had but a very limited scope, and which, so to speak, had been already sufficiently degraded by acts of our legislation.

Mr. DWIGHT now moved to amend the amendment, by inserting, after the words "according to his brevet rank," the following: "*or command upon a separate station.*"

Mr. POWELL objected to this amendment, as going to leave the law precisely where it was.

Mr. McLANE said, that, if any amendment went to change the law, he should be opposed to it, as an appropriation bill did not furnish the proper means for altering the laws. If the amendment only went to enforce the law as it stands, it might be a very proper one. If any abuse does exist, it ought to be corrected.

Mr. COOK, having the same impression as Mr. POWELL, asked the mover of the original amendment for a farther explanation.

Mr. COCKE then went into a further illustration of his proposition; insisting that, if the officers do receive no more than the law allows them, his proviso could do no harm; and if they did receive more, his proviso went to prevent it.

Mr. COOK insisted that the amendment went only to say, that the law should be obeyed, and it was idle to re-enact what had already been enacted.

Mr. McDUFFIE said, that he had no objection to the amendment, provided it contained a literal transcript from the act of Congress. In that case, he thought it could do neither much good nor much harm, and was willing to consent to it to gratify the mover. But he should certainly object to the gentleman's giving his own interpretation to the law, instead of the law itself. He was inclined to believe, for his own part, that the head of the Navy Department had, in this matter, acted quite correctly. He knew, personally, that one of these officers does have a separate command; he presumed the same to be the case with the other.

The question being then taken on Mr. COCKE's amendment, it was rejected.

The amendments to the Navy Appropriation Bill, made in Committee of the Whole, were read and agreed to by the House, and the bill ordered to be engrossed for a third reading.

The House adjourned.

WEDNESDAY, FEBRUARY 15, 1826.

BREAKWATER IN THE DELAWARE.

The House then passed to the unfinished business of yesterday, which was the once rejected but reconsidered resolution of Mr. MINER, calling on the President of the United States for certain statements relating to the receipts and disbursements in the ports within the Delaware.

The resolution having then been again read,

Mr. WOOD, of New York, said, that when this resolution was before under consideration, he had objected to it on the ground of the principle on which the call was founded, which was of a nature not to be tolerated in the House, being, in substance, this: that local interests were to influence the House in deciding on objects of a public nature; and that the amount of revenue which happens to be collected in any particular port, is now used as an argument why that port should receive a corresponding portion of the public resources expended on its accommodation or defence. This principle had been distinctly avowed by a gentleman from Pennsylvania, who addressed the House yesterday. The gentleman had said that, in selecting the object on which the Government should bestow its patronage, reference was to be had to the different amounts of revenue collected in different parts of the Union: and that those States where the revenue was collected, had a prior claim to States where it was not. Sir, this is a principle which I utterly discard although, as one of the Representatives of the State of New York, I come from a State where a much larg

they may deem necessary, because thay may found, upon that information, some argument they may think false. Besides, how can the gentleman prevent the friends of this resolution from getting this information? I, said Mr. McL. can get it, whether the House passes this resolution or not. It will cost us some labor, but, if the House refuses to call on the President for this information, we can, we will obtain it for ourselves. The information is not improper, and why are we not to have it? For myself, I should consider myself bound, in courtesy, if any gentleman says he requires certain information for the right performance of his duty, to consent he should have it. The House, by agreeing to this call, establishes no principle. If it did, I should certainly reject the resolution. But the House is left wholly uncommitted. I, too, am in favor of this Breakwater. But I shall take a different mode to show it from that pursued by the gentleman from New York.

At this point, the SPEAKER interfered, and arrested the further progress of the debate, the time appropriated to the consideration of resolutions having expired.

AMENDMENT OF THE CONSTITUTION.

The House then, on motion of Mr. McDUFFIE, resolved itself into a Committee of the Whole on the State of the Union, Mr. McLANE, of Delaware, in the Chair, and proceeded to the consideration of the following resolutions, moved by Mr. McDUFFIE, on the 19th of December last, viz:

"*Resolved*, That, for the purpose of electing the President and Vice President of the United States, the Constitution ought to be so amended, that a uniform system of voting by districts, shall be established in all the States; and that the Constitution ought to be further amended, in such manner as will prevent the election of the aforesaid officers from devolving upon the respective Houses of Congress.

"*Resolved*, That a Select Committee be appointed, with instructions to prepare and report a joint resolution embracing the aforesaid objects."

These resolutions having been read—

Mr. McDUFFIE addressed the Committee as follows:

Mr. CHAIRMAN: The resolution which has been referred to the consideration of the Committee, is resolvable into two distinct practical propositions, as plain and obvious in their import as they are unquestionably important in their tendency. The first contemplates the establishment of a uniform mode of voting, by Districts, for the President and Vice President of the United States, instead of leaving to the Legislatures of the respective States, either to prescribe and vary the mode of voting, or to assume and exercise that important function themselves. The second proposes, that, in the event of no person receiving a majority of all the electoral votes, at the first balloting, some provision shall be made for the final disposition of the contest, that will supersede the eventual interference of either branch of Congress, in the election of the two chief Executive Magistrates of the Republic. As the resolution does not declare whether it is expedient that the Electors should be dispensed with or retained, nor indicate the substitute by which the final election shall be prevented from devolving upon Congress, I will very briefly state the details of the proposed amendment, in reference to these particular objects.

As the electors, if retained at all, would hold their first balloting immediately after they are chosen, and under circumstances that would almost preclude the possibility of tampering or corruption, I am willing to acquiesce in any decision that a majority of the Committee may make, upon the question of retaining them in the first instance. For, although I do not believe the Electors to be of any possible utility in the system, and can perceive considerable objections to retaining them even thus partially, yet, if a majority of the Committee should think differently, I will cheerfully sacrifice this minor consideration, to ensure the accomplishment of the great object of the contemplated amendment.

But, in case the primary vote of the Electoral Colleges shall fail to decide the election, I propose that the two highest candidates, respectively, shall be referred back to the People, voting directly for the President and Vice President by Districts. For, when it is considered that at least three or four months must unavoidably elapse between the first and the second balloting, the argument against retaining a body of Electors for so long a period exposed to temptation, becomes, in my judgment, irresistible. And, in addition to this view of the subject, when the contest is reduced to a simple issue between two competitors, there is an end to all the conceivable reasons for a discretionary agency, and the interposition of Electors can only be regarded as, at best, a useless incumbrance.

Such, Mr. Chairman, is the brief outline of an amendment, which so emphatically speaks its own importance, that I need scarcely invoke the patient and undivided attention of those, who, under the most solemn responsibility to the present and future generations, are to pronounce and record their judgments upon it.

In bringing forward this plan of Constitutional reform, I am not unaware of the obstacles, common to every similar undertaking, that must be unavoidably encountered. Some there are, who, in their undiscriminating reverence for the excellencies and imperfections of the Constitution, are disposed to regard every proposition to amend it, as a dangerous innovation. Although it is undoubtedly true, that every change is not an improvement, and that the Constitution ought never to be altered, even under the clearest convictions of theoretical propriety, for 'slight or transient' causes, yet it is equally true, that, to stand indiscriminately opposed to all changes, is, to say the least of it, the dictate of a very superficial wisdom. It is offering an idolatrous homage at the shrine of the Constitution, which the Constitution itself explicitly disclaims. That the clause which provides for its own amendment, stands amongst the least equivocal indications of the wisdom of its framers, will be apparent to every one who will reflect but for a single moment, upon the vast comprehensiveness of their labors, and the peculiar circumstances under which they were performed.

Called together by an extraordinary and alarming emergency, and acting under the influence of the excited passions, unavoidably incident to a crisis portending anarchy and civil strife, the Convention were under the necessity of forming, in a few months, the entire structure of a Government, perfectly new in its principles, and destined, in less than a single century from the period of its formation, to extend either its blessings or its curses to a larger number of civilized human beings than were ever before associated under the auspices of one common Government! When, to this view of the impressive magnitude and growing character of the objects and interests committed to the charge of the Federal Convention, we add the consideration that they consisted of Delegates from thirteen independent Sovereignties, having rival interests and conflicting views to harmonize, the wonder is, not that they failed to make a perfect Constitution, but that they made any Constitution at all. And here, sir, I will take occasion to remark, as having a more immediate bearing upon the proposition before us, that, in the organization of the Executive Department of the Government—that department in which it has always been found most difficult to unite the elements, the essential elements of liberty and power—the Convention, deriving but few, and glimmering, and delusive lights from history, have most signally failed in accomplishing their patriotic intentions, though this is undoubtedly the part of the system which they regarded as

least obnoxious to objection:—An impressive admonition to us all, how seldom, in the conduct of human affairs, the wisdom of man transcends the narrow horizon of his experience! In connexion with this view of the subject, I will venture to express the opinion with confidence, that the common mass of tolerably informed politicians, in the present day, having witnessed the actual operation of this part of our political system, understand it decidedly better than the wisest member of the Convention. In uttering this opinion, I derogate nothing from the wisdom of that venerable assembly. They were too wise not to form a just estimate, themselves, of their own situation. Conscious of the complicated and perplexing difficulties under which they acted, and viewing their own work, not with the vain arrogance of the Spartan Lawgiver, but with the profound wisdom of experimental philosophers; so far from attempting to render it immutable, by proscribing all changes under the imposing sanctions of religion, they adopted a much more effectual means of rendering it immortal, by providing a regulated mode of remedying its imperfections. It is thus that the fundamental laws of the Republic, without the violence and blood that have marked the revolutionary throes of other countries, can be gradually and peaceably accommodated to the successive changes and progressive improvements of the social system. In offering to lay the hand of reformation upon the venerated fabric of the Constitution, I feel sustained by the consciousness that I am doing nothing more than the members of the Convention would themselves do, had it pleased Providence that they should have lived to participate in the deliberations of this day. I shall proceed, therefore, without either superstitious awe, on the one hand, or unbecoming irreverence, on the other, to expose the existing defects of the Constitution, and to indicate what I believe to be the appropriate remedy. And I here distinctly admit, that, before I can expect any member of the committee to vote for a proposition involving a fundamental change in the Constitution, I am, upon every principle of sound reasoning, bound to establish the affirmative of that proposition. It is our propitious fortune to exist under a Government that has, in the main, answered all the great ends for which Governments are instituted. Enjoying, in fact, a system of regulated liberty, more perfect in its past operations than any which has heretofore existed in the world, it is the part of wisdom to abstain from change, until the actual existence or threatened approach of danger is clearly and satisfactorily demonstrated.

The first branch of the resolution we are considering, declares the expediency of establishing a uniform system of voting, by districts, for the President and Vice President. By adverting, for a moment, to the existing provisions of the Constitution, on this subject, it will be perceived that the important operation of electing the two chief Executive Officers of the United States is not regulated by *any Constitutional rule whatever*. The Constitution, by declaring, that "each State shall appoint the electors, in such manner as the Legislature thereof may prescribe," puts an unequivocal negative upon the idea of fixedness and permanence, which essentially enter into the elementary notion of Constitutional regulation. Different rules prevail in the same State at different times, and in the different States at the same time, all liable to be changed according to the varying views and fluctuating fortunes of political parties. It may be assumed as a political axiom, that those creative acts of popular sovereignty, which bring the machine of Government into existence, and put it in motion, ought to be placed beyond the power of any legislative control whatever. The reason is obvious. This superior stability of the fundamental law is essential to protect the rights of the minority from the injustice and oppression of the majority. All experience proves that it is in the very nature of political parties to "feel power and forget right." The end which every party proposes to itself, as the object of its united effort, is power. In the pursuit of this object, the majority lose that sense of justice which should protect the rights of the weaker party. They easily persuade themselves that the good of the country will be promoted by excluding their opponents from power, and, under the delusive belief that they are sustained by patriotic motives, they commit the most flagrant acts of outrage upon the minority. What, sir, has been our own experience on the subject? Some ten or fifteen years ago, the dominant party in the State of Massachusetts made an artificial arrangement of the districts, so as to exclude the minority from power almost as completely as the change from the district to the general ticket system would have done it. After the individual, I believe, who was principally instrumental in bringing about this scheme of party tyranny, it is known over the whole Union, by the name of the *Gerrymandering* system. The People were roused to indignation, not only in Massachusetts, but throughout the United States. Under a lively sense of the injustice and oppression of this proceeding, and of perhaps some analogous occurrences in other States, the proposition for establishing a uniform district system of voting for the electors of President, was brought forward by North Carolina—a State which, to her other claims to consideration in the Union, adds a steadfast and uniform adherence to sound Republican principles. This proposition was concurred in by a large majority of the Legislatures of the States, and amongst the rest, two of the largest States in the Union, New York and Virginia, adopted it by an almost unanimous vote of their respective Legislatures.

But an argument in favor of the proposed amendment, results from the obvious propriety of establishing, not only a *permanent*, but an *uniform* system of voting for the President, in all the States. It is not merely for the sake of Constitutional symmetry that this uniformity is desirable, but it is indispensable to the existence of that political justice, which is the bond and cement of the Union. To illustrate the nature and extent of the evil growing out of a want of uniformity in the modes of voting in different States, I will state a case which, so far from being extreme, will probably occur at the very next Presidential election, if this amendment be not adopted. New York has established the district system; Virginia still adheres to the general ticket system. Let us suppose the People of New York, entitled to thirty-six electoral votes for President, to be divided in opinion between two rival candidates, in the proportion of nineteen to seventeen: The result would be that she would give nineteen votes to one candidate, and seventeen to his opponent, leaving a majority of two votes only, in favor of the candidate who stood highest in her confidence. Let us now suppose the People of Virginia, entitled to twenty-four votes, to be divided in opinion between the two rival candidates, in the proportion of thirteen to eleven. Voting by the general ticket, she would give the *whole* of the electoral votes of the State to her favorite candidate. It is thus apparent that New York, voting by districts, would exert only one-twelfth part of the power in the election of the President, that Virginia, voting by the general ticket, would exercise, when, in point of fact, the People of Virginia would be as much divided in opinion, between the competing candidates, as the People of New York. The gross and palpable injustice of permitting such a state of things to continue, must be apparent to every one. It is not in the nature of things that any State can long submit to such political inequality. However striking the superiority of the district system may be considered by the People, whatever may be its intrinsic excellence, all the States must abandon it, and establish the general ticket system, in self defence, unless we establish a uniform district system for the whole Union.

they may deem necessary, because thay may found, upon that information, some argument they may think false. Besides, how can the gentleman prevent the friends of his resolution from getting this information? I, said Mr. McL. can get it, whether the House passes this resolution or not. It will cost us some labor, but, if the House refuses to call on the President for this information, we can, we will obtain it for ourselves. The information is not improper, and why are we not to have it? For myself, I should consider myself bound, in courtesy, if any gentleman says he requires certain information for the right performance of his duty, to consent he should have it. The House, by agreeing to this call, establishes no principle. If it did, I should certainly reject the resolution. But the House is left wholly uncommitted. I, too, am in favor of this Breakwater. But I shall take a different mode to show it from that pursued by the gentleman from New York.

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"*Resolved*, That a Select Committee be appointed, with instructions to prepare and report a joint resolution embracing the aforesaid objects."

These resolutions having been read—

Mr. McDUFFIE addressed the Committee as follows:

Mr. CHAIRMAN: The resolution which has been referred to the consideration of the Committee, is resolvable into two distinct practical propositions, as plain and obvious in their import as they are unquestionably important in their tendency. The first contemplates the establishment of a uniform mode of voting, by Districts, for the President and Vice President of the United States, instead of leaving to the Legislatures of the respective States, either to prescribe and vary the mode of voting, or to assume and exercise that important function themselves. The second proposes, that, in the event of no person receiving a majority of all the electoral votes, at the first balloting, some provision shall be made for the final disposition of the contest, that will supersede the eventual interference of either branch of Congress, in the election of the two chief Executive Magistrates of the Republic. As the resolution does not declare whether it is expedient that the Electors should be dispensed with or retained, nor indicate the substitute by which the final election shall be prevented from devolving upon Congress, I will very briefly state the details of the proposed amendment, in reference to these particular objects.

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But, in case the primary vote of the Electoral Colleges shall fail to decide the election, I propose that the two highest candidates, respectively, shall be referred back to the People, voting directly for the President and Vice President by Districts. For, when it is considered that at least three or four months must unavoidably elapse between the first and the second balloting, the argument against retaining a body of Electors for so long a period exposed to temptation, becomes, in my judgment, irresistible. And, in addition to this view of the subject, when the contest is reduced to a simple issue between two competitors, there is an end to all the conceivable reasons for a discretionary agency, and the interposition of Electors can only be regarded as, at best, a useless incumbrance.

Such, Mr. Chairman, is the brief outline of an amendment, which so emphatically speaks its own importance, that I need scarcely invoke the patient and undivided attention of those, who, under the most solemn responsibility to the present and future generations, are to pronounce and record their judgments upon it.

In bringing forward this plan of Constitutional reform, I am not unaware of the obstacles, common to every similar undertaking, that must be unavoidably encountered. Some there are, who, in their undiscriminating reverence for the excellencies and imperfections of the Constitution, are disposed to regard every proposition to amend it, as a dangerous innovation. Although it is undoubtedly true, that every change is not an improvement, and that the Constitution ought never to be altered, even under the clearest convictions of theoretical propriety, for 'slight or transient' causes, yet it is equally true, that, to stand indiscriminately opposed to all changes, is, to say the least of it, the dictate of a very superficial wisdom. It is offering an idolatrous homage at the shrine of the Constitution, which the Constitution itself explicitly disclaims. That the clause which provides for its own amendment, stands amongst the least equivocal indications of the wisdom of its framers, will be apparent to every one who will reflect but for a single moment, upon the vast comprehensiveness of their labors, and the peculiar circumstances under which they were performed.

Called together by an extraordinary and alarming emergency, and acting under the influence of the excited passions, unavoidably incident to a crisis portending anarchy and civil strife, the Convention were under the necessity of forming, in a few months, the entire structure of a Government, perfectly new in its principles, and destined, in less than a single century from the period of its formation, to extend either its blessings or its curses to a larger number of civilized human beings than were ever before associated under the auspices of one common Government! When, to this view of the impressive magnitude and growing character of the objects and interests committed to the charge of the Federal Convention, we add the consideration that they consisted of Delegates from thirteen independent Sovereignties, having rival interests and conflicting views to harmonize, the wonder is, not that they failed to make a perfect Constitution, but that they made any Constitution at all. And here, sir, I will take occasion to remark, as having a more immediate bearing upon the proposition before us, that, in the organization of the Executive Department of the Government—that department in which it has always been found most difficult to unite the elements, the essential elements of liberty and power—the Convention, deriving but few, and glimmering, and delusive lights from history, have most signally failed in accomplishing their patriotic intentions, though this is undoubtedly the part of the system which they regarded as

fluence it will be generally found that the majority of the People in every State will give their support to the candidate residing in their own particular section of the Union. But there will generally be a minority, respectable in point of numbers, and still more so in point of wisdom and virtue, that will rise superior to local predilections, and look exclusively to the promotion of the national welfare. The unavoidable effect of the general ticket system is to render the sectional feeling, to which I have alluded, omnipotent, by entirely excluding the vote of the high-minded minority that would be disposed to resist it. The district system, by giving to this minority its legitimate weight in the election, would tend to put down the pretensions of those political aspirants who could only hope for success by enlisting local prejudices in their favor. In this respect, the effect of the proposed plan would be to add to the strength and harmony of the Union. But, if there were no other objections to the general ticket system than those I have thus far urged, I should not regard the proposed change, in this particular, as of vital importance. There remains to be considered, however, an objection, which is, to my mind, perfectly conclusive against the general ticket system. As it is the hinge upon which the contest between the two systems principally turns, I request the particular attention of the committee to this part of the inquiry.

I lay it down, sir, as a truth, founded both upon experience and the nature of things, that, wherever the whole mass of the population of a large State vote in common for the electors of President, the whole power of the State will be inevitably thrown into the hands of a few leading politicians of the predominant party. In the remarks which I shall offer on this subject, I disclaim all allusion to the persons who may have heretofore wielded this power. It is not my intention to find fault with human nature. They have done nothing but what they were driven to do by the operation of a defective system. It is this system against which I wage war. Neither are the People of a large State to blame for placing power in the hands of a few, nor that few for assuming and wielding it. With the People, the question is, whether they will give up their influence in the election of President altogether, or establish some central power, clothed with authority to combine, and arrange, and concentrate their common efforts for a common object. Without this combining power, every one of the fifty or sixty counties in a large State would perhaps vote for a different list of electors, though they might all desire to elect the same man President. The popular will would be thus defeated by the irregular and distracted movements of a disorganized mass of voters. In this state of things, a well organized party, consisting of one-fifth of the population, would carry its point against the remaining four-fifths. With the aid of caucus machinery, a skilful party leader, at the head of five thousand *regular* voters, would defeat twenty thousand of the untrained multitude. There can be no doubt, sir, that, in the operation of such large masses as must be brought to concur in a common object, under the general ticket system, party discipline is as efficient as military discipline is in the operations of war. These are not theoretical speculations of mine. In what I have uttered on this point, I have done little more than record the experience of every State that has made trial of the system of which I am speaking. When this political organization first takes place, it naturally throws power into the hands of men who have the confidence of the People, and, in all probability, deserve it. But the viciousness of the system consists in its tendency to pervert and change the character of those who control it. This is precisely that sort of power which men are most prone to abuse. When a caucus system becomes firmly established, there naturally grows up the most dangerous and odious of all oligarchies—an oligarchy of intriguers and political managers. And the People of the State, under the delusive semblance of exercising their highest privilege, do nothing more than go through the empty and unprofitable form of ratifying the decrees of the sovereign Caucus. In the remarks which I have offered, I know I am perfectly understood by the gentlemen from New York, of all parties. They have seen and felt the operations of the system I have been describing, and are almost unanimous, I believe, in favor of abolishing it. That this is the sentiment of the People of New York, we have the most unequivocal evidence. Having but recently thrown off the political *incubus* by which they have been almost suffocated, they have very wisely resolved not to establish a system of voting for President which would render its recurrence certain. The recent vote of the People of New York, in favor of the district system, is sufficient to put to flight a whole host of theoretical arguments against it. I understand that most of the politicians of the State, and nearly all the presses, were opposed to the establishment of a district system there, until a change of the Constitution could be effected, making it uniform throughout the Union. The ground of opposition was not only plausible, but strong. It was reasonable for New York to refuse to divide her energy, in the Presidential election, unless other States would consent to do the same.

But the People of that State, in opposition to all these considerations, decided in favor of the district system, trusting that the wisdom of other States would induce them to follow the example. On the part of the People of New York, this was a magnanimous sacrifice of State power to political principle. And, as far as my observation has extended, the People, in all the States that have tried the general ticket system, are opposed to it.

Having shown that the tendency of the general ticket system is to put the whole elective power of the State into the hands of a few political managers, I need hardly press upon the committee the danger of corrupt influence in the disposition of that elective power. The danger of corruption is in proportion to the magnitude of the power wielded, and the smallness of the number who wield it. Thirty-six electoral votes, in any probable state of the future contests for the Presidency, would be sufficient to decide the fate of the election. How vastly important would be the vote of such a State as New York, and what irresistible power might an aspirant to the Presidency bring the anticipated patronage of the Executive office to bear upon the few by whom that vote could be controlled! Sir, a stronger case of temptation can hardly be imagined.

But we are told, in answer to all this, that the district system ought not to be established, even to avoid these undeniable evils, because it destroys the just power of the States. What interest can the People of any State have that their votes should be misrepresented? What they desire is, that their will should be fairly ascertained according to their suffrages; and the idea that we impair the legitimate power of a State, in the Presidential election, by providing a mode of voting that will give as nearly as real will of the People, instead of the artificial will of the State, can never be admitted.

But, sir, if we have only in view the interest, the true and permanent interest, of the *predominant parties* in the States, it will be the part of wisdom to give to the votes of the State minorities their fair and proper weight in the election. The party which has the ascendancy in a State may, by a revolution of the wheel of political fortune, be hurled from their high supremacy by the next. It is, therefore, worth while to inquire whether it is expedient for a party even upon the most selfish principles, to exercise a temporary tyranny over the minority, with a certain prospect of becoming themselves, at no distant period, the victims of that very tyranny. It is, no doubt, from enlarged considerations of this kind, that the State of New York

Against these weighty considerations in favor of a uniform system, what rational arguments can be raised, even by the most refining ingenuity? Can it be maintained that there exist local peculiarities in the different States, that render it expedient that different *modes* of voting should prevail? Is there any thing in the local situation of New York which renders the district system proper in that State, while in Virginia the general ticket is best adapted to existing circumstances? This will not be pretended. It cannot be conceived that any reason can be applied to one State, that would not be equally applicable to all others, in regard to the *mode of voting*. It is a very different thing to determine the extent of the right of suffrage in the different States. This does depend upon local peculiarities, and is, therefore, appropriately a question for the States to decide for themselves. But even in relation to this matter, the fundamental law does not depend upon the will of the State Legislatures. The persons qualified to vote for the most numerous branch of the State Legislature, will vote for the electors of President; but those persons are ascertained and fixed, in all the States, by their respective Constitutions. It must be admitted, I think, however gentlemen may differ in opinion as to *which* of the different modes of voting is preferable, that *some* one of them is better than the rest. This being conceded, it follows, as an unavoidable consequence, that the system which is best ought to be adopted in all the States. Assuming, then, that I have shown that, whatever mode we adopt, it ought to be permanent and uniform, it only remains to inquire, which of the modes that have prevailed in the different States ought to be adopted. These are the Legislative mode, the general ticket system, and the district system.

Proceeding to examine these several plans, in the order in which I have stated them, I shall very briefly dispose of the first. As to the power which the Legislatures of most of the States have assumed, at one time or another, of choosing the Presidential electors themselves, I feel assured that I shall have the concurrence of a large majority of those who hear me, when I pronounce it a usurpation. Yes, Sir, the very first acts of the State Legislatures, in relation to the election of the President, furnish the best refutation of the doctrine held by some gentlemen, that the State Legislatures ought to retain an agency and control in the election of that officer. We see that these Legislatures can usurp power as well as abuse it. To settle this question, as to the power of the State Legislatures, a few remarks only will be necessary. The words of the Constitution are, that "each *State* shall *appoint*" the electors of President "in such manner as the *Legislature* thereof may *prescribe*." The *State* makes the appointment, and the *Legislature* has only the power to prescribe the mode. That the word "State" means the people of the State, is obvious, not only from its ordinary grammatical import, standing contradistingnished from the word "Legislature," but also from the commentary contained in the Federalist, which, considering the authority of that celebrated exposition, supersedes the necessity of any further argument on this point. In a number written by Mr. Hamilton, relative to the appointment of the President, we find the following decisive words: "They have not made the appointment of President to depend upon pre-existing bodies of men, who might be tampered with beforehand, to prostitute their votes, but they have referred it, in the first instance, to the immediate act of the *People of America*, to be exerted in the choice of persons, for the temporary and sole purpose of making the appointment." Assuming, then, that the power heretofore exercised by the State Legislatures, has been without the warrant of the Constitution, I shall proceed to compare the only two remaining modes of voting, that have prevailed in the different States.

The first objection which I shall urge against the general ticket system, is, that it not only destroys the vote of the minority in the State, but actually transfers the votes which that minority give in favor of one candidate, to another. We know that, in almost every State in the Union, there generally exists a division of opinion amongst the People, on the subject of the Presidential election. Assuming that the People of New York, for example, should be thus divided in opinion, in the proportion of nineteen thousand for one candidate, and seventeen for another, what, let me ask, is the effect of the general ticket, upon the vote of that State? It forcibly gives the vote of seventeen thousand citizens to the candidate *against* whom they actually voted. The very votes which the *People* intended to defeat his election, are, by the *State*, wrested from their legitimate aim, and made subservient to the advancement of a man, who may, perhaps, be an object of abhorrence to the very People who are thus compelled into his service. It is thus, sir, that, under the delusive and mistaken idea of preserving the rights of the States, we sacrifice the fundamental principles of the Republican system. We literally immolate the *People* by thousands and myriads, at the shrine of an ideal phantom. But we shall be told that it is the duty of the minority to submit to the will of the majority. This, sir, is an obvious truth; but I beg gentlemen not to be misled by it. It has no application to the question I am considering. I am not complaining that the minority are compelled to submit, but that all the minorities in the States are *annihilated*, in making up the general aggregate of the whole Union, as if they were immaterial powers in a political equation. And the reason why I do complain of this is, that it gives the minority in the Union a chance for ascendancy equal to that enjoyed by the majority. To show the reality of this danger, I will call the attention of the committee to the difference between the *actual* popular vote of two large States, and the *estimated* vote of the same States under the general ticket system. I will suppose that New York has one hundred thousand voters, and Pennsylvania seventy-five thousand; that sixty thousand of the voters of New York are in favor of one candidate, and forty thousand in favor of another, and that the whole seventy-five thousand voters in Pennsylvania should give their votes to the candidate who received the New York minority. In this state of things, what is the voice of the People of those States? and what would be the estimated vote by the general ticket system? The candidate who received one hundred and fifteen thousand popular votes would actually receive only twenty-eight electoral votes, while his opponent, with only sixty thousand popular votes, would receive thirty-six electoral votes! We are led into error, on this subject of minorities, by not distinguishing between things that are essentially different. Wherever the action of a State is final and conclusive upon a subject, as in the election of her own Governor, the minority must of course submit; but, where the action of all the States in the Union is directed to one common result, the election of a President, the respective State minorities should be brought into the calculation, that we may really ascertain who has the genuine majority of the whole.

Every friend of the Union cannot but perceive a strong objection to the general ticket system, in its tendency to form political parties upon the basis of geographical arrangement. By bringing large political masses into the Presidential contest, by arraying State against State in the consolidated energy of their power, feelings and passions unfriendly to the harmony of the Union will be unavoidably generated. It is a fact known to us all, that, in almost every portion of the Union, there is a local feeling, which is but too apt to enter into all political questions affecting the general interests of the Republic. Into no question is this feeling more likely to infuse itself than that of the election of the Chief Magistrate. From this in-

by, as disinterested spectators, while the People choose the President. It is thus only that they can be preserved in the attitude of sentinels.

Allow me now, sir, to go a little farther on this subject, and ask gentlemen if it has never occurred to them, that the State Governments may communicate an artificial energy, a morbid action, to despotism in the General Government?

Upon what principle is it assumed that the State Legislatures will be always on the side of liberty? Does our experience warrant the supposition? I beg that gentlemen will do me the favor to open their eyes, and look around them, at political events that are passing, almost at the very moment in which I am speaking. Have not attempts been made, during the present session, by the resolutions of State Legislatures, to goad our sluggish pace and stubborn temper into a celerity and pliancy more compatible with the views of the Executive Government? Such, sir, is the frail security of liberty, when we rely, exclusively, upon holding one power in check by another, instead of subjecting all to the control of the People. The experience of all nations that have made the experiment, demonstrates that it will eventually result in a meretricious combination between the powers designed to act as checks on each other. What was the real power to which the fathers of the Republic looked with dread and apprehension? Not the Legislative power of this House, but the power of Executive patronage. Upon whom is it that this power is likely to exert the most dangerous influence? Unquestionably, sir, upon small, pre-existing bodies, like the State Legislatures, and not upon the mass of the People. The people of a single electoral district would be more difficult to move, by Executive patronage, than the Legislature of a whole State. And I will venture to assert, that there is not one of those districts, in the whole Union, that could have been induced, without any information on the subject, to instruct their Representatives here to give their support to a particular measure of the Executive Government. Sir, a President coming into power, by the aid and concurrence of the State Legislatures, would be irresistible. These bodies would lull the People into false security, and, while professing to defend, would actually betray, their liberties. But the most extraordinary objection that I have yet heard urged against the district system, is, its tendency to produce consolidation. What, let me ask, do gentlemen mean by the term consolidation? Do they use it as synonymous with union? If that be the case, I admit that the tendency of the District System will be to "consolidate the Union;" the very thing which the Father of his Country declared to be the primary aim of the Federal Convention, in framing this Government. But, that consolidation, which is really dangerous to liberty, and which would destroy the federative character of our Government, is the concentration of power in the Government *here*. In this sense of the term, I deprecate consolidation as much as any man, and the tendency of my proposition is to produce a result almost precisely the reverse of this. Instead of concentrating power into the hands of the Government here, it diffuses the most important of all powers among the great body of the People, and fixes it there irrevocably.

It seems to me that a new reading of State Rights is now, for the first time, introduced. I have always regarded State Rights as standing in contradistinction to the powers of the General Government. But now the rights of the *States* are brought out in array against the rights of the *People*. How can it be conceived that we impair the rights of a State, by vesting the highest prerogative of sovereignty in the People of that State? Virginia, voting by Districts, is Virginia still—divested of none of her attributes, as a separate member of the Confederacy. God forbid that I should propose any thing so absurd as to break down the barriers which separate her from the rest of the Union, and let in any foreign influence to control her political operations. I do not propose to impair the federative character of the Government in the slightest degree. Each State will give precisely the same number of electoral votes for the President that she is now entitled to give, under the existing provisions of the Constitution.

But the concluding argument which I shall urge in favor of the district system, is this: The small States will never consent to give up their eventual equality in voting for the President, in this House, unless the large States will consent to break their power of concentration and combination, by the establishment of the District System. In reference to this indispensable compromise, all the arguments which go to demonstrate the expediency of depriving this House of the contingent power of voting for the President, are so many arguments in favor of the District System.

Mr. McD. was proceeding in his argument, when, it being past three o'clock, Mr. SAUNDERS moved that the Committee rise. The motion prevailed—and the Committee rose, and, having obtained leave to sit again,

The House adjourned.

THURSDAY, FEBRUARY 16, 1826.

BREAKWATER IN THE DELAWARE.

The House resumed the unfinished business of yesterday morning, which was the resolution of Mr. MINER, calling on the President of the United States for the amount of revenue received, and of public moneys expended, within the harbors of the Delaware River, in comparison with the receipts and expenditures in other harbors.

The question being put upon agreeing to the resolution, a quorum did not vote. The question being about to be again taken, when the members were called to their seats—

Mr. STEVENSON, of Pennsylvania, remarked, he might be permitted to say a few words on this resolution, if but to awaken the attention of the House, as a quorum had not voted on it. Sir, (said he) we have before us the memorial of the Chamber of Commerce of Philadelphia, praying the National attention to the subject of an artificial harbor, or Breakwater, at the mouth of the Delaware, for the protection of the trade of that City. We have the memorial of the citizens of Philadelphia, adopted at a numerous town meeting, to the same effect. We have also the resolutions of the States of Delaware, New Jersey, and Pennsylvania, recommending the attention of this House to the same subject. I know not whether the resolution before you is especially calculated to elicit the information that will tend to strengthen the claim on the Nation for the appropriation for a Breakwater—I only know that the Representation of Philadelphia have desired this information, and I have confidence, that, at a time, they will shew its application. Sir, I may not be satisfied with the advantages of the proposed plan, when fully developed—I may not believe that the benefit to the commerce of Philadelphia will be proportionate to the expense of forming this artificial harbor, or that Philadelphia has a full claim to the proposed expenditure: but I will advocate the passage of any resolution costing nothing but good will, and which may, in the estimation of Philadelphia, or any other of our Cities, tend to bring into view the propriety and justice of their requisition.

Surely the recommendations of the Legislature of the States of Delaware, New Jersey, and Pennsylvania are entitled to a respectful attention, unless, indeed, it is felt that they have been guilty of some political sin which they are to be treated here with cold incivility. The memorial of the City of Philadelphia—that fair City

ted, in the recent establishment of the district system. that State, so rapid has been the succession of political volutions, that almost every party has been up and own, at least half a dozen times. Each having, in its rn, been in the minority, all have learned that the wisest olicy is to be just.

And here, sir, I will remark, that it is no small objec- on to the general ticket system, that it naturally tends, non the most obvious principles of re-action, to produce idden and entire revolutions in the political character of State. A very common state of things, in all the States, a division of the parties very nearly equal. The obvious justice of suppressing entirely the voice of the minority, the natural basis of a re-action, by which that minority ay swell into a majority. Let us suppose, for the sake f illustration, that the State of Virginia should be divided ito two political parties, one having the ascendancy by a ajority of two or three thousand voters. A change of inion, in this small number, would produce an entire evolution in the whole vote of the State. These sudden nd sweeping vibrations, depending upon such small and adequate causes, are alone sufficient to demonstrate the efectiveness of the system that gives rise to them. That ne state of public opinion, in relation to the general ourse of this Government, must, from this cause, become apriciously mutable, is too obvious to require explana- ion. The changes in popular opinion, which would hard- y be felt if a uniform district system were established, would produce, perhaps an entire revolution in the ad- ministration and measures of the General Government nder the other system.

On the question of State power, I would ask, what does ny particular State gain by this process of compulsory concentration, through the general ticket, when all the other States avail themselves of the very same process? The question of power, is necessarily a relative question; and, in this view of the subject, it is of no advantage to Virginia, for example, to have the power to transfer the opposing minority to her favorite candidate, when an equal minority, in the very next State, would, probably, with equal injustice, be taken from him.

But, Mr. Chairman, the real question which we are called upon to decide, is, whether we will establish the district system, or have no system at all. It is certain, from the known state of public opinion on the subject, that the People will never consent to the establishment of an uniform general ticket system, by an amendment of the Constitution. Shall we, then, rather permit the existing state of Constitutional laxity to continue, than adopt the district system?

In estimating the dangers of the present state of things, I have often considered that Providence has been kindly regardful of us, or we should have been long since involved in the most disastrous civil conflicts. Perhaps we owe this fortunate exemption, in a considerable degree, to the moderation and temperance of our National character. But unless the Constitution is fixed upon some certain foundation, there is serious ground for apprehending the occurrence of the most delicate and embarrassing question, at no distant period. I will state a case that may probably occur at the very next election, and request gentlemen, if they can, to solve the difficult question involved in it. New York, we know, is now divided into electoral Districts, by a law which is admitted on all hands to be constitutional. Suppose the Legislature of that State, under the plausible pretext of preventing the division of the elective power of the State, were, on the eve of the next Presidential election, to re-assume the power which they formerly exercised, and appoint the Presidential Electors. Suppose the People of the existing districts, maintaining this act of resumption, on the part of the Legislature, to be unconstitutional, were to vote for Electors, different from those chosen by the Legislature; and that, under these conflicting titles, two pretenders should claim the sceptre of Executive power. This would be a contest which could only be decided by a civil war; and we should have a commentary on our present system written in blood. This is no imaginary difficulty. I solemnly declare that I am utterly incapable of deciding which of the two competitors would be the real President, and would thank any gentleman for his assistance who thinks he can solve the difficulty. To one candidate I would say, you have the Constitution on your side; to the other, you have on yours the practice of most of the State Legislatures, and the acquiescence of the country. And yet the question now presented is different from any that has heretofore occurred, because the law establishing the district system, being clearly constitutional, peculiar ground is furnished for regarding the legislative assumption as an unconstitutional act. Such a question, sir, would never be decided by dispassionate reasoning. Passion, strife, blood—these are the elements that would enter into the argument.

I shall proceed now, Mr. Chairman, to consider an objection to the District system, which I shall examine with more attention, from the respect I entertain for the gentlemen who urge it, than its intrinsic importance would otherwise demand. It is conceived that the proposed system tends to destroy the sovereign rights of the States, and to produce what is denominated consolidation. Now, sir, if I cannot show that the tendency of my proposition is the reverse of that which is ascribed to it in these respects, I will surrender the scheme as indefensible. To a correct understanding of the objection I am considering, a precise and definite conception of the State powers affected by the proposed amendment, is indispensable. As long as we deal in vague generalities, we shall certainly be involved in confusion, if not in error. What, then, are the powers which I propose to take away from the State Legislatures? The power of voting directly for the Electors of President, which will be admitted to be an usurpation, and the power to change the district into the general ticket system. So far as the proposition tends to prevent future acts of usurpation by the State Legislatures, it must be admitted to be salutary. The only power, then, which merits a moment's consideration, is the power of changing the mode of giving the popular vote. Is that a power that ought to belong to any legislative body? Is it not obvious, as well from our own experience, as from the nature of things, that it is a power which will only be exercised abusively, and for the accomplishment of party purposes? What other conceivable purpose can it answer? I will venture to assert that, in every instance in which the district system has been made to give way to the general ticket, party objects have constituted the avowed motive of the change.

But, sir, on this subject of State rights, let me warn gentlemen to beware of running the national barque into the vortex of real dangers, while attempting to escape from those which are purely imaginary. They regard the State Governments as sentinels, standing on the watch-towers of liberty, and yet place those Governments in a relation to the General Government that must destroy both their fidelity and vigilance. I have shown, sir, that where the General Ticket exists, the State Legislatures, by nomination or other modes of indication, will, in practice, control and decide the vote of the State, for President. By bringing the State Legislatures into the operation of choosing the President, you make it the duty of those to sound the alarm of approaching tyranny, who have been themselves instrumental in making the tyrant. It would be just as wise to expect the disclosure of a felony, by a participant in the perpetration of it. The true mode of preserving the guardian vigilance of the State Legislatures, is to keep them entirely out of the sphere of the Presidential canvass. Let them stand

the President with such extensive powers, without endangering public liberty.

What are the powers actually vested in the President? We can hardly realize the fact, though it is unquestionably true, that he possesses very nearly as extensive powers as the King of England. In distributing power to the different departments of the Government, the framers of the Constitution have very specifically defined the powers of Congress, but given an almost unlimited charter to the President. Where is the limitation of his power? The grant is of "all Executive power;" which amounts to neither more nor less than that he shall have power to do whatever any other Executive on earth may do, unless restricted expressly, or by the necessary implication growing out of the grants to the other departments. The President cannot declare war, because that power is expressly delegated to Congress: and this is the only material power possessed by the King of England, that is not vested in the President. Nor will this be regarded as a very considerable practical difference, when it is considered that the King of England never declares war until he is assured the Parliament will sustain the measure.

Sir, our own experience will exclusively demonstrate how delusive it would be to rely for the security of our liberty upon restrictions on the Executive power. When we pass a law, by the concurrence of all the branches of the legislative power, for the internal improvement of the country, we are told that we have transcended the limits of the Constitution, to the imminent jeopardy of public freedom; but when the President, by virtue of the treaty-making power, buys an empire to the West, and adds it to the Republic, we are told that there is no limit to the treaty-making power but the discretion of the Executive, and that a treaty is the supreme law of the land.

It is obvious, therefore, from this view of the undefined and illimitable nature of Executive power, that all barriers restrictive of that power, would be utterly nugatory and contemptible, without a well connected system of responsibility. It has not been my object, in pointing out the character and extent of Executive power, to hold it up as an object of alarm. I am far from regarding power as, in itself, an evil. On the contrary, I view it as the indispensable means of conferring the greatest national blessings. What I dread is the abuse of power. Show me political power so effectually guarded that it will certainly be exerted for the promotion of the welfare of the republic, and I will love and idolize it. According to these views it is my object to infuse into the Executive Government that salutary energy which can only be derived from the confidence of the People. Without that confidence, a President cannot do much good; with it, he can scarcely do much evil.

While discussing the connexion between liberty and power, it is a consolation to reflect, in the present militant state of free principles in the civilized world, that liberty is as essential to power, as power is to liberty. In fact, the sentiment contained in the Message of the President, at the opening of the session, that "liberty is power," is strictly and philosophically true. In the improved state of the art of war in modern times, the power of a nation is measured by its financial capacity. This capacity of course depends on the wealth of the Nation, and that again upon the stimulus applied to industry by the security to property derived from free institutions. On the contrary, the precarious tenure of property, and every other blessing in despotic Governments, paralyzes individual industry, and results in National poverty. Power itself becomes thus the principle of liberty. Despotic rulers, finding their military power sinking through their finances, will be driven to the alternative of giving freedom to their subjects, or falling before the superior power of free States. The extraordinary power which England has exerted in the affairs of modern Europe, is at once the illustration and the proof of these remarks.

Having shown the efficacy of the principle of elective responsibility, in harmonizing the action of liberty and power, I shall proceed to take a brief view of the principles of freedom that have characterized other free Governments, and their comparative efficiency.

The only two forms in which freedom was known to the ancients, were *absolute democracy* and a *balance of orders*. From its very nature, a simple democracy is destined to a turbulent and temporary existence and violent death. The assemblage of the great mass of a political community, to deliberate and decide upon affairs of the deepest moment, must unavoidably give rise to scenes of tumultuous violence and outrage, utterly incompatible with the idea of regulated and permanent freedom. While we recognize, in the fate of Athens, the inevitable catastrophe of that imperfect form of Government, our attention is forcibly drawn to the striking contrast of our political condition, and our absolute exemption from a similar destiny.

The balance of orders, as it existed in the Roman Government, was a principle of perpetual conflict and violence. It exhibited the extraordinary spectacle of two incompatible sovereignties in the same State—the power of the patricians, and that of the popular tribunes—each having a right to act independently, and yet subject to a mutual and irregular control, which ultimately led to the overthrow of the Republic. In looking back upon the catastrophe of Roman freedom, we confidently say, it was inevitable. The system contained within itself the principle of its own destruction. Wherever power is brought into conflict with power, in any political system, without an ultimate responsibility in both, to the People, anarchy and blood are but the precursors of despotism. It was not Cæsar that destroyed the liberties of Rome. They had expired before he crossed the Rubicon. The People, exhausted and corrupted by the bloody conflicts and vicious practices of Marius and Sylla, required and called for a master. If Cæsar had not seized the dereliet helm another would. In the United States, fortunately, we have not the basis of a balance, by the division of society into distinct orders. Our population is homogeneous. All our citizens are, in point of political rights and privileges, equal. It results, as a necessary consequence, that we must introduce a new principle of freedom, different from those which existed in either Greece or Rome. It is this necessity, connected with a corresponding capacity for a new principle of political organization, that constitutes our distinguishing superiority.

The principle of elective responsibility, by which instead of checking one power by another, equally vicious, the whole mass of society, which is necessarily virtuous is brought to bear upon the public functionary, is the innovating, self-sustaining principle of our liberties. If this principle be properly extended through our political system, it is formed for endless duration. It is impossible to foresee any catastrophe that can terminate our liberties while resting on this basis. The People are essentially patriotic. With them, selfishness itself is public virtue. By the laws of moral necessity, they are obliged to seek their own happiness. In exercising the high privilege of choosing the man who is to preside over their destinies they must, from the same moral necessity, select the candidate whom they believe best qualified to promote the welfare of the Republic. Nothing, therefore, can prevent our country from obtaining, under the auspices of the principle of representative responsibility, the highest degree of political happiness, but a want of intelligence in the People.

This brings me to the consideration of an objection founded on this supposed want of intelligence, that

ten urged against that part of the proposed amendment which makes the ultimate choice of the President to depend on the immediate act of the People. I am not, I trust, one of those visionary advocates of the abstract rights of man, that would extend the power of the People farther than is conducive to the happiness of the political society. It is idle to suppose that the People can have any rights incompatible with their own happiness. Although, therefore, I have shown, that they are necessarily virtuous from their position, yet I admit, that patriotic intentions would furnish no adequate security for the wise selection of a Chief Magistrate, in the absence of sufficient intelligence. It would be a vain and delusive mockery, to invest them with an elective power, which they could only exercise to the destruction of that which is the end of all government—the national good. There is no political truth more worthy of the attention of a practical statesman, than that the freedom of the People cannot rise higher than their intelligence. Such is the indispensable condition of freedom; and all the attempts which have been made in modern Europe, to render Government more free than the intelligence of the People would warrant, have resulted in bloody and disastrous reaction. I do not hesitate, therefore, to admit, that the People have no abstract right to any power, which they cannot exercise with intelligence. Is it true, then, that the People of the United States have not sufficient intelligence to choose a President?

On this subject, we are told, that history furnishes no example of a Chief Executive Magistrate chosen directly by the great mass of the People. This, sir, is a melancholy truth; and it furnishes the true solution of the fact, that there never has existed a Republic that has not lost its liberty.

It is easy to demonstrate, that, previous to the establishment of this Government, liberty never had any thing like a fair experiment. This, sir, will conclusively appear, when we come to consider historically and philosophically the causes, why it is that the Chief Magistrate of an extensive country never has been chosen by the great body of the People. How, then has this happened?

As all the Governments of modern Europe had their foundations laid in the principles of the feudal system, the only experiments upon the Republican system, which deserve to be recorded in history, are those made by the ancients.

Now, the election of a chief magistrate by the mass of the People of an extensive community, was, to the most enlightened nations of antiquity, a political impossibility. Destitute of the art of printing, they could not have introduced the representative principle into their political systems, even if they had understood it. In the very nature of things, that principle can only be co-extensive with popular intelligence. In this respect, the art of printing, more than any invention since the creation of man, is destined to change and elevate the political condition of society. It has given a new impulse to the energies of the human mind, and opens new and brilliant destinies to modern Republics, which were utterly unattainable by the ancients. The existence of a country population, scattered over a vast extent of territory, as intelligent as the population of the cities, is a phenomenon which was utterly and necessarily unknown to the free States of antiquity. All the intelligence which controlled the destiny and upheld the dominion of Republican Rome, was confined to the walls of the Great City. Even when her dominion extended beyond Italy to the utmost known limits of the inhabited world, the city was the exclusive seat both of intelligence and empire. Without the art of printing, and the consequent advantages of a free press, that habitual and incessant action of mind upon mind, which is essential to all human improvement, could no more exist, amongst a numerous and scattered population, than the commerce of disconnected continents could traverse the ocean without the art of navigation. Here, then, is the source of our superiority, and our just pride as a nation. The statesmen of the remotest extremes of the Union can converse together, like the philosophers of Athens, in the same Portico, or the politicians of Rome, in the same Forum. Distance is overcome, and the citizens of Georgia and of Maine can be brought to co-operate in the same great object, with as perfect a community of views and feelings, as actuated the tribes of Rome, in the assemblies of the People. It is obvious, from these views of the subject, that liberty has a more extensive and durable foundation in the United States, than it ever has had in any other age or country. By the representative principle—a principle unknown and impracticable among the ancients, the whole mass of society is brought to operate, in constraining the action of power, and in the conservation of public liberty. The extent of territory, which, by the operation of fixed and obvious laws, caused the Roman Republic to sink under its own cumbrous weight, is our best security against a similar catastrophe. The extensive provinces of that Republic, incapable of being brought into the constitutional action of the political system, presented a mass of unenlightened brute force, unconnected with the Republic, by political sympathy or interest, and ready to be wielded by any military adventurer, for the overthrow of public liberty.

In adverting, and I do it with peculiar pleasure, to the situation, and probable destiny of the United States, as contrasted with those of other nations, I would ask, emphatically, what would be the condition, what the security of our liberty, if it were dependent upon any single city? Sir, all cities, however intelligent and virtuous, must, from the very structure of their society, have a populace of greater or less extent, which, when roused to action, by any extraordinary excitement, are impelled by mutual sympathy, and the contagion of feeling, resulting from contact, to acts of turbulence, riot, and outrage. In a word, they degenerate into a tumultuous rabble. I will take Boston for an example, as furnishing the strongest illustration—a City, which I cannot mention, without having excited in my breast strong emotions of reverence, connected with the proudest recollections of our Revolutionary History. In this City, sir, inhabited by the unmixed descendants of the genuine Old English puritans—in this City, distinguished for the general intelligence and steady moral and religious habits of its citizens—in the cradle of American liberty, and the emporium of American literature and arts, what is the spectacle we have recently witnessed? We have seen a miserable strolling player, an outcast from his native country, throw the whole city into a scene of riotous commotion, that might have swept away the liberties of the Republic, had they depended upon so frail a security. But, I thank God that the liberties of this country do not rest upon the trembling and unsteady basis of any city—neither Athens, nor Rome, nor Boston—but on the intelligence of the great mass of the People, scattered as they are, over our widely extended surface.

In pointing out the prominent circumstances that distinguish us from other nations, I will briefly call the attention of the Committee to two other causes of the superior political capability of the People of the United States, which deserve to be considered. The one is the abolition of the rights of primogeniture, which distinguishes us from the nations of modern Europe; the other is the substitution of machinery for manual labor in the arts, which distinguishes us from the ancients. A celebrated writer of Scotland, now living, I believe, expressed the opinion, that the abolition of the laws of primogeniture, in Europe, would do more to improve the political condition of its inhabitants, than any other measure which the wisdom of man could suggest. Though I am not prepared to say

whether the experiment there, would be worth the blood and confusion it must inevitably create, I feel no difficulty in saying, that, next to the art of printing, it is the most indispensable condition to a system of government founded upon representative responsibility. By diffusing property, it produces a corresponding diffusion of intelligence among the mass of the People, and supersedes the existence of an aristocracy, that would necessarily require a balanced government, or be productive of anarchy.

The other circumstances to which I alluded—the introduction of machinery, instead of manual labor—has been the subject of great misapprehension. It has been supposed to be adverse to liberty. But it must be extremely obvious, that a machine, which will enable one man to perform the labor of a hundred, disengages ninety-nine persons from the necessity of manual labor, and leaves them to improve their minds. The aggregate of popular intelligence is thus increased, in proportion to the saving of labor effected by machinery.

All these causes combined, have given us a population, equal, in the mass, to what the politicians of Europe regard as the best part of their society—the middle interest. As intelligence is thus generally diffused among the People, the object of the proposed amendment is to establish such an organization of the elective system, as will enable this diffused intelligence to operate freely and steadily upon the most active and dangerous part of the machine of Government. It is the natural prerogative of intelligence to govern. Even when that intelligence is confined to a small class, it always obtains the ascendency. Nothing, therefore, but the grossest imperfection in our political organization, can prevent it from exerting its legitimate influence, when sustained by the physical power of society.

Upon the question of the capacity of the People to choose the Chief Magistrate, I would remark, that the citizens of all free countries have been found competent to the selection of the highest officers. For the last half century, the talent that has governed England, notwithstanding her artificial distinctions, has been brought forward by the People, and has made its way to power through the House of Commons. Of the distinguished Statesmen who have figured in her Councils, during that period, I know scarcely a single exception. Pitt, Castlereagh, and Canning, were all indebted to the People for their political elevation; and it is certain that no Statesmen, in modern times, have exerted a more decisive influence over the current of human affairs; whether for good or for evil, it is not now material to inquire. But, sir, let us come a little nearer home, and consult our own experience upon this point. Out of the six Presidents who have been called to preside over the Republic, five have been the unquestionable choice of the People of America. Looking back upon the history of the past, with the impartiality of posterity, and the benefit of subsequent experience, we can have no hesitation in admitting, that the selection of the People has been the very best that could have been made. In fact, such is the course of political service through which a Statesman must ordinarily pass before he can aspire to the Pesidency, that it would not be going too far to say, that the People are more capable of selecting that officer, than almost any other public functionary. It is much easier to form a just estimate of a Statesman, by palpable measures of wisdom and foresight, than to discover and bring to light latent capacities that have never been exhibited in the theatre of political action.

But, sir, let us, for a moment, compare the Presidents chosen by the People, with the officers chosen by those Presidents. It is a subject of curious speculation, and will lead us, I think, to a very decided conclusion, that the People are more capable of choosing the President, than the President would himself be to choose his successor. Sir, what criterion of talent have our Presidents adopted in the organization of their cabinets? They have either adopted the popular standard, and promoted those who had been previously distinguished, or they have exhibited the most signal infelicity in their choice. How many instances can be shewn of Statesmen, of first rate talents, brought into the Executive Government, who had not first distinguished themselves here as the immediate Representatives of the People? I will particularly refer to the Administration of Mr. Madison, for whose character, as a profound Statesman, I entertain the highest respect. He was, at the same time, a monument of the capacity of the People to choose public agents, and of the frailty of any other reliance. For, if I may speak with the freedom of history on such a subject, his cabinet was most wretchedly feeble, and from no cause more strikingly so, than from the attempt to discover the secret treasure of talents that had escaped the searching sagacity of the People.

It is not unworthy of remark, that there is no officer in whose election the People are so likely to be actuated exclusively by patriotic and elevated motives, as in that of the President of the United States. Personally unknown to the great body of them, and seen only through the medium of his deeds and his character, they can have no personal predilection or interested motive, to swerve them from the dictates of wisdom and patriotism. On the contrary, in the election of mere local officers, and particularly those ministerial officers of the law, whose official duties have a bearing upon the pecuniary interest of the debtor and creditor classes of the community, it not unfrequently occurs that even the People are actuated by factious motives. And this from the only cause that can produce such motives—the existence of an individual interest in the election, different to the public interest, and paramount to it.

But, sir, I must hasten to consider another objection that has been urged against referring the election of the President directly to the People. We have been told, from high authority—an Executive message of one of the States—that it will produce popular excitement and turbulence. It does really appear to me, sir, that the grave Statesmen of the country are mistaking, on this subject, the images of their classic recollections, for the sober and substantial realities of life. They seem to forget that they are not walking in the groves of Athens, nor mingling in the conflicts of the Roman *Comitia*. They permit themselves to be carried away by false and delusive analogies. I believe it would be a vain attempt to try to rouse the People to scenes of turbulence and strife, on the subject of the Presidential election. The extent of our territory, and the dispersion of our population, circumstances once deemed incompatible with Republican freedom, are our absolute guaranties against those stormy commotions that distinguish the history of simple democracies. I do not believe it would be possible to excite even Boston to a riot on the subject of the Presidency, although Kean, the player, roused the mob to acts of violence: for, by the district system, Boston would only have one electoral vote, and that would scarcely be an object of sufficient magnitude to produce such consequences.

This idea of exciting the People to violence on the Presidential election, is founded on absolute inattention to the situation of our country, and would be scarcely excusable in a youth at College, in his sophomore year. I will appeal to the experience of every member on the floor, and ask whether he has ever heard of a solitary instance of popular outrage on this subject? No, sir: in ten Presidential elections, we have given a practical refutation of the unfounded imputations that have been cast upon the republican form of government in this respect. I will venture to assert—and I speak in the hearing of those who have been eye witnesses of the fact—that a

ten urged against that part of the proposed amendment which makes the ultimate choice of the President to depend on the immediate act of the People. I am not, I trust, one of those visionary advocates of the abstract rights of man, that would extend the power of the People farther than is conducive to the happiness of the political society. It is idle to suppose that the People can have any rights incompatible with their own happiness. Although, therefore, I have shown, that they are necessarily virtuous from their position, yet I admit, that patriotic intentions would furnish no adequate security for the wise selection of a Chief Magistrate, in the absence of sufficient intelligence. It would be a vain and delusive mockery, to invest them with an elective power, which they could only exercise to the destruction of that which is the end of all government—the national good. There is no political truth more worthy of the attention of a practical statesman, than that the freedom of the People cannot rise higher than their intelligence. Such is the indispensable condition of freedom; and all the attempts which have been made in modern Europe, to render Government more free than the intelligence of the People would warrant, have resulted in bloody and disastrous reaction. I do not hesitate, therefore, to admit, that the People have no abstract right to any power, which they cannot exercise with intelligence. Is it true, then, that the People of the United States have not sufficient intelligence to choose a President?

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In pointing out the prominent circumstances that distinguish us from other nations, I will briefly call the attention of the Committee to two other causes of the superior political capability of the People of the United States, which deserve to be considered. The one is the abolition of the rights of primogeniture, which distinguishes us from the nations of modern Europe; the other is the substitution of machinery for manual labor in the arts, which distinguishes us from the ancients. A celebrated writer of Scotland, now living, I believe, expressed the opinion, that the abolition of the laws of primogeniture, in Europe, would do more to improve the political condition of its inhabitants, than any other measure which the wisdom of man could suggest. Though I am not prepared to say

if the parchment be smooth, and the phraseology clear. Sir, unless you lay the foundation of freedom in the structure and education of society, I would not give a rush for the delusive mockery of a paper constitution. A written charter is the evidence, but not the source, of liberty.

In this view of the subject, a strong recommendation of the proposed amendment, is the effect it will produce on the People themselves. We have recently seen, in France, that the People are incapable of exercising the right of trial by jury, though they are scarcely less intelligent than the English, who have exercised that important right, with great wisdom, from the remotest period of their history. The cause is obvious—the People of France have not been accustomed to exercise this right.

Nor will the effect be less important which will be produced upon the person elected President, than it is upon the People who elect him. There is no more effectual corrective of a disposition to despotism, than the consciousness of being the object of the confidence, and love, and admiration, of a great, intelligent, and virtuous nation. The moral elevation arising from the idea of being loved and venerated by those whose destinies are committed to his charge, would convert even a tyrant into the father of his country. It is not in nature for a ruler to tyrannize over a People who love him. Even in spite of himself, he will be awaked to sentiments of magnanimity and patriotism, by the warmth of popular affection, and the unbought demonstrations of gratitude. But how different is the situation of a man elevated to power by factious combination, by force, or fraud, in opposition to the national will! Why, sir, was Nero a tyrant? Not from the native impulse of his heart, but from his situation. He knew that the People deprecated his power, and despised his person. It would have been unnatural, therefore, if he had not become a tyrant, however amiable his natural disposition. We cannot love those long who do not love us. A ruler who knows that he is hated by the People, reciprocates the popular hatred, and looks to his faction for support. He relies exclusively upon political management and intrigue, to sustain his power.

Such, sir, are the natural consequences of acquiring power, not by high-minded and honorable actions, but by the pitiful, petty larceny artifices of intrigue and corruption. There is something essentially degrading in this mode of obtaining power. If I know my own heart, I could not be tempted to use such means and paltry arts even to obtain the control of a nation's destinies. But if I could be so tempted, I should feel myself unworthy to be any thing but a tyrant. God forbid, then, that we should voluntarily place it in the power of men to raise themselves to dominion by such means. Let us not expose them to the temptation.

I come, now, Mr. Chairman, to what I regard the most important consideration connected with this branch of the amendment: the expediency of excluding this body from all agency in the election of the President.

I will, however, first draw the attention of the Committee to a very striking incongruity of principle, involved in the provision to refer that election to this House. The three highest candidates, indicated by the popular vote, are referred to the House of Representatives. Upon what principle? Is it because this body has more capacity for selection than the People? Admit this to be the fact, and what follows? You call in a competent body to select a President out of three persons chosen by those whom the argument supposes to be incompetent. If the People are capable of voting for three, why not for one? Upon what metaphysical or mathematical principle is it, that the People are capable of choosing three persons, one of whom must be President, and are not capable of going another step, and choosing the one of those three who is to wield the sceptre? If the House of Representatives have any superior capacity, you do not give them a sufficient latitude of discretion to exercise it to any effectual purpose. In a word, the scheme combines the disadvantages of both modes of election, and the advantage of neither, giving to this House just sufficient latitude for all the purposes of corruption, and not enough for any good end.

The first objection that I shall urge against the participation of this House in the election of the President, is its tendency to destroy that separation of the Legislative from the Executive Department of the Government, that is indispensable to the effective responsibility of the latter. From the very nature of Executive power, its operations are unseen by the People. Acting, not like Congress, by general laws, that are regularly promulgated, the President expends money, confers offices, and regulates the distribution of armies and navies—acts silently performed, and of which the People can have no precise knowledge, that is not derived from their Representatives here. We ourselves can only see the movements of Executive power, dimly and imperfectly, through the lumbering masses of documents on our tables. It is not to be expected that this body will be inclined to enforce a very rigorous accountability, against the President of its own creation. Instead of standing to the Executive in the relation of an independent, co-ordinate Department, it becomes the partizans of his power, and the apologist for his transgressions.

Another effect which must certainly result from the habitual interference of this House in the election of the President, is the degradation of its legislative character. Instead of statesmen, profoundly versed in the sublime art of rendering the Republic flourishing and happy, the members of this House will degenerate into mere managing politicians, trained in the little arts of intrigue. Instead of devoting ourselves to the peculiar and appropriate duties of our station, the making of laws, we shall be exclusively engrossed in making Presidents.

When the members of Congress become arrayed into cabals, designated by the names of the several candidates for the Presidency, there will be an end both of unanimity and independence. I have no occasion, sir, to be ashamed of any man whose pretensions I have sustained for the Presidency; but every principle of my nature recoils at the idea of being characterized by the mere livery of any man living. A state of things will soon occur, in which the great politicians of the country will be those who are most dexterous at making political combinations, and public men will devote themselves to the huckstering arts of gaining power, instead of using the more dignified art of using it wisely.

It cannot be disguised, sir, that, by bringing the election of the President into this House, we expose ourselves to the influence of those arts of political courtship, which the ambitious have ever been prone to practice. To me, nothing of corruption, there are few among us, sir, so strong as we may feel intrenched behind our own dignity, so are not liable to have the sternness of our purpose relaxed by a condescending smile, or an act of Executive confidence, or—a dinner. These little arts, which, in their combined operation, constitute what is usually denominated intrigue, are the means by which cunning ambition address themselves to the vanity and foibles of those who fall within the sphere of their fascination. The Pure, sir, cannot be reached by these arts; but we, their and virtuous Representatives, thrown into the fatal current fall victims to an influence of which we are not even conscious. It is in vain, sir, to dissemble. We may shroud ourselves in wise looks and a dignified exterior, we are perhaps laboring under the fatal charm of the chantress, at the very moment we are indignantly claiming it.

The peculiar circumstances under which the Presidential Election will generally come before the House

Representatives, constitute a very striking objection to the exercise of the power now vested in this body. The election comes here with almost a certainty that, in nine cases out of ten, it will be decided against the will of the People. The small minorities will naturally combine against the popular favorite. They will do this upon principles as certain in their operation as gravitation. The man who is conscious that he is the choice of the People, stands firm and inflexible in the confidence of his own strength. You cannot approach him. He disdains to negotiate. He feels his title to be strong, and confidently reposes upon it. All the other candidates naturally regard him as the obstacle that stands most in the way of their hopes. United by their very feebleness, they defeat the will of the nation. For accomplishing this object the mode of voting here affords extraordinary facilities. We vote by States. The natural course of things will throw the whole power of the combination upon the small States. A single member is more easily brought into the arrangement than thirty-six. It may thus happen that less than forty members of this body will elect the President. This strong probability that the President will be chosen by a small minority of Congress, demands the most serious and solemn consideration.

Under what circumstances do you call him to the discharge of the high duties of his office? You place a sceptre in a hand which has not energy to wield it. The unavoidable consequence will be, that the whole patronage of his administration will be perverted to the purpose of sustaining and strengthening his popularity. He comes into power under circumstances that create a political necessity of action in this manner. Destitute of the confidence of the People, he must feel that his patronage is his power. This view of the subject brings me to the consideration of the great and conclusive objection to the interference of this House in the election—its tendency to corrupt the Legislative body.

Corrupt Congress, and you assail liberty in the very seat of its vitality.

But, sir, we are apt to treat the idea of our own corruptibility as utterly visionary, and to ask, with a grave affectation of dignity, "What, do you think a Member of Congress can be corrupted?" Sir, I speak what I have long and deliberately considered, when I say, that since man was created, there never has been a political body on the face of the earth, that would not be corrupted under the same circumstances. Corruption steals upon us in a thousand insidious forms, when we are least aware of its approaches. Of all the forms in which it can present itself, the bribery of office is the most dangerous, because it assumes the guise of patriotism to accomplish its fatal sorcery. We are often asked, "Where is the evidence of corruption? Have you seen it?" Sir, do you expect to *see* it? You had as well expect to see the embodied forms of pestilence and famine stalking before you, as to see the latent operations of this insidious power. We may walk amidst it and breathe its contagion, without being conscious of its presence. All experience teaches us the irresistible power of temptation, when vice assumes the form of virtue. The great enemy of mankind could not have consummated his infernal scheme for the seduction of our first parents, but for the disguise in which he presented himself. Had he appeared as the evil, in his proper form—had the spear of Ithuriel disclosed the naked deformity of the Fiend of Hell—the inhabitants of Paradise would have shrunk with horror from his presence. But he came as the insinuating Serpent, and presented a beautiful apple, the most delicious fruit in all the garden. He told his glozing story to the unsuspecting victim of his guile. "It can be no crime to taste this delightful fruit. It will disclose to you the knowledge of good and evil. It will raise you to an equality with the Angels." Such, sir, was the process; and, in this simple but impressive narrative, we have the most beautiful and philosophical illustration of the frailty of man, and the power of temptation, that could possibly be exhibited. Mr. Chairman, I have been forcibly struck with the similarity between our present situation and that of Eve, after it was announced that Satan was on the borders of Paradise. We, too, have been warned that the enemy is on our borders. But God forbid that the similitude should be carried any further. Eve, conscious of her innocence, sought temptation, and defied it. The catastrophe is too fatally known to us all. She went, "with the blessings of Heaven on her head, and its purity in her heart," guarded by the ministry of Angels; she returned, overwhelmed with guilt, and covered with shame, under the awful denunciation of Heaven's everlasting curse.

Sir, it is *innocence* that temptation conquers. If our first parent, pure as she came from the hand of God, was overcome by this seductive power, let us not imitate her fatal rashness, by seeking temptation, when it is in our power to avoid it. Let us not vainly confide in our own incorruptible purity. We *are* liable to be corrupted. To an ambitious man, an honorable office will appear as beautiful and fascinating as the apple of Paradise.

I admit, sir, that ambition is a passion, at once the most powerful and the most useful. Without it human affairs would become a mere stagnant pool. It is the active principle that stimulates even the patriot to exertion, and, in its very excesses, it is the frailty of the most exalted minds. By means of this patronage the President addresses himself, in the most irresistible manner, to this, the noblest and strongest of our passions. All that the imagination can desire—honor, power, wealth, ease, are held out as the temptation. Man was not made to resist such allurements. It is impossible to conceive, Satan himself could not devise, a system which would more infallibly introduce corruption and death into our political Eden. *Sir, the Angels fell from Heaven with less temptation.*

That cannot, then, be a wise political organization that requires us to resist temptations too strong either for men or Angels.

The political truths I have advanced will be fully sustained by the authority of history. Look back, sir, into the vast and dreary solitude of past ages, and read the epitaphs which impartial history has inscribed on the tombs of fallen republics. What is the melancholy lesson they teach us? That no free Government has been overcome by force, but all by corruption. If we ever lose our liberties, which God forbid, this will be the euthanasia of the Republic. While the extent of our territory exempts us from the extinction of our liberties by popular violence, it increases the only other catastrophe to which we can be exposed—the concentration of power in the Executive Government.

These general views of the fascinating allurements of power and patronage, and their corruptive influence when brought to bear upon small and permanent bodies of men, are specifically illustrated by the experience of all those nations that have made the experiment of an elective monarchy. In those countries we have seen the pure current of public virtue sink into the sluggish stream of venality, and the institutions of freedom decay and perish under its corroding influence. No People on earth were more distinguished for their stern and hardy virtues than the Romans in the days of Fabricius; none more for their open and shameless corruption, than the same People, in the days of Julian. In the very same city, where the first Brutus swore, by the reeking blood of the violated Lucretia, to exterminate every vestige of monarchy from Rome, we have seen an infamous band of pretorian soldiers proclaim from the ramparts that the Imperial sceptre was for sale at public auction! How striking

the contrast! how impressive the lesson it teaches us! and how inexcusable should we be to neglect its admonitions.

The history of Poland furnishes another example replete with instruction, directly pertinent to the subject of our investigation. By the Constitution of that country, at one period, the election of the Chief Executive Magistrate devolved upon the Diet—a legislative assembly, even more numerous than this House. Yet, what was the result? A scene of habitual and prostitute corruption, scarcely precedented in the annals of human depravity. No attempt was made even to disguise the enormity of the transaction; but the royal competitors entered the market, and conducted their infamous traffic for the crown, in the face of the whole world, with as much indifference to its opinion, as a citizen here exhibits in going to the shambles to buy the beef for his dinner.

But, sir, on this subject of the danger of Executive patronage, when brought in contact with the Legislative body, there is no country of which the example comes so nearly home to us as England. We can scarcely hope to be exempted from those national frailties, which shall appear from their political history, to be inherent in the character of the English. We are their descendants, and I am proud to acknowledge it. As we cannot claim either Gods, or Greeks, or Romans, for our ancestors, I rejoice that we have an English ancestry. The Anglo-Saxon, for sturdy and masculine national virtues, is unquestionably the best stock of modern times. To the example, then, of that hardy race, who, in the twilight of civilization, extorted *Magna Charta* from an unwilling monarch, and, at a subsequent period, prescribed the limits of royal power by a *Bill of Rights*, I confidently appeal to demonstrate the insinuating and irresistible power of Executive patronage, upon political bodies like this.

During the reign of the Stuarts, the contest between liberty and power was maintained under the names of Royal prerogative and Parliamentary privilege. In this contest, liberty was triumphant. Power, undisguised, was under the necessity of yielding to its more sturdy antagonist. But the Revolution brought a new family to the throne, made wiser, but not better, by the catastrophe of that which had immediately preceded it. The family of Orange gave up the claim of prerogative, and substituted what is speciously denominated *influence*, which is but another word for corruption. Sir, I lament the fact, while I declare it; but it cannot be disguised that the English Parliament is notoriously under the influence, the corrupt influence, of Executive patronage. Power, by the skilful use of this alluring blandishment, has risen from its fall, and re-established its dominion. Since the celebrated resolutions of Mr. Dunning, declaring that the power of "the Crown had increased, was increasing, and ought to be diminished," no successful effort has ever been made in Parliament to reform abuses, or to resist the influence of the Crown. Patronage has shed its moral pestilence over the political system; and almost every page of English history records the melancholy frailty of public men, in the fall of some Parliamentary champion of the rights of the People, the victim of Royal influence.

Sir Robert Walpole, one of the most able Ministers that English history can boast, and too fatally versed in the corrupt use of Executive patronage, expressed, as his deliberate opinion, founded upon his long ministerial experience, that, with the exception of three men, "*every politician he had ever known had his price.*" Though certainly not universally true, this remark is but too generally so in reference to all ages and countries. There is a precise accuracy in the phraseolgy of this sentiment, indicative of the masterly skill of him who expressed it. "Every man has his price." That is to say, you must study the character and foibles of each man, to ascertain what it is that will make him subservient to your purpose. A man who would reject a pecuniary bribe, with indignation, would, perhaps, have no scruples to hold a negotiation for an office. Another, who would disdain to make an *express* stipulation even for an office, might think it quite excusable to act under an *implied understanding*. And a third, who could not reconcile it to his conscience to have any understanding, either express or implied, might be seduced by accidentally hearing that a certain office was designed for him as a reward, not for his vote, but for his extraordinary merits. There is no end, sir, to the subterfuges of that self-deluding casuistry, by which ambition is prone to silence the remonstrances of conscience.

There is a marked distinction between public and private corruption, that explains the reason why the one is so much more generally successful than the other, in conquering those who fall within the sphere *of* its influence. There is a dazzling splendor in successful ambition, that conceals the depravity by which it achieves its purpose. The man who steals a penknife is shunned as an object of abhorrence: the man who steals a sceptre is hailed as an object of adoration. Power diffuses a deceptive gloss over the crimes of the usurper, and corruption sheds indeminity over its victims. Such are the fascinations of power, that it often wins the homage even of those whose dearest rights it has violated. But, sir, I can never regard it in any other light than as a public crime of the most atrocious hue, to acquire power by fraud and corruption. The man who rises by such means is a felon, *flagrante delicto*, and the insignia of his office are the standing monuments of his guilt.

But, sir, it is often said, "true, the politicians of England have been corrupted by patronage, but those of the United States are of more inflexible materials." Indeed! Where did we obtain this charter of exemption from human frailty? Alas, sir, we have no such exemption. The People of the United States, for the reasons which I have explained, are superior, both in virtue and intelligence, to those of any age or country; but their Statesmen are subject to the same influences that operate upon those of England, not, perhaps, in the same degree, but in a degree that is destined to be constantly increased, if not resisted by measures similar to the present. Sir, there is no country on earth where office has greater attractions, or is sought with more avidity, than in the United States. Since I have been in public life, it has been a constant source of mortification to me to witness the spirit which prevails on this subject. There are those, it seems to me, who would rather eat the "very crumbs from the trenchers" of Executive patronage, than the bread of honest independence.

In one respect, it appears to me, we cannot stand a comparison with the Statesmen of England. We do not estimate the dignity of a seat on this floor as highly as an Englishman estimates a seat in Parliament. To those whose objects are the public service, and an honest fame, there can be no theatre so desirable as this floor. But what mortifying spectacles have we seen, of eager competition among members of Congress, for the most paltry and contemptible offices in the gift of the Executive, merely for the pecuniary emolument?—Offices which I do not believe a member of the English Parliament would accept at the hand of his Sovereign. Nor do I see among us any of that extraordinary inflexibility in the adherence to political principles, of which the history of England furnishes some honorable examples. The elder Pitt threw his commission in the face of his Sovereign, as soon as he found that his own political principles could not prevail in the Cabinet. But, do we find any instances among us of the sacrifice of power to principle? On the contrary, do we not find political principle and consistency, every day sacrificed at the shrine of power? We see politicians of every hue and description thrown together, in the

Against these weighty considerations in favor of a uniform system, what rational arguments can be raised, even by the most refining ingenuity? Can it be maintained that there exist local peculiarities in the different States, that render it expedient that different *modes* of voting should prevail? Is there any thing in the local situation of New York which renders the district system proper in that State, while in Virginia the general ticket is best adapted to existing circumstances? This will not be pretended. It cannot be conceived that any reason can be applied to one State, that would not be equally applicable to all others, in regard to the *mode of voting*. It is a very different thing to determine the extent of the right of suffrage in the different States. This does depend upon local peculiarities, and is, therefore, appropriately a question for the States to decide for themselves. But even in relation to this matter, the fundamental law does not depend upon the will of the State Legislatures. The persons qualified to vote for the most numerous branch of the State Legislature, will vote for the electors of President; but those persons are ascertained and fixed, in all the States, by their respective Constitutions. It must be admitted, I think, however gentlemen may differ in opinion as to *which* of the different modes of voting is preferable, that *some* one of them is better than the rest. This being conceded, it follows, as an unavoidable consequence, that the system which is best ought to be adopted in all the States. Assuming, then, that I have shown that, whatever mode we adopt, it ought to be permanent and uniform, it only remains to inquire, which of the modes that have prevailed in the different States ought to be adopted. These are the Legislative mode, the general ticket system, and the district system.

Proceeding to examine these several plans, in the order in which I have stated them, I shall very briefly dispose of the first. As to the power which the Legislatures of most of the States have assumed, at one time or another, of choosing the Presidential electors themselves, I feel assured that I shall have the concurrence of a large majority of those who hear me, when I pronounce it a usurpation. Yes, Sir, the very first acts of the State Legislatures, in relation to the election of the President, furnish the best refutation of the doctrine held by some gentlemen, that the State Legislatures ought to retain an agency and control in the election of that officer. We see that these Legislatures can usurp power as well as abuse it. To settle this question, as to the power of the State Legislatures, a few remarks only will be necessary. The words of the Constitution are, that "each *State* shall *appoint*" the electors of President "in such manner as the *Legislature* thereof may *prescribe*." The *State* makes the appointment, and the *Legislature* has only the power to prescribe the mode. That the word "State" means the people of the State, is obvious, not only from its ordinary grammatical import, standing contradistinguished from the word "Legislature," but also from the commentary contained in the Federalist, which, considering the authority of that celebrated exposition, supersedes the necessity of any further argument on this point. In a number written by Mr. Hamilton, relative to the appointment of the President, we find the following decisive words: 'They have not made the appointment of President to depend upon pre-existing bodies of men, who might be tampered with beforehand, to prostitute their votes, but they have referred it, in the first instance, to the immediate act of the *People of America*, to be exerted in the choice of persons, for the temporary and sole purpose of making the appointment." Assuming, then, that the power heretofore exercised by the State Legislatures, has been without the warrant of the Constitution, I shall proceed to compare the only two remaining modes of voting, that have prevailed in the different States.

The first objection which I shall urge against the general ticket system, is, that it not only destroys the vote of the minority in the State, but actually transfers the votes which that minority give in favor of one candidate, to another. We know that, in almost every State in the Union, there generally exists a division of opinion amongst the People, on the subject of the Presidential election. Assuming that the People of New York, for example, should be thus divided in opinion, in the proportion of nineteen thousand for one candidate, and seventeen for another, what, let me ask, is the effect of the general ticket, upon the vote of that State? It forcibly gives the vote of seventeen thousand citizens to the candidate *against* whom they actually voted. The very votes which the *People* intended to defeat his election, are, by the *State*, wrested from their legitimate aim, and made subservient to the advancement of a man, who may, perhaps, be an object of abhorrence to the very People who are thus compelled into his service. It is thus, sir, that, under the delusive and mistaken idea of preserving the rights of the States, we sacrifice the fundamental principles of the Republican system. We literally immolate the *People* by thousands and myriads, at the shrine of an ideal phantom. But we shall be told that it is the duty of the minority to submit to the will of the majority. This, sir, is an obvious truth; but I beg gentlemen not to be misled by it. It has no application to the question I am considering. I am not complaining that the minority are compelled to submit, but that all the minorities in the States are *annihilated*, in making up the general aggregate of the whole Union, as if they were immaterial powers in a political equation. And the reason why I do complain of this is, that it gives the minority in the Union a chance for ascendancy equal to that enjoyed by the majority. To show the reality of this danger, I will call the attention of the committee to the difference between the *actual* popular vote of two large States, and the *estimated* vote of the same States under the general ticket system. I will suppose that New York has one hundred thousand voters, and Pennsylvania seventy-five thousand; that sixty thousand of the voters of New York are in favor of one candidate, and forty thousand in favor of another, and that the whole seventy-five thousand voters in Pennsylvania should give their votes to the candidate who received the New York minority. In this state of things, what is the voice of the People of those States? and what would be the estimated vote by the general ticket system? The candidate who received one hundred and fifteen thousand popular votes would actually receive only twenty-eight electoral votes, while his opponent, with only sixty thousand popular votes, would receive thirty-six electoral votes! We are led into error, on this subject of minorities, by not distinguishing between things that are essentially different. Wherever the action of a State is final and conclusive upon a subject, as in the election of her own Governor, the minority must of course submit; but, where the action of all the States in the Union is directed to one common result, the election of a President, the respective State minorities should be brought into the calculation, that we may really ascertain who has the genuine majority of the whole.

Every friend of the Union cannot but perceive a strong objection to the general ticket system, in its tendency to form political parties upon the basis of geographical arrangement. By bringing large political masses into the Presidential contest, by arraying State against State in the consolidated energy of their power, feelings and passions unfriendly to the harmony of the Union will be unavoidably generated. It is a fact known to us all, that, in almost every portion of the Union, there is a local feeling, which is but too apt to enter into all political questions affecting the general interests of the Republic. Into no question is this feeling more likely to infuse itself than that of the election of the Chief Magistrate. From this in-

combinations among the large States, that will inevitably result in the oppression of their more feeble competitors.

But, have the *People* of the small States any interest in the possession of this contested equality of power? Though it may increase the power of their politicians, and enable them to secure a large dividend of Executive patronage, yet what do the People gain, either in power or happiness? Has a small State, merely as a small State, any right or interest, which would be safer in the hands of a President chosen by Congress, than they would be in the hands of a President chosen by the People?

But, sir, is not this a delusive mockery even as to the question of power? Do the States really exercise it in point of fact? Consulting the actual operations of the system, we find that the Representatives of the small States have as often voted against the will of those States as in conformity with it. Will the small States contend, then, for the worse than unprofitable right of being *misrepresented* on the great subject of the Presidential election? Will they persist in a system that serves only to expose their Representatives to extraordinary temptation, throwing them into a scene of action, in which, if they had the virtue of Cato, they could not avoid suspicion? But the strong argument in favor of the proposed amendment, in reference to this question of relative power, is the equitable compromise which it involves between the large and the small States. It is that very spirit of mutual concession in which our Government originated. By the district system, the large States give up the power of forming combinations to overpower the small; and by removing the eventual election from this House, the small States give up their contingent equality. What most forcibly recommends this compromise, is the consideration that the powers mutually surrendered by the large and the small States, are dangerous to the purity of the Republic. It is an offering which patriotism requires us to make at the shrine of liberty. Is it possible that we can hesitate?

I do sincerely believe that we have reached a crisis in our great political experiment, when the fate of that experiment will depend upon the wisdom with which we act. Never was there a human assembly invoked by higher considerations to act with disinterested magnanimity. The destiny, not only of the rising millions that are to come after us here, but that of the whole civilized world, hangs trembling on the issue of our deliberations. No nation on earth has ever exerted so extensive an influence on human affairs, as this will certainly exercise, if we preserve our glorious system of Government in its purity. The liberty of this country is a sacred depository—a vestal fire, which Providence has committed to us for the general benefit of mankind. It is the world's last hope. Extinguish it, and the earth will be covered with eternal darkness. "But once put out that light, I know not where is that Promethean heat, that can that light relumine."

Mr. STORRS rose to address the Chair; but, on the suggestion of other gentlemen, moved that the Committee rise.

Before the Committee rose, Mr. McDUFFIE modified his resolutions, so as to read as follows:

"*Resolved*, That, for the purpose of electing the President and Vice President of the United States, the Constitution ought to be amended in such manner as will prevent the election of the aforesaid officers from devolving on Congress.

"*Resolved*, That a uniform system of voting by districts ought to be established in all the States, the number of districts in each State to equal the number of Senators and Representatives to which such State may be entitled in Congress, and each district having one vote.

"*Resolved*, That a select committee be appointed, with instructions to prepare and report a joint resolution, embracing the aforesaid objects."

The Committee having then obtained leave to sit again,

The House adjourned.

FRIDAY, FEBRUARY 17, 1826.

Mr. COOK submitted the following resolution:

Resolved, That the Committee on the Public Lands be instructed to inquire into the expediency of allowing settlements to be made on the Public Lands near to the Lead Mines, on Fever River, in the State of Illinois, and the Territory of Michigan, for agricultural purposes, until the same shall be surveyed and brought into the market; and also into the expediency of granting to those who may settle, within a limited time, the right of pre-emption in purchasing the lands improved by them respectively.

Mr. COCKE objected to the adoption of the resolution. He thought that our citizens were already quite ready to trespass on the Public Lands, without any special invitation from this House, encouraging them to do so. He wished to understand something more of this matter, before he could vote in favor of the proposition, which went to promote what it had been long the endeavor of Congress to prevent.

Mr. VINTON asked for the reading of the resolution, and it was again read at the Clerk's table.

Mr. COOK observed, that if the present resolution proposed to adopt any measure, or to pass any law, there might be some propriety in asking for a lengthy explanation before it was voted for: but this was a mere inquiry into the expediency of a measure, and he presumed might be suffered to go to a committee without any alarming consequences. There had recently been discovered within the bounds of the State of Illinois, a very rich and valuable mineral tract, abounding in lead ore. It lay remote from that part of the Public Lands which had been surveyed, and near the boundary line of the Michigan Territory. There were already between six and eight hundred hands at work upon the mines, and the number was increasing: but the greatest difficulty was experienced by them in obtaining supplies. Persons were willing to go there and raise supplies for these miners, but were forbidden, and warned off, by the Agent of the United States. The lands in the vicinity will not, probably, be surveyed in the course of many years. People are desirous of going to work the mines, (which pay a rent for the ore worked, to the Government,) but are retarded by the want of provisions. The object of the resolution was to permit persons to settle for the purpose of raising supplies, and to give to such settlers the pre-emption right, when the lands they should improve came to be exposed to sale. The latter, however, was a distinct proposition, and its rejection did not necessarily follow that of the first part of the resolution. It was clearly the interest of the Government to permit the settlement, as it enhanced the amount of rent for lead mines, and, at the same time, raised the price of the lands contiguous.

Mr. JAMES JOHNSON, of Kentucky, wished to add a few remarks to those which had been submitted by the honorable mover. The inquiry proposed, relates to the Lead Mines, on Beaver River. Near that river is a tract about twenty miles in extent, either way, in which a reservation made by the Government of the United States in its treaty with the Fox Indians. In the year 1804, a treaty was made, by which the whole of that country was purchased; but, in consequence of complaints by the Indians that their lands had, by the former treaty, been disposed of without their consent, a new treaty was made in 1816, by which a line was to be run from the Southern extremity of Lake Michigan, to the Mississippi, to be the boundary between the lands ceded and those retained. All the

ucted, in the recent establishment of the district system. n that State, so rapid has been the succession of political evolutions, that almost every party has been up and down, at least half a dozen times. Each having, in its urn, been in the minority, all have learned that the wisest policy is to be just.

And here, sir, I will remark, that it is no small objection to the general ticket system, that it naturally tends, upon the most obvious principles of re-action, to produce sudden and entire revolutions in the political character of a State. A very common state of things, in all the States, is a division of the parties very nearly equal. The obvious injustice of suppressing entirely the voice of the minority, is the natural basis of a re-action, by which that minority may swell into a majority. Let us suppose, for the sake of illustration, that the State of Virginia should be divided into two political parties, one having the ascendancy by a majority of two or three thousand voters. A change of opinion, in this small number, would produce an entire revolution in the whole vote of the State. These sudden and sweeping vibrations, depending upon such small and inadequate causes, are alone sufficient to demonstrate the defectiveness of the system that gives rise to them. That the state of public opinion, in relation to the general course of this Government, must, from this cause, become capriciously mutable, is too obvious to require explanation. The changes in popular opinion, which would hardly be felt if a uniform district system were established, would produce, perhaps an entire revolution in the administration and measures of the General Government under the other system.

On the question of State power, I would ask, what does any particular State gain by this process of compulsory concentration, through the general ticket, when all the other States avail themselves of the very same process? The question of power, is necessarily a relative question; and, in this view of the subject, it is of no advantage to Virginia, for example, to have the power to transfer the opposing minority to her favorite candidate, when an equal minority, in the very next State, would, probably, with equal injustice, be taken from him.

But, Mr. Chairman, the real question which we are called upon to decide, is, whether we will establish the district system, or have no system at all. It is certain, from the known state of public opinion on the subject, that the People will never consent to the establishment of an uniform general ticket system, by an amendment of the Constitution. Shall we, then, rather permit the existing state of Constitutional laxity to continue, than adopt the district system?

In estimating the dangers of the present state of things, I have often considered that Providence has been kindly regardful of us, or we should have been long since involved in the most disastrous civil conflicts. Perhaps we owe this fortunate exemption, in a considerable degree, to the moderation and temperance of our National character. But unless the Constitution is fixed upon some certain foundation, there is serious ground for apprehending the occurrence of the most delicate and embarrassing question, at no distant period. I will state a case that may probably occur at the very next election, and request gentlemen, if they can, to solve the difficult question involved in it. New York, we know, is now divided into electoral Districts, by a law which is admitted on all hands to be constitutional. Suppose the Legislature of that State, under the plausible pretext of preventing the division of the elective power of the State, were, on the eve of the next Presidential election, to re-assume the power which they formerly exercised, and appoint the Presidential Electors. Suppose the People of the existing districts, maintaining this act of resumption, on the part of the Legislature, to be unconstitutional, were to vote for Electors, different from those chosen by the Legislature; and that, under these conflicting titles, two pretenders should claim the sceptre of Executive power. This would be a contest which could only be decided by a civil war; and we should have a commentary on our present system written in blood. This is no imaginary difficulty. I solemnly declare that I am utterly incapable of deciding which of the two competitors would be the real President, and would thank any gentleman for his assistance who thinks he can solve the difficulty. To one candidate I would say, you have the Constitution on your side; to the other, you have on yours the practice of most of the State Legislatures, and the acquiescence of the country. And yet the question now presented is different from any that has heretofore occurred, because the law establishing the district system, being clearly constitutional, peculiar ground is furnished for regarding the legislative assumption as an unconstitutional act. Such a question, sir, would never be decided by dispassionate reasoning. Passion, strife, blood—these are the elements that would enter into the argument.

I shall proceed now, Mr. Chairman, to consider an objection to the District system, which I shall examine with more attention, from the respect I entertain for the gentlemen who urge it, than its intrinsic importance would otherwise demand. It is conceived that the proposed system tends to destroy the sovereign rights of the States, and to produce what is denominated consolidation. Now, sir, if I cannot show that the tendency of my proposition is the reverse of that which is ascribed to it in these respects, I will surrender the scheme as indefensible. To a correct understanding of the objection I am considering, a precise and definite conception of the State powers affected by the proposed amendment, is indispensable. As long as we deal in vague generalities, we shall certainly be involved in confusion, if not in error. What, then, are the powers which I propose to take away from the State Legislatures? The power of voting directly for the Electors of President, which will be admitted to be an usurpation, and the power to change the district into the general ticket system. So far as the proposition tends to prevent future acts of usurpation by the State Legislatures, it must be admitted to be salutary. The only power, then, which merits a moment's consideration, is the power of changing the mode of giving the popular vote. Is that a power that ought to belong to any legislative body? Is it not obvious, as well from our own experience, as from the nature of things, that it is a power which will only be exercised abusively, and for the accomplishment of party purposes? What other conceivable purpose can it answer? I will venture to assert that, in every instance in which the district system has been made to give way to the general ticket, party objects have constituted the avowed motive of the change.

But, sir, on this subject of State rights, let me warn gentlemen to beware of running the national barque into the vortex of real dangers, while attempting to escape from those which are purely imaginary. They regard the State Governments as sentinels, standing on the watch-towers of liberty, and yet place those Governments in a relation to the General Government that must destroy both their fidelity and vigilance. I have shown, sir, that where the General Ticket exists, the State Legislatures, by nomination or other modes of indication, will, in practice, control and decide the vote of the State, for President. By bringing the State Legislatures into the operation of choosing the President, you make it the duty of those to sound the alarm of approaching tyranny, who have been themselves instrumental in making the tyrant. It would be just as wise to expect the disclosure of a felony, by a participant in the perpetration of it. The true mode of preserving the guardian vigilance of the State Legislatures, is to keep them entirely out of the sphere of the Presidential canvass. Let them stand

denied or questioned by any, that, in this particular, the plan was the wisest and best which the Convention could have devised to secure the objects of the Union. It can hardly be inferred that those Conventions could have mistaken their own views, or that the future operations of this part of the system were not clearly foreseen and well understood.

The structure of this part of the Constitution has also been revised and amended under the administration and influence of many of those who first put the Government into operation. It is well worth our notice, too, that this revision and amendment took place at a period immediately succeeding the contingency which devolved the election of a President on the House of Representatives, and when the evils of an election by that body, whatever they may have been, were directly in the view of those who proposed that amendment. It was also a time when the prevailing doctrines were peculiarly auspicious to the success of any fancied improvement which should infuse into the system a larger portion of popular power in the Presidential election, if such an object was more consonant to its original principles. The professed object of the Congress of 1802, was, also, not so much to change the distribution of the elective power, as to give that true constitutional impulse to the system, which was alleged to have departed, in its practical operation, from its primary intention of carrying into effect the will of the majority of the People. Whether this has, in fact, been the only result of the amendment then adopted, it is not material to this part of the discussion to inquire. If, however, it has led to consequences which were not then foreseen, or if feared, not effectually guarded against, we may now be admonished of the dangers which commonly follow every disturbance of the fundamental principles of any settled form of government, however speciously amendments may be maintained, or however highly we may estimate our own foresight. The principles on which the political revolution of 1801 was founded, would also have tended powerfully to promote the result which the amendment, now offered to the House, assumes to be so desirable. Those who then came into power out of the political struggles during the previous Administration, rested much of their claims to public confidence on their support of the Rights of the People. During the Administration of Mr. Jefferson, this confidence secured the political power of the Republican party; and yet, Mr. Chairman, during the whole period of that Administration, this amendment of the Constitution, which is now pressed upon us as so clearly indispensable and vital to the system, escaped the attention of the keen-sighted politicians of those days, or, if considered at all, was never presented to the People as an amendment called for by the principles on which their power was established. The dangers of an election by the House of Representatives were then fairly and directly before the Congress and the country: and if it is now so palpable that such an election contains within itself the alarming innate constitutional principles of corruption, of which we have heard so much from the honorable gentleman from South Carolina, it must be somewhat unaccountable, and we must reflect upon it with wonder, that the sagacity of the statesmen of Mr. Jefferson's Administration had not detected and reformed this vicious inclination of the system.

Whatever may prove, in the final vote of the House, to be the result of this discussion, it is, perhaps, not to be regretted that the propositions now before the committee have been moved. The subject has certainly excited some interest in many of the States, and our deliberations here may, perhaps, tend to develop the real effect to be produced by the amendment, and place its expediency in public opinion on its true merits, whatever they may be. In the course of the remarks of the honorable gentleman from South Carolina, he was pleased to derive many of his illustrations from the past course of political events in the State which I have the honor, in part, to represent, and I am not disposed to deny that such has been, sometimes, the effect of her domestic dissensions on her true interests and prosperity at home, and her just influence in the Union, that many useful lessons may be derived from her experience. The evils which have afflicted that State may chiefly be traced to an arrangement of the power of appointment in her original Constitution, unsuited to the times which followed its adoption, and the great extent of State patronage which has been the necessary consequence of her increase in population and wealth, and the great variety of those political institutions which have resulted from her prosperity. Ferocious systems of politics, demoralizing institutions of party, and intolerant proscriptions of virtuous and honorable men, have sometimes stained her annals and destroyed her moral power. But, Sir, the People there have laid their own reforming hand on their political institutions. Their present Constitution has dispersed the distribution of that enormous accumulation of patronage which tended to pollute the administration of her Government—the old spirit of party now merely lingers for a while around a miserable remnant of its former idolatry, and public men must there be now brought to the standard of unbiassed public opinion, and tested by their political virtue.

The honorable gentleman has referred us to a recent event, as an expression of the true sense of the People of that State, in favor of a part of the amendment embraced in his resolutions. I shall, certainly, at all times, feel the highest respect for the opinions of that People, and especially on a mere question of expediency. But in looking to the late vote of that State, in favor of a district system in the Presidential election, I do not find in it that satisfactory evidence of their wishes, which I should desire to have on every question affecting their State interests, before I yield up my own opinion. The census taken nearly a year ago, shows that the State then contained nearly two hundred and seventy-six thousand qualified voters; and I believe that their number is rather underrated, when I estimate that, at the last November election, three hundred thousand electors were entitled to vote on that question. Now, Sir, the returns of the vote show, that on that proposition, about two-thirds of the electors of that State expressed no opinion whatever. The whole number of persons who voted both for the general ticket and district system, was only about one-third of the State; and, of this number, only a majority of some six or eight thousand preferred the district system, and the whole vote in favor of the district system was only a comparatively small part, about sixty or seventy thousand out of nearly three hundred thousand electors.

Though, as a general rule, I should not offer, here or elsewhere, any other criterion by which we should judge of public sentiment, than the sense of the People, expressed in its proper constitutional forms—yet when, on a peculiar subject and occasion, I am referred to as the vote of my own State, as evidence of the actual will of that People, I must be permitted to doubt if there is just to be derived from it any fair or satisfactory conclusion as the state of public opinion on this matter. The vote is susceptible, too, of other explanations, which authorize us to make a very large deduction from the value of the illustration which was drawn from it by the honorable gentleman from South Carolina. The time and circumstances under which this question was presented to the People of that State, were peculiarly unfavorable to eliciting a full and fair expression of public sentiment on the expediency of the proposition. The course of political events in the State, for some years past, is well known here. In the renovation of her Constitution, she had been lately thrice called to the polls of the elections. Scarcely had the agitation of that reformation of her system

tem, and the subsequent elections of her State and local officers subsided, and every thing seemed to promise her a long respite, if not lasting repose, from her severe and bitter trials, when an insane Legislature, under the influence of infatuated and desperate party councils, shamelessly bid defiance to the known public will, and dared to try their strength against the mighty indignation of an insulted People. They found themselves again called to a new and unexpected contest with corrupt and lawless authority, and when the anxious crisis of their moral power arrived, they rose in the strength of freemen, and, breaking the feeble chains of party, overwhelmed the usurpers of their rights in one common and undistinguishable destruction. When, Sir, history, faithful to the day in which we live, shall record her annals, the long train of ruins which followed that tempest of popular indignation, shall mark out her path to future times. Having successfully wrested from the Legislature this right, so long and unjustly withheld, the People of that State, exhausted in these repeated political conflicts, relapsed from the high excitement of that interesting period, and reposed in too confident security. It was in this state of comparative apathy, that a specious and insidious proposition to district that State, was presented to them. In this repose, they have been shorn of their strength, in the election of the President, and suspicions have prevailed, not founded on slight observation of past events, or imperfect judgment of the future, that the tendency of this suicidal policy may chiefly be to paralyze her State power and influence, and enable party leaders to bring into market a large share of her electoral votes, who would otherwise despair of success, on a general ticket throughout the State.

Before I proceed to the particular merits of the amendments now before us, I will ask the attention of the committee to an examination of some parts of the political structure of the Constitution, and the principles on which the elective power, in the choice of the President, was organized. In reforming this system of Government, it is necessary that we should first form for ourselves just views of what these principles really are. It will not answer, on so grave a subject, to assume that they were, or ought to be, what we may merely desire them to have been, and then deduce, from any hypothesis of our own merely, the expediency of improvements which we propose to engraft upon the system, and their consistency with the original principles of the Constitution itself. The honorable gentleman from South Carolina assumed as first principles, throughout the whole course of his remarks, that the original adjustment of the electoral power was intended to obtain the sense of a majority of the People of the United States, in the election of the President; and he reasons throughout on the assumption that in this adjustment we find the introduction of the democratic representative principle into the system—that the plan of a district system, which his amendment proposes, is most congenial to the spirit and intention of the Constitution, in the operation of the elective power; and that the general ticket system tends to subvert and defeat the fair expression of the will of a majority of the People, in the election. If these positions, (and I have endeavored to state them with precision and fairness) are not sustained by the Constitution the foundation on which this part of the amendment, and the argument for its adoption rests, are unsound in principle—they carry with them no recommendations to our favor or support, and every conclusion which has been drawn from the various views in which the operation of this part of the amendment has been presented to us, must be essentially vicious.

I concur in the opinion expressed by the honorable gentleman, that the exercise of the power of choosing the Presidential Electors by the State Legislatures, is neither warranted by any fair construction of the Constitution, nor the spirit of the system. My opinion, however, of the unconstitutionality of that assumption of power, is founded on views of the principles of the Constitution, essentially different from those on which his amendment is founded. I shall have occasion to notice this point in another part of my remarks, and will not stop to examine it here.

The first inquiry, then, directly before us, and which must be answered before we can proceed to any illustration of the true character and effect of this amendment is, What are the true constitutional principles on which this elective power was adjusted? I dissent, entirely, Mr. Chairman, from every fundamental position which the honorable gentleman has assumed, and hope to be able to convince this committee that the amendment cannot be sustained on any principles which can be found in this Constitution.

The great end to be accomplished in the formation of the Constitution was the establishment of a National Government which should be adequate to the objects, in which, as one People, we had common interests, and which at the same time should preserve in the adjustment of the principles of the system, the just influence and power of the several States of the Confederacy. The parties to this compact came together in the character of separate and independent sovereignties. They were *distinct sovereign communities* of People, but in all that related to their external relations and their common security, as well as in much that concerned their domestic and internal prosperity, their true and obvious policy was the same. The formation of a common Government for any of these purposes, however, was attended with great moral and practical difficulties. The natural situation and advantages of some of the States, and the character and habits of the People, had led them to look to commerce and navigation as one of the chief sources of their future prosperity. Other causes, combined with some of these, had, in some degree, established a different policy in other States, more suited to the existing state of their particular interests and social institutions, and perhaps more compatible with their safety. They differed greatly from each other in relative power and population, and it was foreseen that many causes arising from the peculiar advantages (and especially from the crown lands within their territorial limits, which some of them possessed, would necessarily increase this disparity in future. In several of the States there existed common political interests, peculiar in their character, and closely connected with their internal peace and security—perhaps their very existence—which these States could never safely subject, in any degree, to the operation of any system not under their own direct and exclusive control. Public opinion, arising in a considerable degree from difference of situation and interests, education, and particular habits of thinking, had established in many of the States different notions upon many of the principles which enter into the distribution of political power in Representative Government—and, although in the great original outlines of that system, the Constitutions of the State Governments were organized on the same general principles, yet we were not in this, as well as in other respects, altogether a homogeneous People. It was a most difficult and delicate matter, calling for all the sagacity, prudence, and forbearance, as well as political wisdom of the ablest and purest men, to reconcile, in any way, and to unite, even for the most clearly desirable ends, under one frame of Government, the various and distinct, if not, in some respects, incongruous and repugnant interests of the parties to the Federal Constitution. If the secret history of the Convention shall ever, as it probably will, be fully disclosed, we may perhaps find that at one time its actual dissolution was considered as hardly problematical.

By the then existing systems of Government, the security of all these various interests of the several States was

confided, under their own Constitutional forms of Government, to legislatures immediately responsible to them alone. It was to these bodies that the protection of their civil rights was directly entrusted. The power and resources of the States were in the hands of these legislatures, as the immediate guardians of the common political interests of the People who created them. In the formation of a compact between the People of the respective States, which should create a more extended and combined National Government and Confederated Republic, they were called upon to take from their State Legislatures many of the powers of sovereignty which had been vested in them, and to confer those powers on the Federal Government. In the distribution, not only of those powers, but in all those which should be incidentally accessary to the new system, they were most sensibly alive to the security of their separate interests and the preservation of their just relative political influence in that peculiar system which was to be established more or less on the basis of the popular principle of a representation of the People of the several States, as different sovereign communities. In the adjustment of the Executive power of the Union, in all its branches, the Convention were met with the full pressure of these various influences. It was natural that the People of a country on which the hand of tyranny had so recently inflicted the most frightful calamities of despotic vengeance, should look to the organization of the elective and Executive power, with the keenest suspicion and most watchful jealousy. The example of other countries, too, was before them. It was this power which, in all Governments, was most disposed to strengthen itself, and which, in this, might find its policy in weakening those interests and influences to be here secured by the Constitution to the People of the several States, and which might obstruct its path. Experience may indeed have shewn, in the operation of the Government, that those fears which were entertained when this Constitution was presented to the People for their adoption, were more or less unfounded, and that the Executive power is, in truth, much weaker than it was theoretically supposed to be. Be that as it may, we are seeking in this discussion to ascertain the true principles on which this power was intended to be adjusted by the framers of the Constitution and the People of the several States who adopted it. It is then, sir, in my opinion, a compact between the People of the several States, with each other of the respective States, as distinct, sovereign, political, and primary communities. It is not to be treated as the creature of the State Legislatures. These were not parties, as Legislatures, in any sense, to this compact. The Constitution, throughout, speaks of the parties to the compact in the character of such distinct State communities. It was to be ratified by the Conventions of "*the States.*" The House of Representatives is composed of members chosen by "*the People*" of the "*several States.*" Representation and direct taxes were to be apportioned among the several "*States.*" Each "*State*" shall have at least one *Representative.* The Senate shall be composed of two Senators from "*each State,*" chosen by the "*Legislature* THEREOF." In the choice of a President by the House of Representatives, the votes shall be taken by "*States*"—the "*Representation* from each State having one vote." The Judicial power shall reach all cases between two or more "*States,*" &c. and between "*a State,*" or the citizens "*thereof,*" and "*foreign States.*" The sense in which this term is so obviously used throughout the Constitution, is founded on the principle which I have before stated, and there is not, in my judgment, a single instance in which it has been used in that instrument, which does not fairly admit of that construction which is so much in harmony with the moral and political considerations which entered into the structure of the Government. It is true that the *Legislative* power operates *equally* on the People of the several States, and their political rights and duties are common—and, so far as the Government, incidentally from its structure and more directly in the system of general legislation conferred on Congress in certain enumerated powers, produces that equality, it must be considered as a national or municipal system, and as emanating from the People of the United States as one common mass—and it seems to me that, in this point, the supporters of State rights have commonly mistaken the just foundation of their principles, and endeavored to derive from mere rules applicable to the construction of these grants of power, the great principles of security to the rights reserved to the States in this system of Government and its operation. This reservation and these securities lie, in my opinion, in very different parts of the system, and in none are they more vitally concerned than in the distribution of the electoral power which we are now considering. It is a great error to treat this system as founded on the pure, popular, representative principle (which the amendment professes to adopt) in the structure of any branch of the Government. The Senate is established on no such basis. The composition of the Representation of the States in this House is governed by no such rule. There is one interest which goes to make up the relative numerical power of some of the States here, which directly subverts the whole foundation of popular representation in a free Government, and the smaller States are secured one Representative at least, on principles which have no necessary connexion with the population of those States. The distribution of the electoral power in the choice of the President by the several States has been graduated among them by their collective numerical power in this House and the Senate, which carries in it the ingredient of all the Federative as well as representative principles which entered into this political system. The compromise which produced this Constitution is illustrated by these views of the subject. The representation in the Senate secured the equal power of the State sovereignties (not their Legislatures) in Congress and in other respects these sovereignties there hold the exercise of the Executive power, in some degree, under their own control. The slave-holding States retained in their representation in this House an adequate security for that interest, and the compensation, whatever may have since proved to be its value, which the free States received for that concession, is also to be found in the same movement. The deductions which I draw from these first principles of the Constitution, are, that in the election of President, the expression of the will of the *People* of the several *States, as distinct political communities,* was intended to be preserved inviolably in that election.

The primary object of the exercise of that elective power was not to collect the sense of the People of the United States as one common mass, but as representing the will of separate independent Republics. They, as the *People* of the *several States,* were the *parties* to the compact, and not the State Legislatures. A construction different from this is not in harmony with the nature and analogies of the Constitution, and goes to expunge the expression of the public sentiment of the People, as States totally from the election. The exclusion of the power of the State Legislatures from the choice of the President must be the necessary political consequence of this view of the system, unless we admit that it may have been the design of the framers of the Constitution to give it an effect which might render the President the mere creature of the State Legislatures, in known hostility to the popular will of the States. It is not an answer to say that the State Legislatures represent the will of the State sovereignties. They do so on all the points of power conferred upon them by the People of the States; but this right of choosing the electors for President is derived from the Constitution of the General Government, and conferred on and fixed in the People themselves. That part of the

ten urged against that part of the proposed amendment which makes the ultimate choice of the President to depend on the immediate act of the People. I am not, I trust, one of those visionary advocates of the abstract rights of man, that would extend the power of the People farther than is conducive to the happiness of the political society. It is idle to suppose that the People can have any rights incompatible with their own happiness. Although, therefore, I have shown, that they are necessarily virtuous from their position, yet I admit, that patriotic intentions would furnish no adequate security for the wise selection of a Chief Magistrate, in the absence of sufficient intelligence. It would be a vain and delusive mockery, to invest them with an elective power, which they could only exercise to the destruction of that which is the end of all government—the national good. There is no political truth more worthy of the attention of a practical statesman, than that the freedom of the People cannot rise higher than their intelligence. Such is the indispensable condition of freedom; and all the attempts which have been made in modern Europe, to render Government more free than the intelligence of the People would warrant, have resulted in bloody and disastrous reaction. I do not hesitate, therefore, to admit, that the People have no abstract right to any power, which they cannot exercise with intelligence. Is it true, then, that the People of the United States have not sufficient intelligence to choose a President?

On this subject, we are told, that history furnishes no example of a Chief Executive Magistrate chosen directly by the great mass of the People. This, sir, is a melancholy truth; and it furnishes the true solution of the fact, that there never has existed a Republic that has not lost its liberty.

It is easy to demonstrate, that, previous to the establishment of this Government, liberty never had any thing like a fair experiment. This, sir, will conclusively appear, when we come to consider historically and philosophically the causes, why it is that the Chief Magistrate of an extensive country never has been chosen by the great body of the People. How, then has this happened?

As all the Governments of modern Europe had their foundations laid in the principles of the feudal system, the only experiments upon the Republican system, which deserve to be recorded in history, are those made by the ancients.

Now, the election of a chief magistrate by the mass of the People of an extensive community, was, to the most enlightened nations of antiquity, a political impossibility. Destitute of the art of printing, they could not have introduced the representative principle into their political systems, even if they had understood it. In the very nature of things, that principle can only be co-extensive with popular intelligence. In this respect, the art of printing, more than any invention since the creation of man, is destined to change and elevate the political condition of society. It has given a new impulse to the energies of the human mind, and opens new and brilliant destinies to modern Republics, which were utterly unattainable by the ancients. The existence of a country population, scattered over a vast extent of territory, as intelligent as the population of the cities, is a phenomenon which was utterly and necessarily unknown to the free States of antiquity. All the intelligence which controlled the destiny and upheld the dominion of Republican Rome, was confined to the walls of the Great City. Even when her domininion extended beyond Italy to the utmost known limits of the inhabited world, the city was the exclusive seat both of intelligence and empire. Without the art of printing, and the consequent advantages of a free press, that habitual and incessant action of mind upon mind, which is essential to all human improvement, could no more exist, amongst a numerous and scattered population, than the commerce of disconnected continents could traverse the ocean without the art of navigation. Here, then, is the source of our superiority, and our just pride as a nation. The statesmen of the remotest extremes of the Union can converse together, like the philosophers of Athens, in the same Portico, or the politicians of Rome, in the same Forum. Distance is overcome, and the citizens of Georgia and of Maine can be brought to co-operate in the same great object, with as perfect a community of views and feelings, as actuated the tribes of Rome, in the assemblies of the People. It is obvious, from these views of the subject, that liberty has a more extensive and durable foundation in the United States, than it ever has had in any other age or country. By the representative principle—a principle unknown and impracticable among the ancients, the whole mass of society is brought to operate, in constraining the action of power, and in the conservation of public liberty. The extent of territory, which, by the operation of fixed and obvious laws, caused the Roman Republic to sink under its own cumbrous weight, is our best security against a similar catastrophe. The extensive provinces of that Republic, incapable of being brought into the constitutional action of the political system, presented a mass of unenlightened brute force, unconnected with the Republic, by political sympathy or interest, and ready to be wielded by any military adventurer, for the overthrow of public liberty.

In adverting, and I do it with peculiar pleasure, to the situation, and probable destiny of the United States, as contrasted with those of other nations, I would ask, emphatically, what would be the condition, what the security of our liberty, if it were dependent upon any single city? Sir, all cities, however intelligent and virtuous, must, from the very structure of their society, have a populace of greater or less extent, which, when roused to action, by any extraordinary excitement, are impelled by mutual sympathy, and the contagion of feeling, resulting from contact, to acts of turbulence, riot, and outrage. In a word, they degenerate into a tumultuous rabble. I will take Boston for an example, as furnishing the strongest illustration—a City, which I cannot mention, without having excited in my breast strong emotions of reverence, connected with the proudest recollections of our Revolutionary History. In this City, sir, inhabited by the unmixed descendants of the genuine Old English puritans—in this City, distinguished for the general intelligence and steady moral and religious habits of its citizens—in the cradle of American liberty, and the emporium of American literature and arts, what is the spectacle we have recently witnessed? We have seen a miserable strolling player, an outcast from his native country, throw the whole city into a scene of riotous commotion, that might have swept away the liberties of the Republic, had they depended upon so frail a security. But, I thank God that the liberties of this country do not rest upon the trembling and unsteady basis of any city—neither Athens, nor Rome, nor Boston—but on the intelligence of the great mass of the People, scattered as they are, over our widely extended surface.

In pointing out the prominent circumstances that distinguish us from other nations, I will briefly call the attention of the Committee to two other causes of the superior political capability of the People of the United States, which deserve to be considered. The one is the abolition of the rights of primogeniture, which distinguishes us from the nations of modern Europe; the other is the substitution of machinery for manual labor in the arts, which distinguishes us from the ancients. A celebrated writer of Scotland, now living, I believe, expressed the opinion, that the abolition of the laws of primogeniture, in Europe, would do more to improve the political condition of its inhabitants, than any other measure which the wisdom of man could suggest. Though I am not prepared to say

give up the power which many of the States have retained in this election on other principles? The amendment now before us preserves this inequality still, and so far from being calculated to obtain in the election of the President the will of an actual majority of the People, must operate on principles which may defeat the choice of that majority, and yet unite a majority of electoral votes in favor of some one candidate. It appears to me that, in this respect, the amendment does not conform to the principles on which it is supported—and it must undergo at least one essential modification, before it can produce the result which the gentleman from South Carolina deems so important to be attained in the election of the President. The reservation of power which it contains, growing out of the extent of the slave population of the States, is contradictory to the principles on which he so highly recommends it to our favor.

If, then, Sir, I have not mistaken in this discussion the first principles of the Constitution, this part of the amendment before us is incompatible with our system of Government. It has been supported, however, by several considerations growing out of the operation of this elective power, which require some examination before we assent even to its expediency. The gentleman from South Carolina entered into a comparison between the merits of the district and general ticket systems in the United States, and inferred, from the views which he presented to us, that the former was to be preferred. He introduced this part of the discussion by stating that whatever might be the rule, it was desirable that it should be uniform in all the States. This, Sir, must depend on the extent to which we may be disposed to apply this principle in the exercise of the elective power, in any constitutional amendment upon which we may finally agree. If uniformity is desirable, (and it may be more or less so in all systems) it is most consonant to a representative system to introduce that uniformity of rights which tends most to equality, not only in form but in more substantial and important matters. If it is admitted that the elective right is a State power, the mode of choosing electors must be adjusted by their particular views of their own interests, and on principles which they themselves think to be most conducive to the security of their just influence in the Presidential election. The People of the several States, having subjected this right to their own regulation, may find much of its value to consist in preserving it under their own control. If perfect equality of political power can be attained in all the States, I am not certain that I should not prefer to adopt the district system: but under the present distribution of the elective power, (which this amendment leaves untouched) there is not, to my mind, any value in this principle of uniformity but its name, and its introduction may be adapted to produce very great inequalities in the results of its operation. The comparison which the gentleman drew with great accuracy, between the present operations of the different elective systems adopted in the States of New York and Virginia, presented the results of these diverse adjustments of this State power in a very striking light. It may well happen, in so large a State as New York, where no direct common interest or general influence is in active operation, that her electoral vote may be divided betwen two persons in the ratio of 19 to 17, while in Virginia her undivided strength of 24 votes may be given to one of the candidates, and thus produce the singular result that the effectual power of New York in the election would stand, as the gentleman justly concluded, compared with Virginia, as only 2 to 24. He asks us, "if such injustice could be tolerated?" There is a plain remedy for all this yet within the control of the People of New York, which may preserve to that State her real elective power, and by which these States may both stand on principles of uniformity, and, at the same time, preserve also their constitutional equality of right in the election. To correct this possible unequal result, by districting the State of Virginia, might virtually annihilate the entire power of both these large States; but if New York should change her present system, and adopt the plan of a general ticket, she may resume her proper influence, and both States may retain their respective constitutional power in the Presidential election. Distraction of public opinion is, indeed, a great evil in any of the States, but the remedy is not to be found in the diffusion of a principle among them all, which necessarily tends to spread that evil with it wider. If the district system is so much more Republican in principle, and truly democratic in its operation, that the spirit of our Constitution, in the adjustment of the power of the States, required its adoption, Pennsylvania, Virginia, and other large States, would probably before this time have discovered the political virtue of such a system. One system must, indeed, be necessarily better than another, as the honorable gentleman from South Carolina justly said. As a general abstract proposition, it may be undeniable, if the objects which the several States desire to attain be the same, and they have the same interest to cherish, and there exists, at the same time, no unjust inequality between them. But it is clearly not better that some of the States should risk the effect of an amendment to the Constitution which may jeopard, by any change of system, those interests, for the preservation of which they became parties to the compact, or destroy the rights which they have reserved to themselves under it.

It is said by the honorable gentleman, that the election of a general ticket destroys the vote of the minority in a State, and that the consequence of that system is virtually to transfer the votes of that minority to a candidate whom they perhaps dislike or abhor. This argument conceals within itself a fatal error in principle. It indirectly assumes, clothe it in what dress we may, that minorities are entitled to representation as well as majorities. If there is any soundness in the position, or any foundation for complaint, we must recollect that the same result must happen, more or less, not only in the district system, but in all elective systems whatever. The only real difference in principle in the two plans before us, is, that the minority, on the plan of a general ticket, may be much larger than the minority of a mere fragment of a State on the district system: or, we should rather say that such a minority appears larger only because it is a congregation of lesser minorities. But it can never be admitted, as a just foundation for any argument whatever, in any elective Government or system, operating in a large or small State, or any where, that the minority have any rights like these. If in the choice of the President the elective power is a *State* power, the general ticket system is founded on sounder elective principles than the district plan; and it is, *a fortiori*, more so, if this part of the Constitution was adjusted on the principle assumed by the honorable gentleman, that the object of the Convention was to obtain the sense of a majority of the People of the United States in that election. The first and only certain mode of obtaining the sense of a majority in a particular State, or of the whole People, must necessarily be by a general vote throughout that State or the Union. Till a general vote in the Union is not resorted to, the next mode of ascertaining, or rather approximating to the sense of a majority, would seem to be the distribution of the elective right among the largest masses practicable. It is true, that if you divide the entire vote even into two masses only in the election, a single chance is created that the minority may, perhaps, control (for they might only paralyze) the majority. The more you multiply the number of these masses, the further we remove the result from that which we profess to attain—the will of a majority of the whole Union. To illustrate the principle for which the gentleman contends, he supposes a

might happen, in which, by the general ticket system, the vote of the State of New York might stand between two persons in the ratio of nineteen to seventeen—that, under that plan, the votes of the minority, which may have been designed by the "*People*" to defeat a particular candidate, are totally sunk into the estimate of the vote of the "*State*." This only proves, Sir, that the minority, in such a case, must submit to the will of a majority. There is some error in this argument arising from the use of terms. It would, in my opinion, be more correct to say that the *persons* who compose such a minority may have failed in their expectation of defeating the sense of the *People*: for the will of *the State* and the will of *the People* of a State, are merely convertible terms when we speak of the Presidential election. There cannot, in my opinion, Sir, be contrived, by any ingenuity, a scheme which may so effectually defeat not only the will of the People of the several States, but of the majority of the Union, as the district system. It carries within itself the chances of that result, multiplied in the same proportion that we increase the number of the districts in a State, or their aggregate in the Union. Under the general ticket system, and throwing out of the account the votes derived from Senatorial representation, no person can be elected unless he obtains a majority of the electoral votes in the gift of the People, voting on the basis of their true constitutional power—by States. If there is occasionally any inequality under the system of voting by States, like that which the gentleman from South Carolina supposed, in the comparison which he drew between the separate result of the election in New York and Pennsylvania, voting by States, and the result of a vote in those States, if united in one common mass, these inequalities are much more striking and more highly mischievous under the district system. It is by this system that the minority of a State may effectually defeat the will of a majority. Let us consider what may be its effect on the vote of New York in the election of a President, on a division of the popular power of that State into thirty-six electoral districts. Let us suppose that the aggregate of all the surplus majorities in nineteen of these districts, every one of which are in favor of one person, is fifteen thousand votes—and that the aggregate of these majorities in the remaining seventeen districts, all of whom are for a different person, amount to twenty thousand. The effect of this system is, in that case, certainly to defeat the will of the People as a State, and to give to the minority more than sufficient power in the election than the majority. If we pursue the consequences of this plan still further, we shall find that it may happen that a single district may give a greater majority, for instance, a majority of ten thousand votes for one person, when the aggregate of majorities in the whole remaining thirty-five may be only five or nine thousand for a different person; and, in such a case, the power of a minority under the district system is to that of an actual majority in the State, as thirty-five to one! This effect of the system is by no means problematical. I am indulging in fanciful theories on its consequences in the States, and its probable tendency to defeat public opinion. Experience has already, in numerous instances, confirmed the truth of these its fatal effects on the will of the People. The history of many elections in the States which have adopted that plan, if they are examined, must show that such is its tendency. If the general ticket system on any political hypothesis of the Constitution, occasionally disregards here and there in the States the minority of their votes, the district system within such a State necessarily leads to the still more heretical anomaly of principle which defeats the will of the majority, or completely paralyzes the power of the State. Such a State may as well at once be struck out of the political system in the presidential election. It is a mockery to call for the exercise of the will of the People when the very organization on which we profess to obtain it fairly, is only calculated to defeat it altogether. Under the general ticket system, the true original principles on which this elective power among the States was adjusted by the Constitution is completely preserved, and the will of the People of the several States, as States, is strictly regarded, and takes its full effect on the election of the President. Before we adopt any amendment whatever to any part of the Constitution, we must be satisfied that it proposes some valuable improvement to the system. The question before us is not altogether even whether, under the principles on which this power was settled among the States, there may not be some necessary inequality or some incidental inconveniences. It is possible that it can be improved—but we are first to determine whether the plan proposed by the honorable gentleman from South Carolina is a better one, and so adapted in its operation as to remedy these inequalities and inconveniences. Until we are satisfied on that point, I trust we shall not give our assent to it. If the general will of the People of all the States, as a common mass, is the end which it proposes to respect, it is, in my opinion, better calculated to defeat the very object which it professes to attain with so much certainty.

It is further urged, in support of the introduction of this system, that it is adapted to remedy the evils which have sprung up in many of the States, from the establishment of what has been commonly called the caucus system—that the necessary consequence of the general ticket plan is to throw the power of the States into the hands of political managers, who wield this elective power for the accomplishment of their own political purposes. Whatever may be the names which we may give to systems of this sort—whether we denominate them as caucusses, or if, as in Pennsylvania, they assume the somewhat less offensive appellation of conventions, I shall not here enter into any particular examination of their merits, nor shall I differ at all from the justice of the views of these systems which have been presented to us, or are to be inferred from the lights in which they were presented by the argument of the honorable gentleman from South Carolina. But, sir, the true remedy, after all, against the operations of these party systems, is to be found in the stern independence, sagacity, and integrity, of the People. The moral power of this system can only be sustained by public opinion, co operating with it to the same common end. It may, in some degree, tend to the more perfect organization of party—its discipline, efficiency, and activity; but it is to be most successfully met by public opinion, and its operations defeated by the independent exercise of the elective power of the People. It is not in the Presidential election alone that it finds the policy which has given it existence in the States; and the district system in that election will not annihilate the party interests which sustain it. New York has adopted the district plan in that election, and yet this system has been there revived—perhaps with as much efficiency as it ever had. In the choice of electors, I doubt if the district system will provide a complete remedy against the party influence of this political machinery; even at the risque of another evil, the fatal annihilation of the elective power of a State. So long as this party system collects itself at one point, its evils are more fully exposed and accurately judged of. It awakens the jealousy and keeps alive the vigilance of the People. It then presents a single power, against which the moral energies of a whole State may be directed, and if crushed in such a contest, it rescues from the general wreck no remnant of the elective power. Diffuse it, and it still operates silently and unseen. The "central power" still keeps in motion, in other forms, the elements of party organization, and it will still find its way to the remotest corners of a State. So long as it remains concentrated, its power may be subdued; but diffuse it, and it carries its

contaminating influence throughout the body politic, tainting the whole system and corrupting the vitality of our social institutions.

The view which the honorable gentleman presented to us of the effect said to have been produced in Maryland, by a few votes on some occasion, from which it was inferred that only ten or a dozen men, composing a surplus majority, produced an entire political revolution in that State, attributes much more to their elective power than they are entitled to. It is not the surplus over a bare majority whose will alone determines any question. These are but the component parts which constitute the whole number of voters which make up the entire mass of the majority. The Constitution was adopted in the Convention of Virginia by only ten votes, and the late declaration of war passed one branch of Congress by a majority of only four or five votes. It can hardly be considered as just to say, that ten men adopted the Constitution of Virginia, and half a dozen, only, declared the war against Great Britain. This notion was on that occasion carried so far, that I well recollect to have seen or heard of a book written soon after that war commenced, the scope of which was gravely designed to prove the extreme impolicy and absurdity of going to war on the vote of five or six men only! A member of this House, from the State of Pennsylvania, and one of the Representatives from the City of Philadelphia, or its vicinity, was once returned here by a majority of only one vote out of ten or twelve thousand; but we should hardly say, that he was elected by one man; or, if we do adopt that absurdity, we might as well add that as he was elected by one person, he was to be considered here as representing that person only.

On the other branch of these amendments, included in the propositions before us, we could have voted more satisfactorily if the resolution itself contailed the details which the honorable gentleman suggested in his remarks to be his intention to couple with this part of the amendment. He states, that, if we should agree to take the ultimate choice of a President from Congress, he proposes to provide for the contingency of a second election, by sending back to the People either the two highest candidates, or the persons having the two highest numbers of votes, (I did not precisely understand which, and it is immaterial to the view which I shall take of the proposition,) for a second choice by the People, voting throughout the States by districts, between such persons only. We must, therefore, treat this resolution and this plan as one proposition, and consider its merits in connection with such a system. The principal argument in favor of taking the election from this House is founded on the danger that this power may be abused in the hands of the Representatives of the several States here. This argument directs itself against the existence of all political power, and all institutions of Government among men. If the innocent and pure are most liable to fall, by reason of their too confident security, this power here might be more dangerous still. Now, sir, to my mind this species of argument, drawn from the possible abuse of political power in all Governments, only proves that it is much better to go back at once to a state of nature and derive our notions of Government from the social institutions (if social they are in any sense) of the aborigines in our vicinity. If this argument is received by any one who is willing to act on the faith of it, it may present to him inducements to abandon civilized society and unite himself to the savage tribes; but it can receive but little favorable consideration any where, when we remember that, in all our forms of Government, there are restraints, both moral and political, which entitle all public bodies to some confidence. The obligations of an oath and of honor—the power of conscious virtue and the love of one's country, are securities which bind men to their integrity every where. If this House is not to be trusted by the People, to whom it is directly responsible, and no confidence is to be reposed on our integrity in this point, it o serves but very little on any other. But, sir, the hono ble gentleman has derived much of the force of this ar ment from the liability of this House to be corrup men in power. This illustration is but the same arg presented in another posture. The one is founded o innate depravity of the body itself, and the other o danger of its contamination from evil men. If we inc in the conclusions which are drawn from these consid tions, we may come to the conclusion at last that the Pe ple themselves are not to be trusted in the exercise of th elective rights. If those who are elected directly b the mass of the People are not to be trusted at all, dangerous might a direct election, by the People, of President, prove to be, on the hypothesis of the honora gentleman. If this House is so peculiarly liable to be led or corrupted by men in power, is there nothing to apprehended among the People from men out of power Whatever may be the extent of the influence which me in power may obtain in this House by "fawning and fla tery," there is some reason, in all elective Governments for the People also to be on their guard against the arts men out of power, who, in the disguise of friends of t People, may flatter their pride, fawn upon their favor, a finally steal away their rights. The evidences of thi ger are neither few nor obscure in history. Among all views from other times and other countries, which honorable gentleman drew to his argument, he mi have found in the history of every Republic at least, seve striking illustrations of this danger. My own reflect on the nature of this Government have led me to a conc sion directly opposite to that of the honorable gentlem If this Government is to be demolished, it will never the weapons of its destruction in the hands of the power. The Prætorian bands will never be led up fatal work from this House. There are great mat feeling in different parts of the nation, and conn rests which affect great sectional portions of the co which must be first inflamed and put in motion who seek for power—the spirit of anarchy will sp North, "your commerce is to be annihilated" South, "your internal security is in danger"—an West, "your inheritances are to be taken from you your political power is trampled upon"—we may exci among the People for those who, flattering the pr ces—fomenting their passions—stirring up the dead ments of party hatred, and exasperating the bitterest fe ings of human infirmity, persuade them to consider public men and statesmen as traitors to their interests, to treat them as public enemies. Then, sir, we ma amid the confusion of this tumult of passion and pre phrenzy, tyranny, in its incipient garb, and yet unde with power, mounting itself on "young ambition ladder." If we are really so unfit to be trusted, little disposed to regard public opinion and the rig will of our constituents, the honorable gentleman have spared all his labor to convince us of the prop this amendment. Experience and the history of country have not, in my opinion, yet shewn that integrity of this House or the country, is ever to rupted by Executive influence, or made subservie will of that Department. During the Presidency Washington, and with all the great and well-deser moral power of his character, the House of Repre tives, at times feebly supported his general polic administration of the Government. The administra his successor, closed its term after a very doubtful by the Legislature, and the first Congress which ed in the next year, reversed most of its public mea decisive majorities. Mr. Jefferson was elected House of Representatives: and if the abstract pro which the honorable gentleman has offered us as by which we are to be governed in making up our

ment on the conduct of public men, and the motives which guide them in the distribution of patronage are just, to what a deplorable situation should we reduce the respectability and moral value of that high station in the Government of this free country. Can it be believed, on any moral system, that the Executive patronage in the earlier periods of Mr. Jefferson's administration, or in any part of it, was distributed as the wages of political iniquity?—or that the triumphant majorities which supported the general policy of his administration, were maintained by Executive influence?—or that the decided support which his successor (who would seem, from the remarks of the honorable gentleman, to have been endowed with political sagacity scarcely competent to select from the country a cabinet,) found, during his whole term, in both branches of Congress, to all his public measures, was preserved by the power of his personal influence, or even of his patronage? During the next administration, I may appeal to many who are yet here, to say, if, during the greatest part of the last eight years, there has been scarcely a time when the whole power of Executive influence could carry any favorite measure through the House. On many of the most important subjects of general policy, the opinions of this House and the Executive have been essentially variant—and yet, I believe, it will be found that a greater number of appointments to public office, of members of both branches of Congress, has not happened under any administration. I well recollect, that a member of the other branch of the Legislature, even accepted (and, doubtless, solicited,) as a miserable crumb from the Executive table, the paltry place of a Collectorship on one of the Northern Lakes. I can never bring my mind or my feelings, as an American, to suffer myself so to judge of our Executives, as to estimate the motives which may actuate them by the hard rules which the gentleman from South Carolina assumes—let them have come to that high station by a constitutional election under any circumstances whatever. They are tests of such severity, that no man can stand the trial. If the Executive appoints his friends to office, 'tis corruption—if he appoints his enemies, 'tis corruption still. If he appoints his friends, he pays—if his enemies, he buys! Are these, sir, the unsparing judgments which a generous People will pass upon their public men? Are we to cherish, for a moment, doctrines which lead to such denunciations of all that we are taught by our national pride and the character of our institutions to respect? What should we say of the justice of other nations, should they apply to our free Government these bitter reproaches? Let the advocates of the divine rights of monarchy, and Kings themselves, when they behold this great fabric of civil liberty, say, in the envy of their hearts,

"How much, O Sun! I hate thy beams"—

but let *us* never apply to our public men those judgments which may lead the pettiest Prince of Europe to look down upon the President of this free and enlightened People with contempt. The People of this country will not respond to the sentiments which we have heard. Believe me, Sir, they are too jealous of their own honor and the reputation of their Government, and too generous in their nature, to cherish such injustice to their own institutions and their own statesmen. If we invoke these judgments upon those who hold the most eminent stations in the Government, by what rule shall we ask them to judge us? When Mr. Madison called from his retirement in the State which you, Mr. Chairman, have the honor to represent, to the public service of the country, one of her first illustrious citizens and public benefactors, whose name and memory will be revered as long as distinguished talents and eminent public virtue shall be respected and honored any where, was Bayard—purchased? If the living only were involved in these tests of public integrity, we could bear them with more composure—but we must certainly wish that those judgments had been spared which may inscribe a sentence so revolting to our feelings, on the sanctuary of the dead. When, more recently, one of our most excellent and accomplished men was called from these seats to the service of his country, was Poinsett—bought? If it is honorable to die in the service of one's country, is it disreputable to live in the public confidence, or to serve in its public councils? But I forbear to press these illustrations further. I do not deny that the power of appointment has been abused by some, and may be by all men. But it is not every exercise of what is somewhat misnamed when we call it Executive *patronage*, which is to be denounced as a defiling thing which contaminates all the healthful fountains of public virtue. Is it to become a stigma on the fame of men, that they are called to the service or the councils of their country even from this House? If the interests of the country are better served, I know not why the path of honorable fame and honorable emulation may not be as pure through this House as through any other branch of the Government, or as it may be any where. But few men have risen to eminence among us, or partaken of the highest confidence of the country, who have not first served her in her elective public councils. Jefferson and Adams, Hamilton and Madison—and Washington—were educated in these schools of political experience. The gentleman from South Carolina told us, with great justice, that in England there has scarcely been a distinguished public man for a century, who has not first been called to the House of Commons, by the People of that country; and to this I may add, that, flagrantly corrupt as the gentleman presented that political body to us—as the very purchased vassals of the Crown—these eminent and accomplished statesmen were taken from the Parliament and called to those exalted stations in the Government of that country on which they have conferred so much honor. As freemen must be educated to liberty, (and there is nothing more true) so public men must be educated for public stations. I do not believe in the existence of men as statesmen by instinct. One may be born with some qualities which may be suitable for other stations. Nature may, for instance, confer upon a man many qualities of a good soldier; but political science is a moral acquirement. To attain those high stations in public confidence which are so honorable in a free country, it is necessary that one should devote a long life to the study of her laws and institutions, her history, her domestic and foreign relations, the principles of her public policy, the temper of her People, the genius of her political system, and the spirit of her Government; nor even then may he expect the People to confer upon him their highest honors, until he has served in their Senates, passed the ordeal of public opinion as a statesman, and shown that he possesses that profound talent, those sound political principles, and great moral qualifications, which alone can adorn her public councils and perpetuate the civil liberties of the country. It is there that he learns how precious these civil liberties are; it is there that he feels the sanctity of the Constitution; it is there that he draws from experience the lessons of political wisdom; and it is there that he shows his fitness to be trusted with power. When it ceases to be honorable to be here, this House must become a scandal to the nation—a by-word among the People—a reproach to the Government—the scoff of monarchy, and a curse to freedom. Why, then, should we treat of it as only corruptible, and judge of it on abstract principles deduced from the mysteries of political metaphysics and the "philosophy of human nature?" The illustrations which the honorable gentleman has drawn from the history of Rome are not at all applicable to this country. I have long ceased to apprehend any danger founded on the existence of those causes here which destroyed that Government. It was a Republic, (if it now

deserves that name) of a single city—uneducated and unenlightened—of condensed population, and corrupted in morals. Its dissolution only proves that the infuriated rabble of Rome, pinched up by famine, or the fear of it, or dazzled by the glare of military renown, arrayed themselves under the contending chieftains of that city, and were led on by lawless force and blind infatuation, to imbrue their hands in the blood of her best citizens, and to demolish all law—and order—and the Government itself. The history of these atrocious times only further shows that the vassals of Pompey and Cæsar, marshalled in the ranks of these military despots, were at last persuaded to cut each other's throats. But, Sir, I trust there are no analogies in this history which we can ever apply to the educated and enlightened population of our own country. Nor is there any more reason to apprehend in all future time, so long as this Government shall stand, and its People shall enjoy the blessings of education, and feel the obligations and influences of religion, that we shall find any moral parallel between the election of a President and the absurd mockery and lawless violence of a Polish Diet. This Union is not, in my judgment, destined to be severed by such violences as these. Its dissolution is rather to be expected from the operation of other causes. It can only be accomplished by first impairing the confidence of the People in the integrity of their Representatives and its public councils—in raising up against it the States, by violating their rights, and in combining against the Government the moral power of the country. Then, Sir, you will find how weak this political system is without this support from the nation, and it will expire without a struggle. The security for the integrity of this House is to be found in its responsibility to public opinion. This has hitherto proved itself to be an active and vigilant agent in the political system of all our free institutions, and as long as the People are true to their principles and themselves, we may hope that this Government will stand. We may long rely, I trust, on their sagacity, independence, and patriotism, for its stability. Whatever fears we may entertain of the evils of the Caucus system, or the integrity of this House in the Presidential election, it is to this tribunal that we must all answer. Postpone the elections in the States until after the Congressional term has expired, and you give this principle its full operation. In the State which I have the honor partly to represent, its power has lately been most signally illustrated. Out of fifteen members who attended the Caucus of 1824, an honorable member, whom I have in my eye, (Mr. Cambreleng) is the only spared monument among us to remind the delegation of the existence of the system. If one of the objects of this amendment is to destroy the operations of any "central power" whatever, by taking the election from the House of Representatives, it is questionable, in my judgment, whether this end will be effectually accomplished. There is one security, even under the Caucus system, whenever the election comes to this House, which mitigates its inconveniences and evils in other respects. The members here vote under sacred obligations, which the Constitution respects as its security for their integrity, and they are responsible to their constituents But if you take away this security, we may raise up in its place an irresponsible Caucus, which is beyond even the control of public opinion. It will not be a Caucus of the members of these Houses. It will become a combination of political adventurers without doors, who will there organize their schemes of power, and attract to their councils a host of hungry expectants. When the election shall go back to the People a second time, they will be found engaged in poisoning their minds, and rendering the public measures of their Government disreputable in their estimation. They will attack the principles on which public opinion should be founded, and perplex the People with political disquisitions. The master spirits will not be seen in the public eye; and while they and their confederates, in the profoundest conclave, coolly plot the means of successfully storming the highest intrenchments of the Constitution which obstruct their path to power—public opinion and the virtue of the People—others shall, as patriots,

> "Retreated in a silent valley, sing
> "Their own heroic deeds"——
> "Others apart, sat on a hill retir'd,
> "——————— and reasoned high
> "Of Providence, foreknowledge, will, and fate,
> "And found no end in wandering mazes lost.
> * * * * *
> "Vain reason all, and false philosophy!
> "Yet, with a pleasing sorcery, could charm
> "Pain, for a while, and anguish—and excite
> "Fallacious hope."—

In all my reflections on the various propositions which have been made from time to time to amend the Constitution, in the election of the President, I have come to the conclusion, that the best plan for us is to go back to the original system. Although neither that or the amendment of 1802, can yet be said to have had a fair experiment; yet, if any thing is to be done, it is wisest, in my opinion, to retrace our steps. That plan contained within itself at least an effectual remedy against the operations of the Caucus system. Although no amendment can prevent a systematic preconcert of party in the election, if it was in the power of any of the small States, or a few electors—perhaps one—under that arrangement of the elective power, to defeat the election of a particular party candidate as President. It was a valuable improvement on the pure Democratic principle in that elector, and was calculated always to secure in the two highest stations of the Government, public men of the first grade of character. The small States lost much of their power when they gave up this system. The Caucus system received its perfection from that amendment. In relation to the Vice Presidency, it is calculated to operate, in bad times, as a mere bounty of twenty thousand dollars for personal influence. Much as the small States lost by that amendment, the plan now offered by the honorable gentleman from South Carolina proposes, in effect, to take away from them the only remnant of their power. The amount of political power which they are now to retain, and the benefit which they are to derive from its adoption, is to reduce them to their original electoral votes, under every contingency, except the remote chance of a tie in the second election. If they can find an equivalent in securing the large States, for the loss of what they yet retain, they will doubtless be in favor of the amendment. There is, in my opinion, no analogy, as the honorable gentleman stated, between this and the original system. It is, indeed, true, that two candidates only are to be voted for the second choice, but the large States are yet to vote in that event the whole number of their electoral vote.

The plan of sending back to the People only the highest candidates, is founded on the assumption that in case a majority of the People should not unite in the first instance on any person, their second choice must necessarily be for one of the two highest. In this respect the chance of electing the person whom the People would select in the second election, is as much, if not more, promote than under an election by the House, on the existing plan, which presents three persons for our choice. I am from being certain that in every case the second preference of a majority of the People would be for one of the two highest. It may happen that a particular candidate who might, by chance, obtain the second or even the greatest number of votes, might be so obnoxious to those who voted for the other two out of the three, as least would desire to unite, in the second election, (as

east of the three. We have already had four persons voted for at the Presidential election, and the number is perhaps rather to be generally expected to increase than to diminish. The two highest may, in many elections, have but a comparatively small proportion of votes, which will be very far from a near approximation to a majority. Under the plan now offered, the People may be necessarily coerced themselves to elect a President against their will. There is to be no alternative more congenial to the feelings or wishes of the actual majority, and the scheme, in such a case, is calculated to defeat public opinion. It has not, in many respects, even the comparative advantages of a choice by plurality in the second election. If it was admitted, out of deference to the argument, that a choice by the House of Representatives out of the three highest by a majority of States, would in many cases defeat the wishes of the majority of the People, it is not improbable that the plan now offered would much oftener produce that result. It proceeds on the principle that it is of necessity to be inferred that a majority would unite on one of the two highest pluralities, and as it sets out on his false hypothesis, it leads, in the conclusion, to its own refutation, and brings the argument thus founded on unsound abstract principles directly to the *reductio ad absurdum*. The error lies in the premises, and it is not singular that the deduction should be equally vicious in principle.

But, Sir, I will detain you no longer with my views of the incongruity of the principles on which these propositions rest—the inefficacy of the amendment to accomplish even its professed ends, and its impolitic and dangerous disturbance of the rights of the States. I ask of the Committee, if the present period is auspicious to the renovation of this compact. When this Constitution was framed, we had been recently chastened by adversity, and the States then deeply felt how great their mutual obligations were, and they had no interest but to be just. But circumstances and the times have changed; and we are now in the days of our prosperity. The relative population and power of the States are no longer the same; prejudices too firmly established have crept in, and parties have arisen among us. Great sectional interests have sprung up in the States, and a whole nation has been brought into existence beyond the mountains. Public feeling has lately been deeply agitated, and the country is not quiet. I submit it to the dispassionate judgment of this Committee, to say, if it is now discreet to agitate this subject. I trust there are no well grounded apprehensions of any immediate danger to the country. I confess that there have been times when, in the conflicts of party and the convulsions of national feeling, I have too credulously thought that the moral power of this Government was too weak to sustain the Union; but experience has shown us that these fears are groundless. Though the collisions of separate and sectional interests may at times alarm the most confident, yet if we examine our history, and consider how well our institutions have maintained our interests abroad, advanced our common national glory, and secured our civil liberties at home; and if we further look around us, and view the sum of national prosperity and individual happiness which is enjoyed throughout our country, there is abundant consolation for our fears; and we may confidently trust, that, under the blessing of Providence, this empire of civil liberty will be perpetual.

On motion of Mr. ARCHER, the Committee then rose, And the House adjourned to Monday.

MONDAY, FEBRUARY 20, 1826.

AMENDMENT OF THE CONSTITUTION.

Mr. BUCHANAN offered the following:

Resolved, That the Constitution should be so amended, as to re-establish the third clause of the first section of the second article of the original Constitution; except that portion thereof which confers the power of electing the President upon the House of Representatives.

Resolved, That the Constitution should be so amended, that, in case no election shall be made by the Electors, then the States shall choose the President, from the two highest upon the list, in such manner as the Legislatures thereof may direct; each State having one vote.

Mr. BUCHANAN said, it was far from his intention to enter into any detailed explanation, at this time, of the amendment which he had proposed. For the purpose, however, of directing the attention of the House to them, he would merely observe, that the object of the first resolution was, to restore the *original* provision of the Constitution, in regard to the election of President and Vice-President, to the time when that election would devolve upon the House of Representatives.

The second resolution proposes, that, in that event, the sovereign States of this Union shall choose the President from the two highest on the list. When no election is made by the Electors, it simply confers upon the States themselves the power which is now exercised by their Representatives. It proposes that, in making the choice, the States, and not their Representatives in this House, shall each give one vote, in the manner which their respective Legislatures may prescribe.

Mr. B. said, he did not propose the last amendment because he thought it the best possible method of taking the election from the House of Representatives; but because, after much reflection, he believed it was the only one practicable. That consummation was devoutly to be wished by all, and by none more than the Representatives themselves; and he felt persuaded that no amendment for that purpose will ever prevail, which does not leave the balance of power among the States, as it at present exists.

Mr. B. said he did not intend to interfere with the debate now progressing. In case the House should appoint a Select Committee, he wished merely that these propositions may be placed in such a situation that they may be referred to that committee.

These resolutions were referred to a Committee of the Whole.

Mr. DORSEY offered the following:

Resolved, That it is expedient that the Constitution of the United States should be so amended, that the same should establish an uniform system of voting by districts, in all the States, for Electors of President and Vice President; the number of districts to be equal to the whole number of Senators and Representatives to which the same may be entitled in Congress, and each Elector having one vote.

Resolved, That the Constitution of the United States ought to be so amended, that, upon the contingency of no choice being made of the President and Vice President by the Electors, that a new election for Electors shall be held, and the Electors, from the persons having the two highest numbers on the list, shall choose one: but, in choosing the President and Vice President, the vote shall be taken by States, each State having one vote, and the majority of all the States shall be necessary to a choice.

Resolved, That the Constitution of the United States ought to be so amended, that the Electors of President and Vice President, shall vote *viva voce*.

These resolutions were committed to a Committee of the Whole House.

The House then went into Committee of the Whole, Mr. McLANE, of Delaware, in the Chair, on the resolutions of Mr. McDUFFIE, as modified by him.

[Mr. ARCHER addressed the Committee; but, before he had concluded his remarks, gave way for a motion that the committee rise. The entire speech will be found under date of the 23d February.]

TUESDAY, FEBRUARY 21, 1826.

AMENDMENT OF THE CONSTITUTION.

Mr. POWELL offered the following resolution:

Resolved, That the Constitution ought to be so amended, that, in the event of the election of the President of the United States devolving on the House of Representatives, as to provide that no Member of the House who shall vote upon such election, shall be capable of receiving an appointment to any office under the Government of the United States, where the power of nomination is in the President, for the term of three years thereafter, except when the nation may be involved in war, in which event, the foregoing disqualification shall not operate to prevent the appointment, or acceptance by any such member, of a commission in the army or navy of the United States.

Mr. POWELL, upon offering his amendment, observed, that it was not his intention, at this time, to discuss the merits of the proposition he had offered, or any of the various propositions now before the committee, and under discussion; and, unless his present intentions underwent material alteration, he should not, at any future period, intrude himself upon the attention of the committee upon this subject. Mr. P. observed, that it was due to himself and his feelings, in relation to the members of the last Congress, to disclaim any, the most remote, idea that the House, or any of its members, in the exercise of their high constitutional duty of electing a President, at their last session, were influenced by any hope of office, or by any other unworthy motive. He had too high a sense of the character of the members of the last Congress, to believe such an event possible. It was in reference to the future, and the fears expressed by gentlemen, that he had offered the resolution. The House would discover that the resolution would only be adopted in the event of the various plans already suggested, or which might be suggested, to take the ultimate election from the House, being rejected by the House. While we were distributing constitutional power, taking from one, and giving to another, it might be well for us to show our willingness to submit to this self-denying provision, and place the members of this House beyond suspicion.

The resolution was then referred to a Committee of the Whole.

BIRTH DAY OF WASHINGTON.

Mr. COCKE said it was not often that he made a motion to adjourn over; but when it was considered that to-morrow was the anniversary of the natal day of WASHINGTON, he thought it incumbent on the House to show their respect for the memory of that great man, by refraining from business on that day. He therefore moved, that, when the House adjourns, it adjourn to meet on Thursday, instead of to-morrow.

On this question the House divided, and it appeared that a quorum had not voted—there being Ayes 56, Noes 49. [Had there been two more persons counted, on either side, the motion would have been carried.]

During the division, Mr. FORSYTH came in, and, previous to a second count, inquired what was the ground of the motion to adjourn over to-morrow.

Mr. COCKE repeated his reason. To-morrow, he said, is the birth-day of the Father of his Country—of the man to whom this People owed more, for his public services and virtues, than to any other individual. He, for one, was disposed to manifest his respect for that day, by adjourning over.

Mr. FORSYTH said, there was not in this House, or in this community, a man who entertained a deeper reverence for the memory of the great man referred to, than he did. But, it appeared to him, the most respectful tribute the House could pay to the memory of General WASHINGTON, was, a due attention to the discharge of their proper duties. We have been in session here a long time, said Mr. F., and if we look at the business we have transacted, it will be found that we have not done much, nor well. We have adjourned over one day at least in every week, and in some weeks two days: and now, for the first time, the House was asked to adjourn over another day, to pay respect to the memory of General Washington. It was the first time, he believed, that it ever entered into the head of any Member of Congress, that it was proper to pay respect to the birth-day of any man. He hoped the motion would not prevail, to become a bad precedent for the future.

Mr. HOUSTON said, with great deference to the gentleman from Georgia, his impressions were different from those which that gentleman had expressed; nor could he think the example of the success of this motion would be in anywise pernicious. The State of Virginia, by her Legislature, makes an exception of this day, in never transacting business on the twenty-second of February, in honor of the distinguished personage to whom he understood the gentleman's motion to refer. In addition to the general reason, which was sufficient for him, in favor of the proposed adjournment, he added, that the Masonic Fraternity, of which General Washington was, during his life, a distinguished member, wished to celebrate the day, in honor of the memory of the Father of his Country. On this occasion, they desired to have the use of this Hall, as being more suited to their purpose than any other in the City. These, he said, were the considerations which induced him to vote for the motion, and he did not believe that any gentleman was acting out of the line of his duty in supporting it. If the motion for adjournment were dictated alone by the feelings of any individual or of the Members of this House, he should, perhaps, think differently of it. But *the Nation* would participate in the feeling which might be expressed by this House, on the subject in question, and approve the expression of it.

Mr. CAMPBELL observed, that, whether, if the House should adjourn, the celebration in this Hall, would or would not take place, or whether it would be creditable or disgraceful, was a matter of indifference with him, in voting on this motion. He was opposed to the adjournment on other grounds. The House had adjourned over already very often. He believed they had set her on one Saturday since the Session commenced; and should they adjourn on this occasion, it would be construed into a precedent for future sessions, when the same anniversary should come round. He did not wish to reflect, in the slightest manner, on the motives which might govern those gentlemen; but, in himself, he would be departing from what he viewed as the principles of honesty, to vote for the adjournment. He presumed the members would expect to receive their pay as usual, and he thought they ought to remember that they were sent to this place to legislate, and were paid for so doing. Hitherto the House had not been very diligent. He hoped they would be more so during the residue of the session, and not postpone it unnecessarily, even one day. Having these views, and wishing to record his vote in support of them, he asked for the Yeas and Nays.

The House sustained the call, and they were ordered accordingly.

Mr. BARNEY wished to say a word in reply to the gentleman from Ohio. He entirely agreed with the gentleman in the sentiment that it was improper for the House too frequently to adjourn without doing business; but as to the question whether the Hall was likely to be disgraced or not, by the celebration contemplated by our Masonic Brethren, give me leave to tell that gentleman, that nothing which proceeded from Masons, as such, could possibly disgrace it. If the gentleman wished to learn the secrets of Masonry, he must study the Bible: for there

was no precept of Christianity which Masonry did not enjoin and inculcate. And, so far from this Hall being degraded by the celebration, if any thing could be said to honor it still more than the presence of so many distinguished men, it was such a celebration as that now contemplated—in commemoration of one, who, while he was the Father of his Country, was, at the same time, the great Patriarchal Chief of the Masonic Fraternity—a Mason of the first order, and of the most pure and unblemished character.

Mr. CAMPBELL replied, that he did not intend to be dragged into a dispute on the character or tendency of Masonry; but he would take upon him, thus boldly, to say, that he had seen men who were very good Masons, who were, at the same time, avowed deists. For himself, he professed to be, in some degree, governed by the principles of the Bible, and he was taught by it that it was highly improper to receive a recompense and not to perform the duty for which it was given. If he hired a man who neglected to do the duty he undertook, he should be very loth to pay him his wages. He did not so much as imagine, that any disgrace would be cast upon the Hall, by the celebration of the Masons. He presumed the intention was, to have an oration delivered, which he did not doubt would be characterized by eloquence and ability; but, he thought, by adjourning over, the Members of this House would not meet the views of their constituents. If they proceeded in this manner, he could see no termination to the session.

Mr. LITTLE, expressing his regret at so unprofitable a debate, moved to lay the resolution on the table.

The question was taken on laying Mr. COCKE'S motion on the table, and decided in the affirmative, Ayes 85, Noes 52. So the motion to adjourn was, in effect, rejected.

FLORIDA CANAL.

Mr. WHITE, of Florida, moved to postpone all the orders of the day which precede the bill from the Senate, to provide for the survey of a canal route from the Atlantic to the Gulf of Florida. He would briefly state the reasons which induced him to ask the favor of the House, at a time when an important question, interesting to the whole nation, engrossed its attention. The season was now far advanced, and, unless this bill was speedily passed, it will be impossible to accomplish the survey, and make the estimates proposed by the bill, before the Summer or Fall months, when it will not only be too unpleasant, but hazardous for the Engineers to execute the work. If it is not done before June, it cannot be commenced before November, which will not allow time enough to complete the work, and make a report to the next session of Congress. He did not wish to be importunate, deeply impressed as he was with the pressing importance and magnitude of the subject, involving considerations of such political and commercial interest, and so immediately connected with the trade, security, and defence, of the nation. The bill proposes a survey only for the purpose of obtaining information in which every section of the country is deeply interested. If its passage is delayed until the debate in regard to the amendments of the Constitution should be concluded, this important measure will be postponed two years, in which time, according to estimate, the property annually lost on those coasts, will amount to one million and a half of dollars, besides the waste of human lives, unavoidably consequent upon shipwreck. He was not aware that any gentleman would oppose the bill, or that there was any desire to discuss it; he believed that the House had given such consideration to the subject as would justify their acting immediately upon it. He, therefore, hoped he would be indulged with another of the many favors he was proud to acknowledge from the House, by a postponement of the orders of the day, to take up this subject. He was encouraged to make this motion, by the kind permission of the gentleman who was entitled to the floor, who had consented that a measure of such immediate necessity should have precedence.

The question being then taken on the postponement, it was decided in the affirmative—Ayes 78, Noes 55.

After reading the bill,

Mr. WHITE said, he was so sensible of the obligation under which he should labor, for the courtesy and indulgence accorded to him by the House, that he would not abuse that kindness by occupying any portion of its time, as he had intended to do, in discussion. He believed every gentleman was prepared to vote on the subject; and, as it had undergone an enlightened examination in the Senate, he hoped the committee would rise and report the bill without amendment.

Mr. WEBSTER suggested that it would be desirable the bill should distinctly state the extent of the survey, so as to include the harbors in the vicinity of the two extremities of the Canal.

On this point, some farther conversation took place, between Messrs. HEMPHILL, TATTNALL, WHITE, and DRAYTON—when the Committee rose, and reported the bill without amendment, and it was ordered to a third reading at this time: whereupon the bill was read a third time, passed, and returned to the Senate.

PRE-EMPTION RIGHTS IN FLORIDA.

The bill giving the right of pre-emption in the purchase of lands, to certain settlers in the Territory of Florida, was taken up—Mr. FORSYTH in the Chair.

The bill having been read—

Mr. WHITE, of Florida, said, if this were a subject introduced for the first time to the consideration of Congress, he should approach it with some embarrassment, not for the want of confidence in its justice, but, at the introduction of a new system of policy in the disposition of the public lands; and from a reluctance, which every one must feel, in proposing innovations on established law and usage. This is, however, no new proposition in the legislation of the country—it is coeval with the origin of our Government; was practised, previously, by the former Sovereign, in all the Colonies; is identified with our legislative history, and has been pursued, with unbroken continuity, with various, but unessential modifications, from the year 1788 to the present period. He did not perceive any thing to justify a departure from it, at this time, either in the condition of the Government or of the inhabitants of Florida. If there was any thing erroneous in principle, defective in practice, or injurious in its consequences, it ought and would have been discovered and exposed long since; the fact, however, of its having received the sanction of all the Administrations for upwards of thirty years, and of almost every successive Congress, is an undoubted argument in favor of its justice and policy; and it would be admitting the last sister into the Union most ungraciously, to deny her rights which the munificent legislation of the nation has conferred on every other new State and Territory. Sir, I should not like to be the messenger of such unwelcome intelligence to a People proud to acknowledge the repeated evidences of your liberal and expanded policy; and who would not like to recur to so signal an instance of a departure from precedent, so inconsistent with the liberal spirit that has characterized your legislation, and so blighting to their hopes and prospects. The policy of all the Governments on this side of the Atlantic, has been to extend their settlements as widely as possible, to attach the inhabitants to the country and their Government, by giving them an actual share in the real property, that they might not, in times of difficulty, return the answer of the Roman People on Mount Aventine to the Ambassadors of the Senate. Pioneers and adventurers of new Colonies and settlements, formed under so many difficulties and privations, at the sacrifice of so many comforts, and contributing so

many important benefits to the country, in increasing its facilities, extending its empire, and protecting its borders, have always been, and ought to be rewarded. Influenced by these considerations, the Governments of France, England, and Spain, have made gratuitous grants of land to their subjects, who improve, inhabit, and cultivate them. The exercise of this indulgence has been so universal, that it is considered inseparable from the colonial state. The United States, recollecting the favors extended to themselves by the parent Government, and animated by the same just and liberal policy, have not been less bountiful to their citizens.

A recurrence to the laws of the United States will demonstrate that the petitions of the People of Florida, upon which the Land Committee have reported this bill, are neither new or unreasonable, but that they have been sanctioned by numerous precedents. He conceived there were no reasons deemed sufficiently forcible to justify a departure from the system in Florida. Previously to making a particular reference to those laws, it might remove some obscurity, and obviate some objections, to notice a misapprehension of many gentlemen in regard to settlements on the public lands. It has been alleged that the existing laws forbid settlements on the public lands, and denounce heavy penalties against all such intruders, who were located there without authority; and some call them squatters, which, so far as it is intended, as either descriptive or derogatory, was entirely unjustifiable. These inhabitants are small planters, whose lands in the old States have been exhausted by cultivation, and who, animated with the laudable desire of improving their condition, and that of their rising families, have encountered all the hardships of penetrating to the borders of the country, disregarding the difficulties of the journey, and unappalled, either by the labors of the forest, or the enemy in its bosom. Any imputations upon their motives, or question as to their right, would be the strongest censure upon our own forefathers, who sought this Continent, influenced by the same praiseworthy considerations. A more respectable population is not to be found in any of the States. If, however, sir, there was a law of the United States interdicting settlements upon the public lands, I could plead, as an excuse for them, the uniform legislation of Congress rewarding its violaters, and quote the old maxim "*communis error, facit jus*"—he was fortunately, however, not reduced to such an alternative. The law does not prohibit such settlements, and he would shew that the act of 1807, which was considered the basis of such exclusion, did not embrace this class of settlers; and, if it had, that law was practically repealed. That act, which is entitled "An act to prevent intrusions on the public lands," provides, that if any one shall take possession of, or attempt to survey lands ceded to, the United States, he shall forfeit his claim, and the President may remove him by force. This law was passed not long after the cession of Louisiana to the United States, and its evident object was to prevent surveys of large claims, the validity of which were doubted, and to prohibit those having unlocated floating permits, from being surveyed and settled on the best lands of that rich Territory, and hence they employ the phraseology "forfeit his claim." The Government were desirous of prohibiting by force, if necessary, the location of these floating and fraudulent claims, that the occupancy of them, after the change, might not be pleaded as a prescriptive right. Another consideration which probably impelled the enactment of that law, was to enable the President, in a summary way, to preserve the valuable timber, by the expulsion of intruders, without a resort to the tedious and protracted process of law, and the consequent destruction of the public property in the mean time. It never was, and could not be, the intention of that law, or any other of the United States, to prohibit settlements upon the public lands. The Register was authorized to grant permits to settlers. The act of 1807 was re-enacted, in express terms, in that of 26th March, 1816—contains the same provisions, so far as the settlements were concerned, and superseded that act. This statute expired, by its own limitation, one year thereafter, in 1817, when an act was passed, obviously to remedy the defects of the other, and to provide more effectually for the same object. The necessity of one part having been dispensed with, in the adjustment of land titles, it was provided that the Secretary of the Navy, under the direction of the President, should lay off districts which might be useful for public timber, and, by proclamation, to prohibit intrusions on those reserved districts, under severe penalties; if any order of this kind had been made, or any districts selected, and the public notified by proclamation, all who settled within the prohibited district would incur the imputation and penalty imposed by the act of 1807. Since the passage of the last act, there has been no authority given under the laws of the United States to Registers to grant permits, because none were necessary to authorize a settlement upon the public lands; they have, on the contrary, been rewarded by a privilege of purchase similar to what is proposed in this bill. This, however, gives as small a quantity as ever has been given, and smaller than has been accorded in many places, as a reference to the laws providing for the right of pre-emption will demonstrate. In Ohio, a grant of this kind was made to the United Brethren, on the Muskingum; and one million of acres afterwards given to John C. Symmes, upon condition, which having failed, six hundred thousand acres were given to settlers at the Government price, with the privilege of entering 640 acres by each individual. The same right was extended, by law, to the settlers at Galliopolis and the District of Cincinnati.

In Illinois, by an act of Congress, passed in 1814, after donations had been given by law, the right of preemption was given, up to February, 1813, of not less than 160, nor more than 640 acres—in Indiana, up to 1813, both subsequent to the law of 1807. In Michigan, to [illegible] with other indulgencies to the settlers. In Mississippi, after great liberality in granting donations, pre-emptions were allowed up to 1807, and the purchasers given to 1813 to pay for the lands. In Missouri, Louisiana and Arkansas, the same rights were given to settlers. It is manifest, sir, from a reference to these laws, that the system has been adopted and continued almost uniformly in all the States and Territories where there were public lands, and if it was inexpedient, why has it not been arrested before now? All that is solicited for Florida is what has been granted elsewhere. This bill does not provide to the same extent that others have; in Louisiana and Mississippi, these rights were given to settlers for ten years after the change of Government. The country he had the honor to represent was surrendered in 1821; this bill only provides for four years instead of *ten*; in some others they were allowed 320 and 640 acres of land, and, in most instances, time has been given for payment. By the terms of the bill under consideration, they have the right of purchase for 160 acres, for which they pay cash. This surely is a most reasonable request, as is shown by the foregoing comparison; if it is granted, as it is an exercise of bounty, the People of Florida will not stop to inquire what has been done elsewhere, but offer their sincere benedictions for the Government that has protected their families in the enjoyment of their homes, in the formation of which they have expended their only means of purchasing competitions with others, attracted by their improvements.

Are there any circumstances or difficulties connected with the settlement of Louisiana or Mississippi, to distinguish them from, or give them a preference over, this Territory? If there was any difference in point of danger and privation, it was on the side of Florida. After

change of Government, the present inhabitants travelled from the Southern States several hundred miles through the Creek Nation, or around it, through forests, cutting roads and constructing bridges, swimming creeks and rivers, and, after their arrival, for the first two or three years, were under the necessity of purchasing provisions at three or four times the amount they now cost.

Is it equitable or proper, that men who have encountered all these difficulties, submitted to these dangers and privations, and furnished these facilities for others to get into the country, should be put into equal competition with those who have made no expenditures, and availed themselves of the conveniences of their more intrepid pioneers? Is it just, sir, that one who has, by improving the country, increased the value of all the contiguous lands, and whose labor alone has given additional value to the spot on which he has located his family, shall be expelled, without any equivalent, from his home, by affording to the ruthless speculator, an opportunity to buy it over him? Sir, some have pretended to doubt the policy of these laws from the beginning. I would inquire of such, how would you ever sell those frontier lands without roads and settlers? If any gentleman supposes that, upon an enlarged view of this subject, the United States will lose by the passage of this law, he will be greatly mistaken, unless they avail themselves of the labor of those adventurous citizens, without a fair equivalent. The value above the Government price is derived from their labor, and the means they have furnished in penetrating the country. See the returns of the sales in Tallahassee; refer to the price of lands in the States; when it sells for twelve dollars per acre, ten of that is derived from the improvement, because land in its vacant state requires that sum to improve it. I do not hesitate to believe, that the land, in the state in which these settlers found it, was not worth more than the sum they are required to pay by this law. It is a sound principle, in politics and ethics, that he who benefits the public, is entitled to his reward. That the country has been greatly improved by the labors of these individuals, cannot be denied; and what will be their reward if this law does not pass? Their means of purchasing have been exhausted in the improvements of the country, and the high price of provisions; and the inevitable consequence will be, that they will be turned from their houses, forced from their plantations, by the rapacity of the heartless speculator, with but an inconsiderable augmentation to the Treasury. You cannot conceive, sir, the distress that it will occasion. They have, on account of the causes enumerated, but moderate means. They cannot enter the lists of competition with those who are attracted by their improvements, the result of toil and labor, in which they had no participation, and which they feel no sympathy.

Mr. W. could not, in justice to the subject, dispense with the necessity of informing the House how these things were managed. A sale of public land is advertised the sharpers of the adjoining States, strengthened by the aids of usurers and banks, club together their funds—flock to the country like vultures, at "death's prophetic smell," traverse all the roads made by the honest settlers; survey the whole district; take notes of every well-improved place; ascertain whether there is a spot endeared to a planter, on account of its containing the bones of a wife, child, or friend; and when the sale begins, the planters are informed privately, that, unless they pay so much to this "*holy alliance*," their farms and houses will be taken from them. The unpleasant alternative is presented, either to tender the bribe, or abandon the possession. If it is given either in money or in bond, all others are forbidden to bid for the land, and it is purchased at the price proposed in this bill, from the United States, and perhaps the same sum to the company. Should it not be given, the land is purchased for a few dollars more than the means of the honest settler, who is sacrificed, and the public Treasury augmented a few cents. It is to prevent this vile bartering, or the consequent injuries to those who will not engage in it, that this law is desirable. Such were the excesses to which these practices were carried in the Southern part of Alabama, that their Courts were crowded with suits upon notes of this description. Instances equally distressing, have occurred, and will again occur, in Florida.

By the passage of this law, you save from ruin an industrious, enterprising class of men, who have confided in your munificence, from a knowledge of your long continued legislation on the same subject. It is also important in a political point of view. The lands on our borders and frontiers should be occupied by men who are competent and willing to repel the first invasion of our country. Should this class be driven from the lands, and they were succeeded by the quarters of Southern planters and speculators, what will be our condition in time of war? It is important that small planters should be encouraged, and a dense and efficient population invited and encouraged, at the limits of the Confederacy, devoted to the Government, by a grateful recollection of its favors. One successful sortie of an enemy, and the occupation of a favorable point, might cost the Government more than all the lands in a district would sell for to remove him.

In every view of the subject, precedent, good faith, and policy, in my humble judgment, this law ought to pass.

Mr. WHIPPLE said, he had some doubts as to the propriety of this mode of legislation. He did not, however, rise for the purpose of opposing the bill; but he objected generally to the extension of the pre-emption system. It would be recollected that provision had already been made, by donation, for all those who settled in Florida up to the time of its cession; but the present bill goes further, and grants to those who settled on the public lands after the cession, the privilege of purchasing at the minimum price for a period of four years. He thought this course was impolitic, and that this right of pre-emption ought to be restricted; because its practical tendency was to encourage the intrusion of unauthorized settlers on our public lands. Those settlers were in the habit of selecting the very best of the land, and of fixing themselves upon the soil, and when afterwards the lands were exposed for sale, they say it is unjust to eject us; we have made improvements; and they insist upon having the best and the richest of the land at the very lowest price the law will allow. For himself, he thought that this was a very questionable policy; but if the House were inclined to sustain it, he should make no opposition.

Mr. OWEN observed, that this was a proposition that certainly could not stand in need of debate. It was not at this time of day to be settled, whether this Government will or will not pursue the course of policy to which the gentleman had alluded. It had already been adopted and long pursued. This very bill, after being last year sustained both by the Committee on the Public Lands, and by the Committee on Private Land Claims, passed the House. The policy was adopted long since, and the doctrine advanced by the member from New Hampshire might almost be said to be now universally exploded. The donation lands to which the gentleman had alluded, were given to the former settlers in Florida on a principle of individual right. If they had not been conferred by this Government, the settlers would have obtained a title from the Government under which they formerly lived; it was, therefore, only an act of justice, and not of liberality. But, on the question of policy, he held an opinion directly the reverse of that which had been expressed by the gentleman from New Hampshire. He thought it was our true policy to grant to those who settled on the lands the right of pre-emption. It was their labor which gave value to the lands; without it they would have had none. He

considered it wise to encourage those who might, with propriety, be termed the pioneers of a more dense population. It was they who, by braving the dangers and overcoming the difficulties of an unsettled country, opened the way for the introduction of capital and all the improvements of civilized existence. As to what the gentleman had said of their selecting the best points, even admitting it to be true, their number was comparatively few, and abundance of the best land would still be left. But, from his own experience, as having been himself one of these pioneers, he was disposed to believe that the fact was the very reverse of this. It was true, that new settlers, if intelligent, selected those points which invited most advantages for a new settler; but, as they had to choose them in such a situation only as would admit of their sustaining themselves till they could make further progress in improvement, they were not at liberty to range through the whole of a body of public lands, and pick out those portions only which contained the most fertile soil. These settlers were, for the most part, already drained of all the money they had, by payments into the public Treasury. Would gentlemen wish to deprive them of all their earnings? In Alabama, the proceeds of what they paid into the Treasury, was equal to the whole amount of staple commodities they had hitherto been able to raise. They had literally been laboring for the Government, and the same state of things existed in Florida.

Mr. COCKE said, that his vote on this occasion would be regulated by one consideration alone. If it was proposed to extend a greater boon to the settlers in Florida than had been bestowed on those in other States, he should be opposed to the bill; if not, he should vote in its favor, unless some reason could be given.

Mr. WHIPPLE replied, that the extent of time during which this right of pre-emption was given to settlers in other Territories, was greater than that now proposed. He wished to correct one misconception of the gentleman from Alabama. It was true that the bill had been reported to the House at the last session, but the Chairman of the Committee on the Public Lands, and two other members of that committee, were opposed to the principle on which it was founded. As to the donation rights in Florida, the gentleman was also mistaken. Commissioners were appointed, to whom the claims of settlers were to be committed; and, where the evidence in their favor was incomplete, if the Commissioners thought that the claim would be confirmed by the Spanish Government, they reported in favor of them. Pre-emption rights went on a different ground. They were to be given to persons who had settled since the cession of the Territory was openly known, and who knew that the land on which they settled was public property. Still, however, as the Government of the United Staes had seen fit to grant such rights to others, he should not oppose their doing so in the present instance.

Mr. SCOTT said, that if this were to be the beginning of the pre-emption system, it was very possible that the Committee on the Public Lands would not be in favor of its adoption. But, when the right now to be given was compared with that which had already been given to others, he saw no reason why it should be refused to the settlers in Florida. In Missouri, the right of pre-emption originated in 1800, and he did not know a single instance where it had been refused. In Michigan, in Mississippi, and in Arkansas, the right of pre-emption was extended to ten years; but this bill gives it for five years only; and although it is admitted that they made their settlements contrary to the acts of 1804 and 1807, forbidding settlements on the public lands, yet the House had so far superseded the law as to give pre-emption rights to those who had violated it, and there was no reason why a difference should be made between settlers in one territory and those in another.

Mr. COOK was about to address the House, when—

The SPEAKER suggested, that, as there was no opposition to the bill, the debate was consuming time to no purpose.

Whereupon, the question was taken upon ordering the bill to be engrossed for a third reading, and decided in the affirmative.

And the House adjourned.

WEDNESDAY, FEBRUARY 22, 1826.

The House having come to order—

Mr. MITCHELL, of Tennessee, moved to dispense with the reading of the Journal of yesterday. This, said Mr. M., is the 22d of February! A day held as sacred by the People of these United States, as that which commemorates the advent of the Son of God! For it marks the birth of one who was the most perfect of all beings that ever appeared in the form of humanity, as a mere man. The People will applaud us for dispensing, on this day, with the business of legislation. Let us adjourn from this House, and let us sociably meet and converse of those great and important consequences which have followed the actions of that exalted man, the most virtuous that ever appeared on the page of history. Sir, I did imagine when the resolution for adjourning over was yesterday introduced by my colleague, that it was not possible it could meet with the slightest opposition. I did believe it was in coincident with the feelings of every American heart, that there was not a gentleman on this floor who could be found to a word in objection, but that the proposal would be hailed universally as worthy of instantaneous adoption. I do hope, sir, that the words and acts of this House would have done more to convince the world of what we feel on this occasion, than those frothy compliments which we have been in the habit of lavishing on the Father of his Country: and still hoping that we shall consent to this, I move you, at present, that the reading of the Journal be dispensed with.

The SPEAKER putting the question of consideration, the House refused to consider the motion.

Mr. MITCHELL then moved an adjournment: and the question being taken, it was decided in the negative—ayes 53, noes 79.

CONGRESS OF PANAMA.

Mr. McDUFFIE rose, to make an inquiry of the Chairman of the Committee on Foreign Relations. It was, he recollected that a resolution had been moved by his colleague, (Mr. HAMILTON) calling on the President of the United States to communicate to the House, the correspondence respecting an invitation to send Commissioners to attend the Congress at Panama, and that the House after some modifications, had passed the resolution, and communicated it to the President. As no answer had been received, he wished to ask of the Chairman of the Committee of Foreign Relations, (as the only organ of the House whose duty led him to hold immediate communication with the Department of State, whether he could inform the House whether any reply at all is to be expected; and, if not, what are the reasons which have induced the Executive to disregard the call of the House.

Mr. FORSYTH (the Chairman of the Committee on Foreign Relations) said he had no information to give the gentleman on the subject to which his inquiry related. He had not considered it his duty to make any inquiry on the subject, and he had not made any. If the gentleman from South Carolina had any curiosity on the subject, he suggested to him the propriety of his applying to the House whose instance the resolution, calling for the information, was adopted by this House.

Mr. BOON offered the following:

Resolved, That the Constitution of the United States

ought to be so amended, as to authorize the qualified voters for the most numerous branch of the State Legislatures, in the several States, to vote directly for President and Vice President of the United States, in such manner as the Legislature of each State shall, by law, direct.

The resolution was committed to a Committee of the Whole House on the state of the Union.

Mr. HAYNES offered the following:

Resolved, That the People of the several States shall vote for President and Vice President by general ticket, and the candidate for each, respectively, receiving the greatest number of votes in a State, shall be taken and held to have received a number of votes equal to the number of Senators and Representatives of such State in the Congress of the United States.

Resolved, That, if no candidate for President shall receive a majority of the whole number of votes, according to the foregoing plan, then the two highest on the list of candidates for President shall be returned to the People, voting again by general ticket, and the one receiving the highest number of votes in a State, shall be holden to have received one vote: and if no candidate for Vice President shall receive a majority of votes, according to the foregoing plan, then the two highest on the list of candidates for Vice President shall be returned to the People, voting by General Ticket, and the one having the highest number of votes in a State, shall be taken and held to have received one vote.

Resolved, That, in either event, a majority of the whole number of votes, according to the foregoing plan, shall be necessary to a choice.

The resolution was committed to a Committee of the Whole on the state of the Union.

PRE-EMPTION RIGHTS IN FLORIDA.

The engrossed bill "granting the right of pre-emption to certain settlers on Public Lands in the Territory of Florida," was read a third time; and the question being, "Shall the bill pass?"

Mr. VINTON said, that he was fully aware that a privilege, similar to that now proposed to be conferred on these settlers in Florida, had already been granted to others not more meritorious than they. But, from his experience and observation as one of the members of the Committee on the Public Lands, he was entirely satisfied that we must break down this system of pre-emption granting, or it would break down the land system. The basis of that system, as originally intended, was, that the lands ceded by the several States to the General Government, should be started with by sale only, and in this way regulate and direct the settlement of the country. Pre-emption and donation rights had, however, been granted for various purposes: some had their origin in the charity and sympathy of Congress; some for purposes of education; others for the encouragement of religion. Concerning this entire class, whatever might be his opinions as to the expediency or wisdom of such disposition of the public property, he would at this time say nothing: they rested on their own particular merits. But, said Mr. V., there is a class, both of donation and of pre-emption grants, (and that class which embraces the case of the bill) which leads to consequences the most prejudicial to the interests of the country. These persons, to whom you are now called upon to grant pre-emption rights, are naked trespassers, who, entering without a shadow of right, upon the Public Lands of the United States, selected the very choicest portions of those lands for themselves, and now come before this House, without even a pretence to any title whatever, and ask for countenance and reward from the Government. Congress has passed laws forbidding all trespasses on the Public Lands: but, if it had not, the natural principles of right, the universal law of property, forbid any man from appropriating public property to his own use, without the consent of Government. The contrary principle, if pushed to all its legitimate consequences, would end in the annihilation of all public property, and the subversion of all Government.

It was said yesterday, in the course of debate, that we are now *bound* to go on as we have proceeded, because we have extended this same benefit to others, not more meritorious, nor any less culpable, than these. But this fact, so far from being an argument in favor of passing the present bill, is, with me, precisely the reason, and the strongest of all arguments, from the accumulating force of the example, why we should not pass it. We have, it is true, gone to a great length in this species of legislation, and, if we proceed much further in it, the system will have accumulated, from precedent, a force and impetus which cannot be resisted; and, because we have encouraged and rewarded trespassers, we shall be held obliged to encourage and reward them, so long as we hold an acre of public land. Let gentlemen recollect that, in the course of time, the whole of that vast region which lies West of the Mississippi, will come to be settled under the operations of the land system of this Government. And I think, when this is duly considered, the House must be satisfied, that they have gone far enough already—that it is high time to stop—and arrest this course, before it leads to the entire prostration of our landed system, by our People running over the country in the wildest and most irregular manner. It is idle to talk about the *claims* of trespassers. No trespasser has any claim. The gentleman from Florida is certainly mistaken when he says, that this system has been acted on ever since the year 1788. In the course of the remarks made yesterday, in support of the bill, reference was had to pre-emption rights granted in Ohio to those who held under John Cleves Symmes, and to the donation granted to the Moravian settlers, and those in the Cincinnati district. The cases are by no means analogous, and furnish no just precedent for the present bill. The persons for whom this bill has been brought into the House, are trespassers; but those in the cases referred to, were not trespassers at all. The grant to the Moravians was made at two different times. By the first act, three townships were given to certain Christian Indians, or for their benefit: and by the second act, ten thousand acres of land were given to the Moravians, residing at Bethlehem, in the State of Pennsylvania, in trust, as a fund to be devoted to the civilization and christianizing certain Indian tribes. Were these Moravians trespassers on your public lands? They did not reside within hundreds of miles of them—they lived on their own property, in the heart of Pennsylvania. As to the pre-emption right granted to settlers on the tract sold to John Cleves Symmes, they rest wholly on equitable considerations. The United States sold a million of acres to Symmes, and allowed him some time for the payment. He immediately went on to the tract he had purchased, and commenced selling out the land in lots to settlers. These settlers honestly paid him for their land, and at very high prices too, he believed, and then improved it. Symmes afterwards failed in his contract, and, in consequence, the tract reverted to the United States; and these settlers might have been turned off—but the Government, from principles of equity, allowed each settler to retain a lot of one hundred and sixty acres, at the price of two dollars per acre. Were these trespassers? They paid for their land twice, and had gone lawfully into possession. Did these men go roaming over the Public Lands, and settle where they pleased, upon the choicest land, without a shadow of title—upon land worth perhaps ten, twenty, or thirty dollars per acre, and then come here for reward? No, sir; they were the *bona fide* purchasers of the land they held; and, as to the Cincinnati district, the grants there, were to persons who had purchased from Symmes. It is, in fact, only a different part of the same case. Not a single instance could be pointed

many important benefits to the country, in increasing its facilities, extending its empire, and protecting its borders, have always been, and ought to be rewarded. Influenced by these considerations, the Governments of France, England, and Spain, have made gratuitous grants of land to their subjects, who improve, inhabit, and cultivate them. The exercise of this indulgence has been so universal, that it is considered inseparable from the colonial state. The United States, recollecting the favors extended to themselves by the parent Government, and animated by the same just and liberal policy, have not been less bountiful to their citizens.

A recurrence to the laws of the United States will demonstrate that the petitions of the People of Florida, upon which the Land Committee have reported this bill, are neither new or unreasonable, but that they have been sanctioned by numerous precedents. He conceived there were no reasons deemed sufficiently forcible to justify a departure from the system in Florida. Previously to making a particular reference to those laws, it might remove some obscurity, and obviate some objections, to notice a misapprehension of many gentlemen in regard to settlements on the public lands. It has been alleged that the existing laws forbid settlements on the public lands, and denounce heavy penalties against all such intruders, who were located there without authority; and some call them squatters, which, so far as it is intended, as either descriptive or derogatory, was entirely unjustifiable. These inhabitants are small planters, whose lands in the old States have been exhausted by cultivation, and who, animated with the laudable desire of improving their condition, and that of their rising families, have encountered all the hardships of penetrating to the borders of the country, disregarding the difficulties of the journey, and unappalled, either by the labors of the forest, or the enemy in its bosom. Any imputations upon their motives, or question as to their right, would be the strongest censure upon our own forefathers, who sought this Continent, influenced by the same praiseworthy considerations. A more respectable population is not to be found in any of the States. If, however, sir, there was a law of the United States interdicting settlements upon the public lands, I could plead, as an excuse for them, the uniform legislation of Congress rewarding its violaters, and quote the old maxim "*communis error, facit jus*"—he was fortunately, however, not reduced to such an alternative. The law does not prohibit such settlements, and he would shew that the act of 1807, which was considered the basis of such exclusion, did not embrace this class of settlers; and, if it had, that law was practically repealed. That act, which is entitled "An act to prevent intrusions on the public lands," provides, that if any one shall take possession of, or attempt to survey lands ceded to, the United States, he shall forfeit his claim, and the President may remove him by force. This law was passed not long after the cession of Louisiana to the United States, and its evident object was to prevent surveys of large claims, the validity of which were doubted, and to prohibit those having unlocated floating permits, from being surveyed and settled on the best lands of that rich Territory, and hence they employ the phraseology "forfeit his claim." The Government were desirous of prohibiting by force, if necessary, the location of these floating and fraudulent claims, that the occupancy of them, after the change, might not be pleaded as a prescriptive right. Another consideration which probably impelled the enactment of that law, was to enable the President, in a summary way, to preserve the valuable timber, by the expulsion of intruders, without a resort to the tedious and protracted process of law, and the consequent destruction of the public property in the mean time. It never was, and could not be, the intention of that law, or any other of the United States, to prohibit settlements upon the public lands. The Register was authorized to grant permits to settlers. The act of 1807 was re-enacted, in expressions, in that of 26th March, 1816—contains the same provisions, so far as the settlements were concerned, and superseded that act. This statute expired, by its own limitation, a year thereafter, in 1817, when an act was passed, obviously to remedy the defects of the other, and to provide more effectually for the same object. The necessity of one part having been dispensed with, in the adjustment of land titles, it was provided that the Secretary of the Navy, under the direction of the President, should lay off districts which might be useful for public timber, and, by proclamation, to prohibit intrusions on those reserved districts, under severe penalties; if any order of this kind had been made, or any districts selected, and the public notified by proclamation, all who settled within the prohibited district would incur the imputation and penalty imposed by the act of 1807. Since the passage of the last act, there has been no authority given under the laws of the United States to Registers to grant permits, because none were necessary to authorize a settlement upon the public lands; they have, on the contrary, been rewarded by a privilege of purchase similar to what is proposed in this bill. This, however, gives as small a quantity as ever has been given, and smaller than has been accorded in many places, as a reference to the laws providing for the right of pre-emption will demonstrate. In Ohio, a grant of this kind was made to the United Brethren, on the Muskingum; and one million of acres afterwards given to John C. Symmes, upon condition, which having failed, six hundred thousand acres were given to settlers at the Government price, with the privilege of entering 640 acres by each individual. The same right was extended, by law, to the settlers at Galliopolis, and the District of Cincinnati.

In Illinois, by an act of Congress, passed in 1814, [illegible] donations had been given by law, the right of preemption was given, up to February, 1813, of not less than 160, nor more than 640 acres—in Indiana, up to 1[illegible] both subsequent to the law of 1807. In Michigan, to[illegible] with other indulgencies to the settlers. In Missouri, after great liberality in granting donations, pre-emptions were allowed up to 1807, and the purchasers given to 1813 to pay for the lands. In Missouri, Louisiana, and Arkansas, the same rights were given to settlers. It is manifest, sir, from a reference to these laws, that this system has been adopted and continued almost uniformly in all the States and Territories where there were public lands, and if it was inexpedient, why has it not been arrested before now? All that is solicited for Florida is what has been granted elsewhere. This bill does not provide to the same extent that others have; in Louisiana and Mississippi, these rights were given to settlers for ten years after the change of Government. The country he had the honor to represent was surrendered in 1821; this bill only provides for four years instead of *ten*; in some others they were allowed 320 and 640 acres of land, and, in most instances, time has been given for payment. By the provisions of the bill under consideration, they have the right of purchase for 160 acres, for which they pay cash. This, sir, is a most reasonable request, as is shown by the foregoing comparison; if it is granted, as it is an exercise of bounty, the People of Florida will not stop to inquire what has been done elsewhere, but offer their sincere benedictions for the Government that has protected their families, the enjoyment of their homes, in the formation of which they have expended their only means of purchasing, in competitions with others, attracted by their improvements.

Are there any circumstances or difficulties connected with the settlement of Louisiana or Mississippi, to distinguish them from, or give them a preference over, this Territory? If there was any difference in point of [illegible] and privation, it was on the side of Florida. After

change of Government, the present inhabitants travelled from the Southern States several hundred miles through the Creek Nation, or around it, through forests, cutting roads and constructing bridges, swimming creeks and rivers, and, after their arrival, for the first two or three years, were under the necessity of purchasing provisions at three or four times the amount they now cost.

Is it equitable or proper, that men who have encountered all these difficulties, submitted to these dangers and privations, and furnished these facilities for others to get into the country, should be put into equal competition with those who have made no expenditures, and availed themselves of the conveniences of their more intrepid pioneers? Is it just, sir, that one who has, by improving the country, increased the value of all the contiguous lands, and whose labor alone has given additional value to the spot on which he has located his family, shall be expelled, without any equivalent, from his home, by affording to the ruthless speculator, an opportunity to buy it over him? Sir, some have pretended to doubt the policy of these laws from the beginning. I would inquire of such, how would you ever sell those frontier lands without roads and settlers? If any gentleman supposes that, upon an enlarged view of this subject, the United States will lose by the passage of this law, he will be greatly mistaken, unless they avail themselves of the labor of those adventurous citizens, without a fair equivalent. The value above the Government price is derived from their labor, and the means they have furnished in penetrating the country. See the returns of the sales in Tallahassee; refer to the price of lands in the States; when it sells for twelve dollars per acre, ten of that is derived from the improvement, because land in its vacant state requires that sum to improve it. I do not hesitate to believe, that the land, in the state in which these settlers found it, was not worth more than the sum they are required to pay by this law. It is a sound principle, in politics and ethics, that he who benefits the public, is entitled to his reward. That the country has been greatly improved by the labors of these individuals, cannot be denied; and what will be their reward if this law does not pass? Their means of purchasing have been exhausted in the improvements of the country, and the high price of provisions; and the inevitable consequence will be, that they will be turned from their houses, forced from their plantations, by the rapacity of the heartless speculator, with but an inconsiderable augmentation to the Treasury. You cannot conceive, sir, the distress that it will occasion. They have, on account of the causes enumerated, but moderate means. They cannot enter the lists of competition with those who are attracted by their improvements, the result of toil and labor, in which they had no participation, and for which they feel no sympathy.

Mr. W. could not, in justice to the subject, dispense with the necessity of informing the House how these things were managed. A sale of public land is advertised—the sharpers of the adjoining States, strengthened by the aids of usurers and banks, club together their funds—flock to the country like vultures, at "death's prophetic knell," traverse all the roads made by the honest settlers; survey the whole district; take notes of every well-improved place; ascertain whether there is a spot endeared to a planter, on account of its containing the bones of a wife, child, or friend; and when the sale begins, the planters are informed privately, that, unless they pay so much to this "*holy alliance*," their farms and houses will be taken from them. The unpleasant alternative is presented, either to tender the bribe, or abandon the possession. If it is given either in money or in bond, all others are forbidden to bid for the land, and it is purchased at the price proposed in this bill, from the United States, and perhaps the same sum to the company. Should it not be given, the land is purchased for a few dollars more than the means of the honest settler, who is sacrificed, and the public Treasury augmented a few cents. It is to prevent this vile bartering, or the consequent injuries to those who will not engage in it, that this law is desirable. Such were the excesses to which these practices were carried in the Southern part of Alabama, that their Courts were crowded with suits upon notes of this description. Instances equally distressing, have occurred, and will again occur, in Florida.

By the passage of this law, you save from ruin an industrious, enterprising class of men, who have confided in your munificence, from a knowledge of your long continued legislation on the same subject. It is also important in a political point of view. The lands on our borders and frontiers should be occupied by men who are competent and willing to repel the first invasion of our country. Should this class be driven from the lands, and they were succeeded by the quarters of Southern planters and speculators, what will be our condition in time of war? It is important that small planters should be encouraged, and a dense and efficient population invited and encouraged, at the limits of the Confederacy, devoted to the Government, by a grateful recollection of its favors. One successful sortie of an enemy, and the occupation of a favorable point, might cost the Government more than all the lands in a district would sell for to remove him.

In every view of the subject, precedent, good faith, and policy, in my humble judgment, this law ought to pass.

Mr. WHIPPLE said, he had some doubts as to the propriety of this mode of legislation. He did not, however, rise for the purpose of opposing the bill; but he objected generally to the extension of the pre-emption system. It would be recollected that provision had already been made, by donation, for all those who settled in Florida up to the time of its cession; but the present bill goes farther, and grants to those who settled on the public lands after the cession, the privilege of purchasing at the minimum price for a period of four years. He thought this course was impolitic, and that this right of pre-emption ought to be restricted; because its practical tendency was to encourage the intrusion of unauthorized settlers on our public lands. Those settlers were in the habit of selecting the very best of the land, and of fixing themselves upon the soil, and when afterwards the lands were exposed for sale, they say it is unjust to eject us; we have made improvements; and they insist upon having the best and the richest of the land at the very lowest price the law will allow. For himself, he thought that this was a very questionable policy; but if the House were inclined to sustain it, he should make no opposition.

Mr. OWEN observed, that this was a proposition that certainly could not stand in need of debate. It was not at this time of day to be settled, whether this Government will or will not pursue the course of policy to which the gentleman had alluded. It had already been adopted and long pursued. This very bill, after being last year sustained both by the Committee on the Public Lands, and by the Committee on Private Land Claims, passed the House. The policy was adopted long since, and the doctrine advanced by the member from New Hampshire might almost be said to be now universally exploded. The donation lands to which the gentleman had alluded, were given to the former settlers in Florida on a principle of individual right. If they had not been conferred by this Government, the settlers would have obtained a title from the Government under which they formerly lived; it was, therefore, only an act of justice, and not of liberality. But, on the question of policy, he held an opinion directly the reverse of that which had been expressed by the gentleman from New Hampshire. He thought it was our true policy to grant to those who settled on the lands the right of pre-emption. It was their labor which gave value to the lands; without it they would have had none. He

considered it wise to encourage those who might, with propriety, be termed the pioneers of a more dense population. It was they who, by braving the dangers and overcoming the difficulties of an unsettled country, opened the way for the introduction of capital and all the improvements of civilized existence. As to what the gentleman had said of their selecting the best points, even admitting it to be true, their number was comparatively few, and abundance of the best land would still be left. But, from his own experience, as having been himself one of these pioneers, he was disposed to believe that the fact was the very reverse of this. It was true, that new settlers, if intelligent, selected those points which invited most advantages for a new settler; but, as they had to choose them in such a situation only as would admit of their sustaining themselves till they could make further progress in improvement, they were not at liberty to range through the whole of a body of public lands, and pick out those portions only which contained the most fertile soil. These settlers were, for the most part, already drained of all the money they had, by payments into the public Treasury. Would gentlemen wish to deprive them of all their earnings? In Alabama, the proceeds of what they paid into the Treasury, was equal to the whole amount of staple commodities they had hitherto been able to raise. They had literally been laboring for the Government, and the same state of things existed in Florida.

Mr. COCKE said, that his vote on this occasion would be regulated by one consideration alone. If it was proposed to extend a greater boon to the settlers in Florida than had been bestowed on those in other States, he should be opposed to the bill; if not, he should vote in its favor, unless some reason could be given.

Mr. WHIPPLE replied, that the extent of time during which this right of pre-emption was given to settlers in other Territories, was greater than that now proposed. He wished to correct one misconception of the gentleman from Alabama. It was true that the bill had been reported to the House at the last session, but the Chairman of the Committee on the Public Lands, and two other members of that committee, were opposed to the principle on which it was founded. As to the donation rights in Florida, the gentleman was also mistaken. Commissioners were appointed, to whom the claims of settlers were to be committed; and, where the evidence in their favor was incomplete, if the Commissioners thought that the claim would be confirmed by the Spanish Government, they reported in favor of them. Pre-emption rights went on a different ground. They were to be given to persons who had settled since the cession of the Territory was openly known, and who knew that the land on which they settled was public property. Still, however, as the Government of the United Staes had seen fit to grant such rights to others, he should not oppose their doing so in the present instance.

Mr. SCOTT said, that if this were to be the beginning of the pre-emption system, it was very possible that the Committee on the Public Lands would not be in favor of its adoption. But, when the right now to be given was compared with that which had already been given to others, he saw no reason why it should be refused to the settlers in Florida. In Missouri, the right of pre-emption originated in 1800, and he did not know a single instance where it had been refused. In Michigan, in Mississippi, and in Arkansas, the right of pre-emption was extended to ten years; but this bill gives it for five years only; and although it is admitted that they made their settlements contrary to the acts of 1804 and 1807, forbidding settlements on the public lands, yet the House had so far superseded the law as to give pre-emption rights to those who had violated it, and there was no reason why a difference should be made between settlers in one territory and those in another.

Mr. COOK was about to address the House, when—

The SPEAKER suggested, that, as there was no opposition to the bill, the debate was consuming time to no purpose.

Whereupon, the question was taken upon ordering the bill to be engrossed for a third reading, and decided in the affirmative.

And the House adjourned.

WEDNESDAY, FEBRUARY 22, 1826.

The House having come to order—

Mr. MITCHELL, of Tennessee, moved to dispense with the reading of the Journal of yesterday. This, said Mr. M., is the 22d of February! A day held as sacred by the People of these United States, as that which commemorates the advent of the Son of God! For it marks the birth of one who was the most perfect of all beings that ever appeared in the form of humanity, as a mere man. The People will applaud us for dispensing, on this day, with the business of legislation. Let us adjourn from this House, and let us sociably meet and converse of those great and important consequences which have followed the actions of that exalted man, the most virtuous that ever appeared on the page of history. Sir, I did imagine, when the resolution for adjourning over was yesterday introduced by my colleague, that it was not possible it could meet with the slightest opposition. I did believe it was so coincident with the feelings of every American heart, that there was not a gentleman on this floor who could be found to say a word in objection, but that the proposal would be hailed universally as worthy of instantaneous adoption. I do hope, sir, that the words and acts of this House would have done more to convince the world of what we feel on this occasion, than those frothy compliments which we have been in the habit of lavishing on the Father of his Country: and still hoping that we shall consent to adjourn, I move you, at present, that the reading of the Journal be dispensed with.

The SPEAKER putting the question of consideration, the House refused to consider the motion.

Mr. MITCHELL then moved an adjournment; on the question being taken, it was decided in the negative—ayes 53, noes 79.

CONGRESS OF PANAMA.

Mr. McDUFFIE rose, to make an inquiry of the Chairman of the Committee on Foreign Relations. It would be recollected that a resolution had been moved by his colleague, (Mr. HAMILTON) calling on the President of the United States to communicate to the House, the correspondence respecting an invitation to send Commissioners to attend the Congress at Panama, and that the House, after some modifications, had passed the resolution, and communicated it to the President. As no answer had yet been received, he wished to ask of the Chairman of the Committee of Foreign Relations, (as the only organ of the House whose duty led him to hold immediate communication with the Department of State, whether he could inform the House whether any reply at all is to be expected; and, if not, what are the reasons which have induced the Executive to disregard the call of the House.

Mr. FORSYTH (the Chairman of the Committee on Foreign Relations) said he had no information to give the gentleman on the subject to which his inquiry related. He had not considered it his duty to make any inquiry on the subject, and he had not made any. If the gentleman from South Carolina had any curiosity on the subject, he suggested to him the propriety of his applying to those in whose instance the resolution, calling for the information, was adopted by this House.

Mr. BOON offered the following:

Resolved, That the Constitution of the United States

ought to be so amended, as to authorize the qualified voters for the most numerous branch of the State Legislatures, in the several States, to vote directly for President and Vice President of the United States, in such manner as the Legislature of each State shall, by law, direct.

The resolution was committed to a Committee of the Whole House on the state of the Union.

Mr. HAYNES offered the following:

Resolved, That the People of the several States shall vote for President and Vice President by general ticket, and the candidate for each, respectively, receiving the greatest number of votes in a State, shall be taken and held to have received a number of votes equal to the number of Senators and Representatives of such State in the Congress of the United States.

Resolved, That, if no candidate for President shall receive a majority of the whole number of votes, according to the foregoing plan, then the two highest on the list of candidates for President shall be returned to the People, voting again by general ticket, and the one receiving the highest number of votes in a State, shall be holden to have received one vote: and if no candidate for Vice President shall receive a majority of votes, according to the foregoing plan, then the two highest on the list of candidates for Vice President shall be returned to the People, voting by General Ticket, and the one having the highest number of votes in a State, shall be taken and held to have received one vote.

Resolved, That, in either event, a majority of the whole number of votes, according to the foregoing plan, shall be necessary to a choice.

The resolution was committed to a Committee of the Whole on the state of the Union.

PRE-EMPTION RIGHTS IN FLORIDA.

The engrossed bill "granting the right of pre-emption to certain settlers on Public Lands in the Territory of Florida," was read a third time; and the question being, 'Shall the bill pass?"

Mr. VINTON said, that he was fully aware that a privilege, similar to that now proposed to be conferred on these settlers in Florida, had already been granted to others not more meritorious than they. But, from his experience and observation as one of the members of the Committee on the Public Lands, he was entirely satisfied that we must break down this system of pre-emption granting, or it would break down the land system. The basis of that system, as originally intended, was, that the lands ceded by the several States to the General Government, should be parted with by sale only, and in this way regulate and direct the settlement of the country. Pre-emption and donation rights had, however, been granted for various purposes: some had their origin in the charity and sympathy of Congress; some for purposes of education; others for the encouragement of religion. Concerning this entire class, whatever might be his opinions as to the expediency or wisdom of such disposition of the public property, he would at this time say nothing: they rested on their own particular merits. But, said Mr. V., there is a class, both of donation and of pre-emption grants, (and that class which embraces the case of the bill) which leads to consequences the most prejudicial to the interests of the country. These persons, to whom you are now called upon to grant pre-emption rights, are naked trespassers, who, entering without a shadow of right, upon the Public Lands of the United States, selected the very choicest portions of those lands for themselves, and now come before this House, without even a pretence to any title whatever, and ask for countenance and reward from the Government. Congress has passed laws forbidding all trespasses on the Public Lands: but, if it had not, the natural principles of right, the universal law of property, forbid any man from appropriating public property to his own use, without the consent of Government. The contrary principle, if pushed to all its legitimate consequences, would end in the annihilation of all public property, and the subversion of all Government.

It was said yesterday, in the course of debate, that we are now *bound* to go on as we have proceeded, because we have extended this same benefit to others, not more meritorious, nor any less culpable, than these. But this fact, so far from being an argument in favor of passing the present bill, is, with me, precisely the reason, and the strongest of all arguments, from the accumulating force of the example, why we should not pass it. We have, it is true, gone to a great length in this species of legislation, and, if we proceed much further in it, the system will have accumulated, from precedent, a force and impetus which cannot be resisted; and, because we have encouraged and rewarded trespassers, we shall be held obliged to encourage and reward them, so long as we hold an acre of public land. Let gentlemen recollect that, in the course of time, the whole of that vast region which lies West of the Mississippi, will come to be settled under the operations of the land system of this Government. And I think, when this is duly considered, the House must be satisfied, that they have gone far enough already—that it is high time to stop—and arrest this course, before it leads to the entire prostration of our landed system, by our People running over the country in the wildest and most irregular manner. It is idle to talk about the *claims* of trespassers. No trespasser has any claim. The gentleman from Florida is certainly mistaken when he says, that this system has been acted on ever since the year 1788. In the course of the remarks made yesterday, in support of the bill, reference was had to pre-emption rights granted in Ohio to those who held under John Cleves Symmes, and to the donation granted to the Moravian settlers, and those in the Cincinnati district. The cases are by no means analogous, and furnish no just precedent for the present bill. The persons for whom this bill has been brought into the House, are trespassers; but those in the cases referred to, were not trespassers at all. The grant to the Moravians was made at two different times. By the first act, three townships were given to certain Christian Indians, or for their benefit: and by the second act, ten thousand acres of land were given to the Moravians, residing at Bethlehem, in the State of Pennsylvania, in trust, as a fund to be devoted to the civilization and christianizing certain Indian tribes. Were these Moravians trespassers on your public lands? They did not reside within hundreds of miles of them—they lived on their own property, in the heart of Pennsylvania. As to the pre-emption right granted to settlers on the tract sold to John Cleves Symmes, they rest wholly on equitable considerations. The United States sold a million of acres to Symmes, and allowed him some time for the payment. He immediately went on to the tract he had purchased, and commenced selling out the land in lots to settlers. These settlers honestly paid him for their land, and at very high prices too, he believed, and then improved it. Symmes afterwards failed in his contract, and, in consequence, the tract reverted to the United States; and these settlers might have been turned off—but the Government, from principles of equity, allowed each settler to retain a lot of one hundred and sixty acres, at the price of two dollars per acre. Were these trespassers? They paid for their land twice, and had gone lawfully into possession. Did these men go roaming over the Public Lands, and settle where they pleased, upon the choicest land, without a shadow of title—upon land worth perhaps ten, twenty, or thirty dollars per acre, and then come here for reward? No, sir; they were the *bona fide* purchasers of the land they held; and, as to the Cincinnati district, the grants there, were to persons who had purchased from Symmes. It is, in fact, only a different part of the same case. Not a single instance could be pointed

out, in Ohio, in which trespassers had received the smallest encouragement; much less, the bounty of Government, for violating public property—it never had been asked for them—they had been left to their fate.

He would now say a few words as to the effect of this system of pre-emption right. It had its first rise in Louisiana and Missouri. He would begin, however, in Michigan, and, passing through the Territories, would shew what had been its consequences. Some four or five years ago, an act was passed granting donation rights to all persons who had settled in the county of Mackinac, previously to the year 1812, on condition that they should prove that they had submitted to the laws of the United States, and acknowledged their allegiance to this Government. It was known there were persons there who were aliens, and had served with the enemy during the war. The Commissioners, before whom those proofs were to be made out, by some extraordinary process of reasoning, came to a decision that no proofs should be required of this, on the part of the settlers, but that they would wait till some person came forward, produced a record of the conviction of the settlers, of the crime of treason, or some other violation of law. Some time after that, a military post was established at the Sault of St. Marie, which rendered this place of some importance—and what was the consequence? It appeared, last year, in evidence produced to this House, that, with the exception of one or two, all the persons who had received these donations were either British subjects, or had actually borne arms against the United States. And the leading claimant among them was the very commander who led the party that took the post at Michillimacinac, and let in that flood of Indians who covered our frontiers with blood, and who were the authors of some of the worst evils and barbarities of the late war. These Commissioners had recommended for confirmation, donation rights to those persons who were intended to be excluded by the law, within the very pickets of our military post at that place; and the consequence was, that the troops were compelled either to purchase their wood of these persons, or to go a distance of two or three miles to obtain it, in this inclement country.

What was the state of this matter in Arkansas? A few years ago the United States made a treaty with the Cherokee Indians, by which that tribe was to receive a quantity of land (far beyond the public surveys or any known settlements) on the West side of the Mississippi, equal to that which they should give up on the East side of that river. But when the Indians, in compliance with this treaty, removed to the West, they found on the lands which had been ceded to them, hundreds of white settlers, who had settled there without any title, but who came into this House and demanded pre-emption rights; and, at the first session of the last Congress, those rights were granted to them. A treaty was afterwards made with the Choctaws for a similar exchange of lands, and when they went to occupy the tract assigned them, they found upon it settlers (which he had heard estimated to amount to between two and three thousand) who were unwilling to surrender the land on which they had trespassed; and during the whole of the last Winter a delegation of that nation were in attendance at the Seat of Government, endeavoring to obtain the removal of these intruders, or make arrangements about them. Great difficulty and embarrassment was produced by their application, and I believe they have not yet been put in possession of their lands, or any adjustment effected.

In Louisiana these pre-emption rights were extended to ten years. A session or two ago, a gentleman from Louisiana had called for information, why a certain district of country in that State had not been surveyed and brought into market? The inquiry produced a long correspondence between the Surveyor General of the district South of Tennessee, and the Commissioner of the General Land Office, in which the former stated that Congress had so often extended the time to persons who held donation and pre-emption rights, and other claims, to make proof of them, as to render it impossible that those districts could be surveyed and brought into market: and in his correspondence the Surveyor General minutely details a system of fraud and perjury, so extensive, as almost to exceed credibility; and he concludes with saying, that Congress have only to go on to pass one or two more laws, such as they have passed, and the residue of the lands belonging to the United States, in Louisiana, will not be of sufficient value to pay for the surveys. It is very easy in this way to grant away a whole State before we are aware of it.

In Florida, Congress had confirmed to settlers all the lands held by them at the time of the treaty, by which Florida was ceded, whether the settlers had title or not. A subsequent bill had been reported, by which six hundred and forty acres were proposed to be given to each of those who settled on the Public Lands, between the making of the treaty and the actual surrender of the Territory to the United States, by which bill, which, in analogy to other acts ought to pass, not less than eighty thousand acres of Public Land would be given away. And now a bill is introduced, which gives to every man who may have run over the Public Lands for five years past, and chosen out the best spots for himself, a right to pay for it at the minimum price. No man knows the number of these persons, and the gentleman from Florida has not undertaken to tell us. If any thing, surely, was calculated to encourage the most wanton trespasses on our public domain—to break down our whole land system—it was this. They had retarded the sales of land, prevented the public surveys, interfered with the execution of our public treaties, and made war upon our military posts. These trespassers were ready, as appeared from these things, to throw a clog in the way of the movement of every wheel of the Government. Our land system, as at first devised, was an excellent one: experience demonstrated it to be founded on principles of practical excellence and expedience, and its effects have been highly beneficial to the public interest in Ohio, where it has been carried into speedy and undeviating execution. But, if the course is persevered in, of granting these pre-emption and donation rights, the system will be virtually broken down. Congress are necessarily, ignorant of what is taking place on the part of the Public Lands which lies beyond the portion surveyed. They do not know how many persons are engaged in making on the public property; and when they pass a bill like that now before them, they continue ignorant of the magnitude of the grant they have made, until they find some of its effects interfering with the subsequent movements of the Government. They then become aware, for the first time, of the extent or amount of their own grant, and then it is too late to correct the error. Unless the Government shall stop this encouragement to unlawful settlements, it was easy to foresee that the whole country, West of the Mississippi, was destined to be settled in the most irregular and objectionable manner, to become a prey to the yearnings of cupidity. He held it to be most important to the public good, that this whole business of settlement should be strictly regulated, and should be kept in the Government under its own control. The inevitable effect of any other course would be a mischievous interference with our relations with the Indian tribes, and to throw the settlement of the country entirely beyond the control of the Government, which ought to be known and regulated by policy. He had not made these remarks out of particular hostility to the present bill, but from a general conviction of the impropriety and injurious tendency of this course of legislation—making the invidious distinction of rewarding one man for his trespass, and making another pay for his lawful possession. If the House are of opinion that the present course ought to continue, it

hey ought to pass the present bill; but, if they thought otherwise, they ought, undoubtedly, to refuse it. There were hundreds of trespassers on the Public Lands in Ohio, nor could he see why trespassers in Ohio or Indiana, in 824, were not entitled to the same boon as trespassers in Florida, or trespassers in Michigan or Missouri. If any are o be encouraged and rewarded, remove all barriers; abandon all care of your Public Lands; and let all manner of persons enter upon them, and take what and where they choose. The consequence of which would be, one universal scramble for the whole country, to the Pacific, the evils of which to the Government, and the real settlement and prosperity of the country he should not attempt to depict.

Mr. WHITE, of Florida, said, after the explanations which had been given of the principle and policy on which the bill now under consideration was founded, and no amendment having been proposed in Committee of the Whole, he could not have anticipated such formidable opposition on its final passage, and particularly from the gentleman from Ohio. He has said, it was time to break down the system, and denounced all who are intended to be embraced by this bill, as trespassers on the Public Lands: and has also asserted that their improvements cover all the good lands of the Territory. He denied that either of the propositions were correct. The inhabitants, whose rights were intended to be secured by the passage of this bill, were not trespassers. The act of 1807, entitled "An act to prevent intrusions upon the Public Lands," was passed shortly after Louisiana was surrendered to the United States. There were, at that time, numerous unlocated claims, derived from the French and Spanish Governments, founded on permits, requets, and floating concessions.

That act was intended to prevent the location and survey of those incomplete titles, and at the same time to authorize the President of the United States to preserve, by force, if necessary, not only the domain, as this Government acquired it, in the treaty with France, but also to invest him with discretionary power to prevent these locations of claims, many of which were considered invalid, and in the hands of those who did not intend to become citizens of the United States; the pretext for locating which, might have led to serious disturbances, in the condition that country was in at that time. Another consideration, which induced the passage of that law, was the preservation of the public timber on the lands of the United States.

It never was either the intention or policy of the Government of the United States to prohibit settlements on their vacant lands: on the contrary, they have encouraged it, by a long continued system of legislation, both before and after the act, to which, alone, the gentleman must refer, in pronouncing them trespassers. By the provisions of that act, the Register of the Land Office was authorized to grant permits of settlement to every American citizen who should apply for that privilege. Does this look like an intention of the Government, at the time of the enactment of that law, to interdict settlements on the Public Lands? No, sir; neither that law, nor any other to be found in the statute book of the United States, will justify the statement of the gentleman.

In the act of 1818, the same provisions are incorporated, and the same permission given. That act expired in one year, and with it expired the only law then in force, or which has been subsequently enacted, to provide for granting permits to emigrants settling on the public lands. Every citizen, looking to the history of our legislation, feeling himself justified by established precedents, and in the absence of any prohibition, could settle any where on the public lands he thought proper, without incurring the imputation of trespassing, or the penalties of intrusion.

From the expiration of the act of 1816, in the year 1817, to the present time, there has been no law interdicting settlements on the public lands of the United States.

One of the great objects in the act of 1807, the preservation of the public timber, was provided for in another and better mode in 1817. He alluded to the law authorizing the Secretary of the Navy to reserve certain districts, which might, in the estimation of the Executive, be useful for timber. With this enactment, and the final adjustment of land claims in Louisiana, terminated the law, and its necessity, under which the gentleman has considered it proper to denominate the citizens for whose benefit the law was intended, as "intruders and trespassers"—appellations which neither the law, nor the character of the inhabitants, would authorize as appropriate or descriptive.

The gentleman says we have gone far enough; it is time to stop. Sir, he ought to have been here thirty years ago, when you were voting away such extensive donations to the State he represents; his arguments might have been more forcible then than now: but how does the account stand? Ohio has gotten all that she could ask, and it is time to stop: "the system is a bad one." Is this consistent with the equality and propriety that should characterize the legislation of this great nation? Ohio has been satisfied, and it is time to stop. The gentleman has attempted to explain how these grants were made to the State of Ohio; and, however ingenious he may be, and is capable of being, in the explanation, he cannot separate it from the present bill. One million of acres of land was given to John C. Symmes, upon certain conditions; they were not complied with; the land reverted to the United States, and, by law, 600,000 acres were given to purchasers at the Government price. Yes, sir, by a law of Congress; and the gentleman attempts to explain it by saying, that they were purchasers under Symmes. Does this constitute any equitable or legal claim on the United States? Whatever might have been their demands on the original grantee, they assuredly had none on our Government; and this act in favor of Ohio, was a bounty of six hundred thousand acres to them, on the same terms that this bill proposes to give one or two hundred to the settlers in Florida. If that gentleman could have been here, and by the power of his arguments prevented the passage of that law, he would have saved more to the Government than will be saved by preventing the passage of this. But is this all that has been granted to Ohio? Sir, I have taken a note of all the laws which have been passed on this subject, and I find in that catalogue a grant to the "United Brethren," in Ohio, on the Muskingum; a grant to the French settlers at Galliopolis; I find, also, a grant to settlers in the land District of Cincinnati. How much has been given to this favored State by all this munificent legislation, I have not taken the trouble to estimate; but since Ohio has received all that she can get, and is now rich and powerful, "it is time to stop;" we have gone far enough. Sir, this logic may suit that gentleman, but it would sound most ungraciously in the ears of those I have the honor to represent; and it would have been, some years ago, most unwelcome intelligence to those he now represents. The gentleman has told us of the abuses which have been practised in Michigan and Louisiana, under laws similar to the one under consideration. If such have existed, it is the misfortune of the Government and its agents. It does not grow out of the system itself, and is no argument against its propriety. If he had read this bill, however, with his accustomed perspicacity, he would not have anticipated any such results as he has deprecated, in regard to the obstructions of the surveys.

This law cannot create any such inconvenience. It proposes to give to each settler a quarter section of land, at a specified price, to be bounded by sectional lines, if the surveys are completed; if not, to be bounded in the same way when they shall be completed; and, in this way, all the difficulties in regard to the surveys are obviated.

Sir, I do not ask for the People I represent more than

has been conceded elsewhere, and it is difficult for me to perceive the force or propriety of adopting an uninterrupted system, continued and uniform, sanctioned by nearly every Congress for thirty years, and when you reach the most exposed and frontier country of all your new Territories, say it is time to stop. We are told, however, that, by a law passed, and one in contemplation, 80,000 acres are already given. The donations up to 1819, when the Treaty was concluded, were only eighteen in number, as will be seen by the reports of the Commissioners; and I do not believe that the land, if sold, would pay for the surveying. The other class in contemplation, in Escambia County, where the greatest number reside, is of the same character. Those further East are more valuable; but admitting that the whole was good land, and add to it that proposed to be embraced by this bill, and how will it compare with the 600,000 acres in Ohio? This, however, is not be considered as purely a donation: By the regulations and ordinances of the Spanish authorities, in force in Florida, every person who settled in these Provinces, and inhabited and cultivated the land for a particular number of years, was entitled to a gratuitous concession from that Government; and by the Treaty between Spain and the United States, the latter covenanted to confirm all titles to the same extent that would have been confirmed under the Spanish Government. The actual occupation under that Government has always been considered as constituting an inchoate right, or equitable title, to be perfected in the same manner that such titles would have been under the Spanish Government. Upon this principle, the United States have adjusted all the equitable, as well as legal claims, up to the change of Government. Such were the laws for Missouri, Mississippi, and Louisiana. The pre-emption laws have originated from considerations entirely different. I have shown, in the remarks I had the honor to offer in explanation of the objects of the bill, on yesterday, what was granted in Illinois, Indiana, Michigan, Missouri, Mississippi, and Louisiana. The gentleman says there are no recent instances, and that it ought to be stopped. In Arkansas, I think so late as the year 1823, or 4, Congress passed an act giving pre-emption to all the settlers embraced in a Treaty with the Choctaws, any where in that Territory—Cherokees, I am informed by the honorable gentleman from Arkansas—and in lieu of pre-emptions granted by an act of 1814. I thank the gentleman for the information, but it does not alter my argument. It is to show that this House have recently legislated upon the subject, and the extension that we contend for has been granted to Arkansas. The gentleman is equally mistaken in supposing that this law will cover all the good lands. The Indians were removed in the Fall of 1824. This bill extends the right of preference in purchasing, to the 1st of January, 1825. It would be most surprising if many could have "inhabited and cultivated" the lands occupied by them until October or November, 1824, before the 1st of January, 1825. Besides, sir, if that were the fact, I contend that the Government of the United States have no equitable or moral right to more than the lands are worth, in their unimproved state.

The gentleman has attempted to give an estimate of the lands, and their value; let him look to the returns of the sales of unimproved lands in the vicinity of the Seat of Government; it did not average two dollars per acre in the immediate neighborhood of Tallahassee. This sale will demonstrate what lands are worth in the woods. It is proper, however, to remark, that there were other causes, which, in some measure, produced this result. If, then, Sir, the lands on which these settlers live, are worth more at this time, from what is it derived? Their own labor: and is it just, that the Government should appropriate the labors of its own citizens to fill its coffers? Sir, it would be making slaves of the most deserving of your population. If the land is worth one dollar and a quarter, or two dollars, in the woods, and it costs ten dollars to clear it, is it fair, honest, or magnanimous, to take from the settler, encouraged to locate himself there by your laws, more than the value of the land in its unimproved condition? Look then to the sales in the woods in that country, and you have the estimate, and very near to the sum proposed to be given by this law. Mr. W. said that he had attempted on yesterday to prove that the United States would make but little by the refusal to pass this law, whilst this deserving class of inhabitants, who have cut roads, constructed bridges, and felled the forest, would be placed at the mercy of a class of speculators, who are so well disciplined in the arts of their profession, and so familiar with the distress they have occasioned, that the People have as little hope of compassion as from an Inquisitor, or mercy from a Shylock.

It is impossible to prevent combinations at those sales. No matter what the demand is, to a certain extent it has and will be continued. By passing this law, the individuals who are embraced by it (and their numbers have been greatly exaggerated) will be secure, and the Government have a fair equivalent for the land in the state they found it—when you take in connexion the increased value of the land around their settlements, in consequence of the facilities they have created to get them, and the comforts and conveniences they afford to new emigrants. Whenever improvements are found to be valuable, the company of speculators, through their foreman, notify the farmer, whose means of purchasing have been exhausted in the improvement of the country, and in purchasing every article at four times its present price, that unless he will pay so much to the company, they will bid for the land, against him. In this way the honest planter is obliged to compromise, and perhaps pay them as much as the Government, or be sacrificed.

It is to prevent this, sir, that this bill is intended, not to reward the enterprise of your adventurous citizens who have encountered all the perils and difficulties of a settlement in that country. Another consideration has great force in recommending the passage of this bill. Florida is your most exposed frontier, having an extensive sea coast. It is, therefore, the policy of the Government to have as dense a population as possible, and every advisable means should be adopted for that object. Should the lands fall into the hands of speculators, or large planters, who will quarter their negroes near your borders and coasts, the consequences will be equally injurious to the population of the Territory, and the security of the country. For these reasons, sir, and those I had the honor to submit on yesterday, I trust the bill may pass.

The question was then taken, and the bill was passed and sent to the Senate for concurrence.

IMPORTATION OF GIN AND BRANDY.

The House then proceeded to the consideration of a bill to authorize the importation of Gin and Brandy in casks of a capacity not less than fifteen gallons.

The bill having been read—

Mr. WRIGHT said, that, as this appeared to be a departure from our ordinary system of legislation in respect to the revenue, he was desirous of knowing some of the reasons which had induced the Committee of Commerce to report the bill.

Mr. NEWTON said, it was with reluctance he found himself called on, after the explanation he had heretofore given, to repeat that explanation to the House. There was, he thought, no greater danger to be apprehended from smuggling, by permitting the importation of gin and brandy into the United States, in casks of fifteen gallons than there was in granting the same permission to carry wines in casks of a similar character. We must run some risk—we must take the advantages and the disadvantages

of the measure—and he believed our merchants to be as honest as those of any other nation. What, Mr. N. inquired, was the object of this bill? It was to promote our commercial intercourse with South America; and to enable our merchants to carry on trade with that country, with equal effect with other nations, it is necessary they should be placed on the same footing with other merchants. He had said yesterday that the British had relaxed their system; they have opened their rivers; they have even sanctioned the warehousing system: their merchants are afforded every facility for trading with South America, and we ought, Mr. N. said, to adopt the same policy. Our trade with South America is very valuable: that country yields the same articles that the United States yield, and many others besides. We cannot export cotton to South America, nor tobacco, nor many other articles, and our export of flour will not be of long duration: for, the moment the people of that country are at peace, their soil is rich enough to supply all their wants. The only articles with which we can supply them are manufactured articles—the products of the industry of our own country, or of others; and, in proportion as the advantages are taken away from our merchants, by which they may trade with effect, to that country, our trade is surrendered to Great Britain, and to other nations.

The Committee of Commerce had, Mr. N. said, taken this subject into their serious consideration; they had weighed well all the advantages and disadvantages, and the result was, that it was necessary this policy should be adopted, to enable our merchants to carry on commerce with South America, with success.

Mr. WRIGHT expressed his doubts as to the policy of this bill, in one point. If it were expedient to legislate to facilitate the intercourse with those countries, he did not think it was expedient to facilitate the introduction of those articles for the purpose of home consumption. One of the greatest securities against smuggling articles of this kind into the country, is, that the cask or chest, in certain cases, in which they are imported, affords a facility for detecting the smuggled articles. Mr. W. said, he did not understand that the gentleman at the head of the Committee on Commerce had asserted the necessity of encouraging the importation of these articles for the consumption of the country; nor that it was necessary for any purpose connected with the wants of those People, except as regards the trade with those South American Republics. The only objectionable feature in the bill would, he thought, be removed by inserting, as a guard against fraud, that these articles should not be imported in casks of this size for the consumption of the country, but that the importation shall be confined to the articles intended to be warehoused and exported again out of the country. If such a guard as this was inserted in the bill; or if the provisions of the bill themselves were, in the apprehension of the gentleman, and of the House, sufficiently guarded on that point, he should rest satisfied.

Mr. NEWTON, in reply, remarked, that, if the gentleman would advert to the bill, he would find, that when this brandy and gin is to be imported into the United States, it is to be warehoused, and put under the lock and key of the Custom House Officer; and it would not be taken out until the duty is paid, or until it is to be re-exported, for the benefit of drawback, to South America. All the provisions of the law were as guarded as they could be, and he did not believe there was more risk of brandy being smuggled into the country, than of the smuggling of wine, or any other small package, at present authorized by law to be imported into the United States.

Mr. BUCHANAN said, he was not in the House when the bill was brought up for consideration, and he should be very glad if the gentleman who was at the head of the Committee on Commerce would suffer it to lie on the table for one day. There were, he said, certain provisions in it, which, when they came to be explained, would be considered of great importance, at least to the Representatives of many of the States of the Union.

Mr. NEWTON expressed his belief of the correctness of the policy recommended by the Committee of Commerce, to be too strong to fear any investigation; nor did he wish to press this subject, when any gentleman wished time for consideration—he therefore moved an adjournment:

And the House accordingly adjourned without passing upon the bill.

THURSDAY, FEBRUARY 23, 1826.

There was no business transacted this day giving rise to debate.

AMENDMENT OF THE CONSTITUTION.

Mr. ARCHER concluded his remarks on the resolutions of Mr. M'DUFFIE. The following is a full report of his speech:

He entered on the subject by an expression of his satisfaction at the modification which had been submitted of the Resolution, as first presented to the Committee. Involving, as it did in its original shape, two propositions, distinct in character, though not in subject, and admitting of diversity of opinion, he confessed he had been at a loss how to reconcile the difficulty it had created. From this difficulty we were relieved, however, the propositions having become separable in discussion, as they were in the objects they pursued, and as he trusted they would be, in the reception which awaited them from the Committee.

He should have frequent occasion (as a person following him would, unavoidably, have to do,) to refer, in the course of his remarks, to what had fallen from his friend from South Carolina, with whom, though dissenting from one of his propositions, he concurred in many of his views, and in the first, and that which he regarded as the most important of his resolutions. He should profit by this concurrence, to abridge the remarks he should have to offer on this Resolution, conscious that he could add little to the force of the views which had been stated of it. In the view which had been taken on the general subject of this amendment of the Constitution, he entirely agreed. He agreed, that not only general reason and expedience, but the language of the Constitution itself, repudiated the idea of its superiority to amendment. The framers of the Constitution themselves, he said, if now mingling in our deliberations, would be the first to discountenance the suggestion, that there was more than mortal perfection infused into the great work they had produced. Time and experience were the wisest of all things. He was disposed to admit no other authority as paramount to the Constitution; and the practical rule in relation to the amendment, he thought, therefore, ought to be, that it was only to be resorted to for defect, which experience had disclosed. In relation to all suggestions of defect, not ratified by this authority, he thought it the dictate of prudence, no less than modesty, to hold the wisdom of the Constitution superior to our own.

There was another preliminary remark with which he must be indulged. One of the resolutions was surrounded by invidious topics of allusion. His friend from South Carolina had given him great satisfaction by the determination he had expressed, to discuss this important subject, without permitting himself to be influenced by temper, or by any unworthy associations. It was hardly necessary to say, that he should be governed by the example, and observe the same rule of conduct. His friend had not exaggerated the importance of the subject. Indeed it was scarcely possible to exaggerate it. He agreed entirely, that the part of the Constitution which referred to the election of President, was the most vulnerable of the whole, and presented the point, in which our system

stood most exposed. The disturbing influence of the freqency of the recurrence of the election operating on the peculiar character of the office, justified solicitude. The vessel rode in peril in the neighborhood of this shoal. Every provision of precaution, therefore, was due to a situation of this exposure. Interests were associated, Mr. A. said, with the progress of our National System, of higher order than had ever been identified by the ordination of Providence, with the fate of any human institution! Our own widely expanded, and rapidly filling Continent, was not exclusively involved. An inresistible impulse to political regeneration, pervaded almost every region of the earth. The elements had been reposited, and active in political effervescence, or latent in the social condition; the processes were going on, from which results inappreciable in magnitude and value were to spring. And where, Mr. A. asked, was the principle from whose action these imposing results would trace their source? *It was the influence of the spectacle of the free institutions of this country!* This was the "touch of Promethean fire" which was destined to waken the *heart-beatings* of freedom, through the world. Where, in the wide expanse, was the region, which the glow of this genial inspiration was not fated to reach? It was to be hoped fervently there was none—generous enthusiasts believed that even benighted Africa was destined to break through her cloud of centuries, and to grow bright in the light of our *radiating* example. All must, in any event, admit, that if this light were once obscured, no future sun could be looked for, to restore the *day time* of freedom to the world. The extraordinary personage, who had recently swayed, on the continent of Europe, the greatest of all Empires, had said, in a spirit of sublime animation, of his soldiery, on a particular occasion, that forty centuries looked down on the issue of their military operations. In how much a more sober spirit, it might be affirmed, that not forty centuries only, but the whole train of future time, with its inappreciable destinies, looked on the progress of our political experiment; which, perhaps, was, in a greater or less degree, to be affected by the issue of the counsels in which we were now engaged. In the contemplation of a question of this magnitude, he would not believe it in human nature to permit the sordid stain of party acrimony to pollute its unutterable dignity.

Of the points, Mr. Archer went on to say, in which modern might claim superiority over ancient times, none was more remarkable than that which related to the art of government. Magnificent Empires, flourishing Republics, were presented to our admiration in ancient times. And what was the spectacle which impressed us? The precarious and irregular character of their exertions—the incomprehensible rapidity of their decay—the marvellous facility of their subversion. A battle overpowered, a breath was sufficient to overturn them. The resolution of these peculiarities presented the problem which was, beyond all comparison, the most interesting in history. What was the cause? The ancient Governments wanted the true principles of political institution. The Empires were subverted or perished, because they did not admit the sustaining conservative principle of the action of the will of the community on the machinery of the Government. The Republics were swept away by the irremediable disorder, growing out of the want of balanced forms, to prevent the principle of popular sovereignty from running into despotism. From these fundamental defects we were happily exempt. Perhaps, in reference to this particular department, no improvements remained to be introduced. But in reference to another, of scarcely secondary interest, there was a desideratum. He alluded to the subject of the efficient and safe organization of the Executive. Here the difficulty was of no common order, resulting from the peculiar character of the office, requiring it to be confided to a single functionary, yet surrounded by every allurement to wrong bias, as respected the persons who were to bestow, as well as those who were to discharge it. In relation to this subject we appeared, to Mr. Archer, to have adopted the most beneficial and efficient regulations which it was in the competency of wisdom to devise. The office had been rendered elective—limited to a short term—removed, as respected the election, from the seat of bad influence, and referred to the disposal of those who, from various causes, were least liable to the access of this influence. But a resulting difficulty was presented. A majority of the electoral votes must be requisite to an election—or by the influence of the distractions of public sentiment, it might be placed in the power of an inconsiderable minority, to dispose of the office. Then this contingency must be provided for, of a distribution of the electoral votes, giving to each person receiving any portion of them, a suffrage less than that of a majority. What had been the regulation provided, in reference to the occurrence of this contingency? The contingency was not expected, however, frequently to occur. The depths of political refinement would not be expected to be sounded, therefore, in arranging a provision for its occurrence.

In the event of its occurrence, the difficulty it created would be pressing. An arrangement which was immediately available, would be in request; and that which presented itself most obviously, and was the most easily available, would therefore be preferred. In failure of the primary election, the persons the best entitled to supply the place of the original electors, in conducting it, would be their Representatives. Those persons would be required to be in assemblage too, at the time of the difficulty requiring provision in the discharge of other functions. They would be recommended then by all the considerations alleged: the pressure of the difficulty for arrangement; the obviousness of this particular arrangement; the facility of its adoption; the relation of these persons to the original electors, for the discharge of this resulting office of election. Such were the considerations, Mr. A. said, which must have operated with the framers of the Constitution in the introduction of this provision. A farther [illegible] ment was probably found, in the fact, that the action of representative bodies had been known to them only in its best forms, and most favorable aspect. A body of this character had recently carried them successfully through the struggle of the Revolution, with no room for suspicion, that such a body would ever be found, evincing [illegible] tion to the will of its constituents; to which the [illegible] well as the principle of its composition, would [illegible] subservience. Such considerations as these, Mr. A. [illegible] ed, and no independent and intrinsic views of policy [illegible] ference to a peculiar qualification or proper adaptation for the office, had induced the selection of the national Representatives, for its discharge. The failure of this provision, therefore, when called into practical operation, constituted no imputation on any real policy of the Constitution, nor on the uncontested wisdom of its framers. It was a provision for emergency scarcely expected to occur, selected for its facility, obviousness, and ready adaptation to the occasion; and not from its intrinsic recommendations, in reference to the elective function to be discharged. But we were now enlightened, as respects the real character and effect of this provision, by knowledge which was denied to the framers of the Constitution, derived from practical experiment of its [illegible] operation. On the first trial, on the first occasion [illegible] election being devolved on the House of Representatives, what had been the spectacle exhibited, to the [illegible] of the People? Ballots were taken day after day, night after night, until thirty-seven ballotings had [illegible] place, before the *known and uncontested public* [illegible] allowed to be triumphant! We have the light [illegible]

xample, denied to the framers of the Constitution. Having been conversant with representative bodies, only in eir purity, their provision was not made for a state of ings, of the possible occurrence of which they had form- l no conception. This provision of the Constitution has en twice acted on; the election has twice been brought efore the House. He should not allude to the second lvent in any feeling of acrimony; but, this he might be lowed to say—that the result of this reference had not ven entire public satisfaction. He did not say, this ight to have been the effect—he was simply speaking of ie fact—this was the effect. No matter how correctly the lection was conducted, such was the result. And, if all the ersons engaged in it, were above the reach of human infirmity, whenever the election comes to the House, such issatisfaction will ensue. Why is this? Because, three andidates being sent from the primary elections no one an be elected but by a combination among the friends f the other two! And, no matter how pure may be the rinciples and views of all parties, suspicion will attach, hat improper considerations have influenced the result. He would say, that no Executive, elected under such circumstances, could be efficient and pure. The effects of iscontent will always show themselves, first on the effiiency, and secondly, on the purity of Government. The Executive is only the organ of the public will. If the People attach suspicion to his motives and conduct, his Administration cannot be efficient. Why cannot it be ure? Because, if an Administration be not supported y the People, it must seek support by other modes. This s the law of human nature. If the fabric cannot stand irm and safe on its proper foundations, it must be sustained by buttresses which are external. If the Government has not the support of the People, it must, perhaps t ought to be pardoned for resorting to the means of corruption for its support. If, then, such are to be the reults, ought we not to close this House to this election?—ught we not to take the election from the House, if it be ikely to come here again?

And was it likely to come again? This event must always hereafter occur. The period could scarcely be conceived, in which it could hereafter be avoided. Such a period, not only could not arrive—he hoped it never would arrive: for he felt a pride in believing, that there would always be four or five persons brought before the People, as candidates for this high station, who would all be entitled, by their merits and abilities, to the suffrages of their fellow citizens. The country being divided into geographical sections, and education widely and generally diffused, talent, in various quarters, would be elicited, equal to this elevated station; in any event, the People of that particular quarter will think it equal, and each sustain its favorite; and thus the election will be thrown into the House. The geographical divisions of our country, as well as its extent, impose limits to the sphere of popularity. If the reputation of an individual travelled beyond his own State or division, it would be sure to meet, in some other, perhaps in every other, rivals, elevated, if not by equality of pretension, by the force of party or sectional prepossession; and, sustained by the same influence, or by that of antipathy and jealousy, derived from the same source. The South would support a Southern, the West a Western candidate, from the want of opportunity for the institution of adequate comparison; or from the approach to equality in the results of this comparison; or it might be from the force of unrelated considerations and prepossession. Was the case even inconceivable, that a candidate, without personal popularity, might be sustained, by these considerations, so as to be brought as a competitor to the House? He disclaimed all particular allusion. In the great discussion in which we were embarked, he felt himself in a region, and invested with a character, superior to such allusion. But take the strongest case in illustration of the proposition he was stating, which our geographical influences and national composition afforded. Suppose a candidate brought forward in the New England States, who always acted together—he mentioned this not in a way of reproach, but with respect for their consistency and union—they were capable of the sacrifice of political and personal considerations, for union; he wished the South would take the example from them. Suppose a candidate brought forward in the New England States, was it questionable who would get their votes? If Virginia brought forward, not the Father of his Country—that example to introduce were irreverence—but its second Father, the man who promulged the independence which the best and the greatest of Patriots achieved—who would get the vote of New England? Would it not be the candidate from New England? Would any man say, this would not be so? Perhaps it ought to be. The principle which would lead to this result, was of more value than any man. These States, acting in a body, will always act with more effect. It would be the same in the South, the same in the West. But the consequence of the operations of these principles was, the multiplication of the number of competitors, who would be strongly sustained, and the certain advent of the election to the House in future periods. The diffusion and equality of pretension; the limitation of the sphere of popularity; the influence of views and prepossession, derived from geographical subdivisions and feelings; rendered this event inevitable. The election must come perpetually to the House, unless, by the amendment of the Constitution, we prevent it. The only way to avert this evil, is to take away this jurisdiction. Why has not this election come to this House on the occurrence of every period of election heretofore? He would tell the committee why it had not. The operation of circumstances, accidental in their character, and which were now superseded in their operation, had prevented this result. The country had been distributed, by the influences resulting from the recent adoption of a new and untried political system, into two grand divisions of party, arraying themselves by concert against each other, in the election of the President. The election of the Father of his Country was a peculiar case, in relation to which, the voice of all distracting influence was *hushed*. But was it hushed, said Mr. ARCHER, in relation even to this case? It was with regret and pain that the fact was to be stated, but the fact was, that, at the second election of our first President, the voice of distraction, though not rendered audible in any electoral suffrage, did vent itself in murmurs, which, though broken and submitted, were distinct.

It may be, that, at the ensuing election, this voice would have been roused to a louder tone, and resounded in a national opprobium, if a magnanimity on which the love of power had no hold, had not added a redemption from this shame to *its other and larger tribute of preservation*. In all subsequent elections of a President, party organization had prevented the election from coming to the House of Representatives. Until what period? Until that period, when, under the influence of new doctrines, not the instrument of party organization only—caucus—but party organization itself was given up. Mr. A. was not going, he said, into any commentary on the character of these doctrines, nor of the consideration from which they sprung, nor of the result they had achieved. He had very distinct opinions on these subjects indeed, but he should withhold them at this time. He spoke now of the fact historically. The influence of party organization, in preventing the election of the Chief Magistrate from coming to the House of Representatives, was destroyed. Then the causes which were of efficient activity to bring it there, would be left to an unrestricted operation. Then it must always come there, unless in the occurrence of some new and inexperienced state of things. The removal of the collate-

ral preventives, and efficiency of the causes which operate to bring it there, may always be expected to bring the election to this House, if this jurisdiction be retained.

What will be the result when it does come to the House? Supposing that there should be no corruption, such as his friend from South Carolina apprehends, but the utmost purity should prevail, what will be the result? This body, instead of being the forum of legislation, will be the arena on which passion will be arrayed against passion. The independence of this House must be destroyed. The party which has been successful, and elected the President, must sustain him. Suppose he should be opposed by a strong party, then they must use means to become stronger than they were. This is inevitable. Effects must follow causes: the laws of nature are not to be trammelled or contravened by our speculations. Suppose there should be corruption—for we must look to other times when the power may devolve on other men—if the People should suspect that corruption has been operative in the election, will they submit to be sold like a herd? If the highest office in the country be disposed of by venality, will the People sit down undisturbed and unresisting spectators of it? Will the victim make no *struggle at the spectacle of the shambles?* Then what is the consequence which may be expected to ensue? In what is this state of things to result? There could be but one answer—a convulsion of the State!

If, then, the election should come to the House, one of two consequences must ensue: either the House will become an arena for a conflict of passions, or civil convulsions will result. Does not every appeal which can be addressed to prudence or to patriotism, invoke the prevention of either of these evils? If the election be destined to come here, the whole circumjacent atmosphere must be poisoned, "in which we live, and move, and have our being." A river of dark and deadly waters, such as held its course through the fabled Tartarus of antiquity, must flow from this fountain a pestilent and brackish torrent through the land. Are such mischiefs to be avoided? Shall we oppose ourselves to their appealing claim, for obstruction and prevention? What, too, is the demand of the public voice on this subject, in relation to this particular branch of the proposition for amendment? Can the character of this demand be contested? Does it not claim the abrogation of this jurisdiction of the House of Representatives? Doubt had been entertained, whether an implicit obedience were due to the constituent will, in relation to the discharge of the functions of ordinary legislation. Similar doubt had been expressed in relation to the discharge of the function of election which was called into action by the devolution of the election of the President on this House. In relation to these subjects, it had been said, that we were not to be regarded in the character of agents, but of arbitrators and referees, whose subservience was due to justice, and not to instruction. Mr. ARCHER had no design to go into any discussion of the correctness of this doctrine now. But whether the doctrine were to be recognized or rejected, it could have no application to a case of the character of that in question, of the alteration and new modification of a part of the organic fundamental law of the State—the Constitution. It could not be said, without a temerity, meriting the name of audacious, that the known public will was not to be received, to give the rule of change or preservation, as respected the form or modification of the fundamental compact of the community. Could the demand for this change, in relation to the proposition of amendment under discussion, the divestiture of the jurisdiction of the House of Representatives, be denied to exist? Was not this demand peremptory, imperative, explicitly announced in the modes in which it admitted of being announced? Was not the public voice loud, distinct, decisive, in its tone upon this subject? Who were we, then, Mr. ARCHER asked, who may be deaf to this voice, rebellious to this demand, may exert an audacious authority to supersede, to countervail, to annul, the public will? We were the appointed organs and agents to express, to digest, to give form, and fruit, and power, and efficiency, to this will. We would not have the hardihood, then, to oppose ourselves to what he conceived to be the unquestionable public sentiment on the subject of this amendment. This was shown, if proof were desired, by the multiplicity of the propositions of amendment which had been submitted, all of which had grown out of the general excitement in relation to the object which is now proposed—the divestiture of the jurisdiction on the House of Representatives, in the election of the President.

What, then, are the circumstances in which we are placed, and called on to express a voice, in relation to this amendment? He respected the wisdom of the framers of the Constitution as much as any man. No man was more ready not to acknowledge only, but to defer, by practical accordance, to their views. It had been shown, however, in relation to the provision which it was sought to abolish, that they had acted from no view to the intrinsic policy of the arrangement, but in reference to considerations which were collateral and accidental only. Time would press, and exigency, from the period of the election of the President to that appointed for the entrance on the duties of the office. The House of Representatives would be in session in this interval, in the discharge of its other and ordinary duties. The framers of the Constitution were authorized in admitting the belief, that this body could never do otherwise than fulfil the will of their constituents, in relation to this as to the ordinary routine of their duties. Experience and time, and these only, have made us wiser.

Most reluctant would he be to impute mistake, in the smallest point, to the framers of the Constitution. But in their view, in relation to this provision, they had acted in reference to an accidental ancillary contingent arrangement, and which they probably regarded as of subordinate importance, not claiming the resources of that profound and elaborate exercise of precaution, which is the most signal mark of their labors, and tribute to their wisdom. Nothing was there which induced them to adopt that provision, which would now forbid them to adopt this amendment. There is no reason to forbid our revisal of the Constitution, when defect has been demonstrated by positive experience. There is imperative reason demanding this revisal, when it is enjoined on us by the public will. He hoped, therefore, that, in the multitude of amendments which had been offered—and he regretted to see so many propositions—we should agree at this point, in relation to which the will of our constituents has been too plainly expressed to be misunderstood—to *abrogate, to rescue, to vindicate,* this pernicious jurisdiction from the House of Representatives.

Such were the views he had felt called on to submit in relation to the first branch of the inquiry. He came now to the second branch, the desire to submit his views in relation to which, had formed the almost exclusive argument to his obtrusion on the Committee.

He had said that the amendment proposed by the first resolution, was unequivocally demanded by the public voice. But could this, he asked, be affirmed of that contemplated by the second resolution? The Constitution now accorded to the several States a perfect liberty of voting for electors in the manner they might approve. On this subject, therefore, there could, of course, be little room for dissatisfaction or excitement. The attempt was under cover of the strong and just sentiments of discontent awakened in relation to the subject of the first branch of the amendment, to press the adoption of the second part, united to it by no essential principle of connexion nor demanded by any expression of public feeling and opin-

And here it would be necessary, Mr. A. said, to advert to the practical rule he had already laid down, in relation to the general subject of constitutional amendment, namely: That it was only to be resorted to on the occasion of defect, demonstrated by experience. In relation to the demand for amendment, under other circumstances than his, it had been seen that it was the dictate, no less of prudence than modesty, to hold the wisdom of the framers of the Constitution as our rule. It was in deference to this rule, and because he considered that defect had been demonstrated, and danger disclosed, by that test which alone was paramount to the wisdom of the Constitution, that he had expressed himself in favor of the first of the proposed amendments. But why, he asked, attempt to alter the mode prescribed for the primary election of President? Had it failed, in any degree, in the attainment of the object for which it was designed? The design was to elicit a true expression of public sentiment. Who would say that this had not been attained at the period of the election of every President of the United States? In the utmost violence and heat of altercation, on this subject, had the contrary ever been averred? No such thing had ever been pretended. Then, what was it we were called upon to do? To abrogate a provision which has answered avowedly and perfectly its purpose, and that the very purpose which it was proper it should answer. It was wise not to push a remedy beyond the evil against which it was provided. Here we were not only asked to do this, but, in truth, to conjoin with the proper remedy, something, the effect of which must be to irritate the source of the complaint. Why does a strong feeling exist in relation to the election of a President by this House? It results from the primary election having answered so completely its object as to have brought the election, in a recent instance, to this House. The votes of the primary electors at the last election, fairly reflected the public mind. The declaration they had made was true, that there was no majority of the People in favor of either of the candidates at that election. This election was a mirror, which reflected, not merely the general aspect of the public mind, but its minutest features also. It presented not only the peculiarities, but the distraction of opinion, as they really existed. Was this mirror to be broken, because, exhibiting objects with fidelity, it did not exhibit them precisely in the aspect we desired? The rule being that the Constitution was only to be amended for practical imperfection, were we to supplant an important provision, fulfilling, faithfully, its office, in practical operation, because the result, in a particular instance, had not been concurrent with our peculiar prepossessions? For himself, Mr. A. said, when he had been accustomed to reflect, on a general view, on the wonderful adaptation of the Constitution, not in its largest only, but in its minutest provisions also, to the attainment of its ends, he was almost betrayed into the delusion that, in accomplishing their task, its incomparable framers had been aided by a wisdom not their own. Their work stood, in every view that could be taken of it, paramount to the political institutions of every age. The only change introduced, since the commencement of its operation, (in relation to this subject of the Presidential election) had tested the indiscretion of interference with its arrangement. The change now proposed, in reference to the same subject, (by taking the election from the House of Representatives) violated no policy, but only an arrangement of convenience, suggested by its obviousness as a provision for a contingent event, and was no real infringement, therefore, of the plan of the Constitution. This provision, in relation to the mode of primary election, however, was now represented as obnoxious. Complaint had grown out of the distraction of public sentiment, on a particular occasion, and the design was to adopt a provision, the effect of which must be to produce a more aggravated distraction of this sentiment on all occasions on which the provision would have to operate. The present mode of election expressed the general, as well as sectional, differences of opinion which prevailed; and the wish was to adopt the district system, that every petty and unworthy personal difference might be expressed in the same manner, and with the same high relief.

Most of the objections to the arrangement of the Constitution, Mr. A. thought, like those sometimes urged against the arrangements of a higher wisdom, only specious till the design of these arrangements had been explained. This was the case with respect to this subject of the primary election of President, in relation to which his friend from South Carolina had been able to discover no design, and had supposed that we were left without the guidance of any fixed principles of regulation in a matter of this importance. He could not conceive that any principle presided when the rule was variable with the legislation of every State. It was a matter of no difficulty to admonish him of his error, and to develop to his view a principle of the most profound and salutary design, presiding in this arrangement. Our first form of Federative Government, Mr. A. said, had exhibited a condition of complete dependence of the General on the State Governments. Perhaps from the jealousy of National power which prevailed, no other form of a National system would have been tolerated, till the incontrovertible testimony of experience had demonstrated its defects and inefficiencies. The whole mass of the functions of the General Government were administered by a single class of agents—a representative assembly. We had no other General Government than Congress. When this plan came to be substituted by the present form of federation, it was necessary to keep the two systems of a General and State Government, in connexion and correspondence, as parts of a consistent, though complex adjustment, of machinery. What were the means by which this arrangement was to be effected? It could only be done by making the concurrence of one part of the system requisite to the action of the other part. The General Government was to take its life from the State Governments, which were antecedent both in existence and authority. The dependence, then, which was necessary to the congenial and harmonious operation of the two systems, must proceed from the States, and rest on the general authority. In what manner were the links of this dependence to be contrived? There could be but two modes of this dependence; the one of the General Government on the State Governments, for its operation; the other for its organization, and the appointment of its officers. No other modes of the dependence and necessarily concurrent action of two political systems, could be conceived. The first of these modes, however, the dependence of the general system on the States for its operation, had been condemned by an experience that was unequivocally instructive. It was the old system of requisition, which had become notoriously effete, after the excitement of the Revolutionary struggle, by which alone it had been sustained, had been withdrawn. No resources then remained but the dependence of the General Government on the State Governments, for the appointment of its functionaries. To give this absolutely, and without qualification, would make the dependence extreme, and might obstruct the salutary efficiency of the General Government. Then a qualified dependence must be resorted to, reserving to the State authorities a controlling, instead of an appointing power, as respected the selection of the depositaries and functionaries of the General Government. As respected one branch of the General Legislature, the Senatorial, the power of appointment was given absolutely. This was not a sufficient guarantee for control, however, because the whole body of the Senate, not falling under the power of displacement at one time, (this other considerations forbade) a sufficient number of the body would remain, in

defiance of the exercise of this power, to sustain and to prosecute a system of disorganizing administration. A further influence over the selection of the general functionaries, was therefore required to be given. Over the House of Representatives, a direct emanation from the popular sovereignty, the control was a slight one, (and that guarded) extending to the time, place, and manner, only, of the elections. But, as respected the Executive Department, the control was made effective: unreserved discretion was given over the modes of appointment of the electors of the President. With a design to what effect? That the States might be endued with a capacity to bear with consolidated weight, and an undivided strength, on the election of Chief Magistrate for the repression of any disturbing tendency which might be developed in the administration of the General Government. This explained the design as profound, Mr. A. repeated, as it was salutary, which had dictated the arrangement of this part of the Constitution, in relation to which the gentleman from South Carolina had been able to detect the trace of no intelligible policy.

The gentleman had dilated much on the abstract incongruity presented by our system, in the absence of fixed and consistent regulation on this subject, of the election of federal officers, in those respects, in regard to which an influence had been confided to the State jurisdiction. Arguments of merely abstract character had little weight with Mr. Archer. The gentleman had been in error, however, as it appeared to Mr. Archer, even in the speculative reasonings on which he founded his conclusion. He had relied with great confidence on the position, that, in relation to the circumstances alluded to, there must be a method entitled to preference over every other, which ought, on that account, to be uniformly established, and fixed on a basis of permanence, by constitutional regulation. This position, and its inferences, Mr. Archer ventured to controvert. He was of opinion that no method was entitled to an invariable preference, in relation to the matters referred to; and that, if there were, it did not follow that it ought to be established uniformly, or made permanent by the force of constitutional regulation. As respected the control given to the States, over the time, place, and manner, of the election to the House of Representatives, the proposition would not be contested, that varying regulation was required, nor that the State authorities were the best qualified to introduce it. The argument might be exemplified in relation to the oral or ballot modes of the exercise of suffrage. In an abstract view, that mode of the exercise of the highest attribute of sovereignty, which, by its publicity, was suited to the character of the act, must be preferable to a mode in which the office was exercised surreptitiously, as if its character were clandestine. Yet we had the assurance of gentlemen here, that there were parts of our country in which the independent exercise of suffrage would be entirely subverted by the exclusion of this ballot mode. Notwithstanding his own fixed predilection for the oral mode, Mr. A. was not prepared to controvert the correctness of this statement, and still less to insist on the peremptory enforcement of the mode for which he indulged a preference in all the States; without reference to their varieties of social habitude and condition. Though such enforcement were not intrinsically blameable, it would become so, in reference to public opinion, which was not to be outraged in a free State, from compliance with speculative refinement. The uniform establishment of the oral mode of voting, would be received with disgust and resentment in some States, and the ballot mode in others, with a no less decisive sentiment of reprobation. Then neither mode ought to be fastened on all the States indifferently, and fixed unchangeably by constitutional regulation.

Mr. Archer proceeded to argue to the same conclusion, in relation to the qualifications of the Electors of the House of Representatives and President, which were submitted to State jurisdiction by the Constitution. Although a peculiar qualification, he said, might appear, in all circumstances, preferable to every other, as the freehold qualification did to him; yet it did not follow that it would be proper to impose it under all circumstances, in opposition to a revolting public opinion, as a voice in every State, and to render it irremovable by a Constitutional regulation.

The argument was the same, he said, in reference to the election of the immediate Electors of the President, by the several modes of a district or general ticket system. Circumstances might be stated, in which diversities of interest and opinion among the several parts of a State, might require to be expressed by the operation of the district system. Its establishment, in such circumstances, might be no less expedient than equitable. But cases might also be presented, of States distracted not by irreconcilable diversities of interest, but of unenterprising and factious opinion, in which the operation of a district system, on an even number of votes, would divest all participation in the election of a President. Rhode Island, with four votes, or Virginia with twenty-four, might be adduced as examples. Would it be no evil, as respected the smaller of these States, in reference to a sentiment of just pride or of patriotic devotion—would it be no evil as respected the large States, in reference to the strength and efficiency of the General Administration—that these States should be placed, for a series of elections, out of the pale of one of the most important functions of the system which embraced them? And were such results of practical and sensible mischief to be hazarded, for the sake of a mere speculative refinement, on the symmetry of the Constitution? Then the system of voting for the election of the President, by districts, ought not to be established uniformly!

But supposing this system admitted by uniform action, still less did it follow, that it would be proper to give it the permanence of a Constitutional regulation. It had been already seen, that control over the mode of the election of the President, had been given for two purposes to the State Authorities, as an instrument of efficient and salutary action, on the administration of the General Government. But a district system once fixed and made unalterable, this control was at an end. If a district system were recognized, either by convenance or opinion, it was in the competency of the States, by the present plan of the Constitution, to adopt it. But their main faculty of control on the administration of the General Government, consisted in the power of departure from this system, as exigency required, so as to be enabled to throw a collected and decisive impetus, on the unsteady and vacillating *lever* of the election of a President. The State might diffuse and spread out the manacles of its power, in relaxation, but no manacle must prevent its collecting and drawing up this strength, when the reason of efficient action impended, and the blow for public safety was required to be struck.

His friend from South Carolina had been right, then, in affirming, Mr. Archer said, that the true comparison in the present discussion, was not between the district and the general ticket systems, but between the district system and the subsisting plan of the Constitution, or, in other words, as the gentleman had expressed it, between the district system and the faculty of violent and arbitrary change, from one of these systems to the other, on the part of the State Governments. Mr. A. accorded his unreserved assent to the correctness of this statement of the question. He admitted that the comparison was between the value of the district system and the value of this power of arbitrary, and what might be called, violent change; that is to say, change on the

of a depending election of President, from the district to the general ticket system. In this faculty of change for the depending crisis and occasion, and with a view to the production of an effect on the election which would be at hand, he affirmed the real efficacy, and just value, of the present plan of the Constitution to consist. The property, which his friend from South Carolina had indicated as its opprobrium, constituted the effective and beneficial vitality of the system he arraigned. The general ticket system was, in an intrinsic consideration indeed, of far greater value, Mr. A. said, than the district system, for reasons which he should have occasion presently to exhibit. But, neither could the general ticket system pretend to competition with the subsisting plan of the Constitution. The subsisting plan, to the superiority of an optional employment, of either the district or general ticket systems, as demanded by convenience or opinion, added the higher advantage, of a faculty of rapid (and it might be temporary) alteration of its system, for the purpose of timely and decisive operation on the election of the President. This faculty of alteration was liable indeed to abuse for a purpose of faction or injustice! But so was every other political authority or function; though none in a less degree than this, from the direct and immediate responsibility to public opinion, under which the abuse must be attempted, and the *manifest* character it must disclose, whether disappointed or successful. The fact was in correspondence with the speculative reasoning on the subject. Ample as the opportunity for experiment had been, under the operation of the present system, in how many instances had faction been alleged to have been indulged, or injustice been attempted by the exercise of this power? The gentleman from South Carolina, with his zeal to collect the examples, had been able, as well as Mr. A. remembered, to adduce two instances only, of the practical attempt, one of them in Massachusetts, and the other in New York. And what was the history of their results? The first of these attempts had *re-acted* so completely (we were informed by the gentleman himself) as to have produced subsequently the passage of this very proposition of amendment of which he is now the advocate, in the Legislature of Massachusetts! In the other case referred to, that of the attempt of the Legislature of New York, during the past year, to *coerce* the electoral suffrage of that State, the experience had been correspondent with the result of the experiment in Massachusetts. Or rather the fate attendant on these attempts, had been more remarkably exemplified in the latter instance, by the transference of the larger proportion, indeed nearly the whole mass of the vote, to which the attempt had been applied, from the candidate in whose behalf it had been enlisted. The fate of such attempts would be so generally correspondent, that the danger of their recurrence to any injurious extent, was no subject for apprehension. The value of the present system of primary election could sustain, therefore, no serious impeachment, from liability to an abuse so problematical.

The objections, then, Mr. ARCHER said, which had thus far been urged to the subsisting mode of the primary election, appeared, on review, not only to be unsustained, but, as respected the most imposing of them, to redound in placing in stronger relief, the merit of the system it arraigned. The particular objection on which his friend from South Carolina had insisted so much, derived from the want of uniformity in the system, which he conceived of such essential consequence to supply, had been obviated by himself. A principal ground of the objection was found in the tendency which was affirmed to belong to the present system, to produce an universal adoption of the mode of voting by general ticket. This would be forced, it was said, on every State, independently of the exercise of judgment or volition, as a necessary policy of defence, and vindication of its just participation in the election of a President. But if this suggestion were well founded, as possibly it might be, then the objection to the present mode of election, of its wanting uniformity, furnished only a temporary ground of imputation on it.

The true point of the discussion rested undoubtedly, Mr. ARCHER said, on the comparison between the District and the present system of the election. And this last system had been shown to combine with the proper advantages of a district system, the important addition of the exercise of an option between the systems, as circumstances might require, and the gain of an essential power connected with the transition from the one to the other of them. But as the advocates of the proposition of amendment under consideration, were accustomed to place the entire force of their arguments on the alleged superiority of the district over the general ticket system, Mr. A. was not unwilling to make this comparison the point of the discussion. He maintained that, in relation to an Executive officer, the mode of election by general ticket was better calculated than that by districts, to afford a just and sound expression of public sentiment—the object of the elective function. The error of the contrary opinion, grew out of an analogy to the character of a Representative function, which in this respect did not hold. The consideration which rendered a district system essential to the just discharge of a Representative office, had no sustainable application to the office of the election of a President. The Representative sustained a continuing relation to the constituent body, which gave occasion to continual communication, and required personal acquaintance between the parties. Between the person rendering the electoral vote and the President, the relation was determined and complete by its rendition. Interests and views of particular and local character, were confided to the Representative office. In relation to the office of President, of purely national and general concern, the influence of all views and interests of this character were required to be suppressed. It was because the mode of election by general ticket suppressed the voice of these views and interests, while the district mode gave scope and effect to its expression, that the former of these modes was to be regarded as the best. Personal acquaintance, moreover, on the part of the mass of the constituent body, which was practicable in relation to a Representative, was not so in reference to the President. In relation to this officer, the exercise of suffrage must be determined by information and opinion only. And which classes of information and opinion were most apt to be intelligent, and unperverted, and sound—those which were diffusive through the extent of a State, or those which were imprisoned by the limits of a district? The modes of public opinion were known to be in a great degree factitious, dictated by those enjoying favorable opportunities for the acquirement of influence or knowledge. This was true, in an especial manner, in relation to the election of a President. But which class of advisers, Mr. ARCHER asked, was likely to be the safest—those spread through the body of a State, operating as watchmen and checks upon each other, or those collected in the *lists* of a district, with every facility and motive to interested conspiracy?

Whatever might be the force imputed to partizan influence, its operation must necessarily be less extensive and impure in a State than a District. And why? The persons exercising this influence in a State, were to be derived from a larger surface and mass of population. Their consequence and power of influencing opinion, must have arisen from a reference more direct to public considerations. They would be bound by obligations of higher character to caution in their proceedings, from acting on a theatre more conspicuous and exposed—from having an object of larger bulk and parts less coherent to impell—and from having reputation more extensive, and an influence of greater value, to compromise from improvidence.

or to forfeit by delinquency. The dictators of influence, in a word, of a State, would be partisans: of a District, would be demagogues. The efficiency of the operation of political management, must necessarily present an inverse proportion to the bulk and want of coherence of the parts of the objects it had to move. This was little short of a truth of mechanical philosophy. The taint of any mode of corrupt influence, must, of the same necessity, present a similar proportion to the extent of the surface it had to cover. This was little short of a law of chemical affinity. To affirm that a State was liable, in a less degree than a district, to an access of corrupt influence, was no more than affirming the inferior probability of an epidemic to an endemical disease. The air might be impure in spots and districts, but let it be left to mix with the breezes from the ocean, and the currents from the mountains, in the large sphere of a State, and the result would be a general atmosphere of salubrity.

It appeared, then, Mr. A. said, that the mode of election by a general ticket had a character more congenial to the nature of the Presidential office and election than that by a district system, and was better calculated to elicit a sound expression of public sentiment. Then it was a preferable mode for this election.

There was an argument, however, said Mr. A. employed always in a tone of triumph, in objection to the correctness of this conclusion. The argument to which he referred was that derived from the necessity for political management, and what had been denominated a caucus machinery, under the operation of the mode of election by a general ticket system. The allegation admitted the superiority of the general ticket system in other respects. In relation to this much enduring topic, the time-worn analogy of juggling and wires never failed to be employed. Mr. A. had no desire to elude this objection, and it was his intention to meet it directly. He admitted the inevitable occurrence of the mode of proceeding by caucus arrangements, whenever a general ticket system of election was established. And who, he asked, were the efficient operators, the jugglers, in this arrangement—and what was the real effect and character of the operation thus contrived and put in motion? Who are the operators? Men who have attained the general confidence: for this must be the ground of their pretension to the office. Whence do they come? From dispersed places, and the body of the People. Where do they convene? Under the eyes of the People; aware that their temporary function is to undergo the instant ordeal of the judgment of the community. Under what responsibility do they act? Of the forfeiture of the object at stake on their proceeding, the reputation they have acquired, and their influence in future. By what process are their sentiments cemented, and their nomination evolved? There can be none other that the comparison and collation of the popular opinions they bring along with them. Then, with what propriety could this machinery be arraigned as an engine by which the public opinion was counteracted and oppressed? In relation to the correctness of this imputation, there happened, Mr. A. said, to be a test which was decisive. Suppose a nomination by a caucus in undoubted contravention of public sentiment! Would any person commit himself by affirming, that such a nomination could be made to realize its object, no matter who might be the agents employed in directing it? Then a caucus machinery was not equal to the counteraction of public sentiment. In his own State, on the occasion of the first election of Mr. Madison to the Presidency, a caucus nomination was made of Mr. Monroe, by persons highly respected, and some of them distinguished by previous political influence as well as talent. What was its effect? The consignment of its agents to unpopularity, and not the counteraction of public sentiment. Another countervailing nomination was attempted last year, when Mr. Crawford commanded the real suffrages of the State, in favor of a gentleman also a native of the State. What did it produce? Amusement; but no effect of the contravention of the public will.

There is, indeed, a case in which caucus may have influence over public opinion—and that is, where there is no public opinion—when the People themselves know not on whom to concentrate. In no case does it operate to counteract opinion; and, if opinion remains to be formed, no persons are better qualified to dictate it than those men who have the greatest stake of reputation. The necessity of an election requires that an opinion should be formed, and these are the men to concentrate and give its direction. This engine of caucus, therefore, does not control opinion, except where no previous opinion exists, and then it ought to control. The real objection, then, to caucus, is not that it suppresses public opinion, but the efficiency which it gives to public opinion. This is sufficiently evident from both the source and the language of the objections. The source is the minorities of the country; and the language, that minorities are made victims by suppression and impressment. When there was so great a clamor on the subject of Presidential caucus, what was the meaning of it? It meant only that one candidate was stronger than the rest. Minorities did not choose to play a game of certain loss, but to take the chances. He did not mention this by way of blame. It is natural; it is thought right; and perhaps it is right. Our inclinations always appear under the mask of duty. Partisans think that they are patriotic, and this opinion makes them so. They are not liable to censure for refusing to lend themselves to their rivals. They ought not to go into caucus under such circumstances, unless it is to obtain some great good or to exclude some special evil, such as the election of a candidate of different political principles, or that of the election being brought to the House of Representatives. All objections to the caucus system coming then from minorities, do not deserve great consideration. They indulge, however, in fierce invective and formidable calculations of figures. The gentleman from South Carolina has taken this course. For himself, however, he objected to all introduction of figures into such arguments. It was a certain proof that the moral argument is not plain; and equally an evidence that it is not just, because it compels us to borrow from false analogy to sustain it. For this reason, he would not follow his friend from South Carolina through his calculations. He had no great head for figures; and if he could not explain a moral argument without them, he always gave it up. He would never run to strained elucidation till the case is desperate.

The calculations of his friend from South Carolina, as to the relative minorities to be suppressed by district or general ticket system, are entirely conjectural. If they are right, the result in the different States all produce a balance. If the majority in the several States belong to the same side, it is immaterial in what way it is collected. If it be not on the same side, then the modes of suppressing the minorities will balance each other. But it is fair that not only the will of the minorities should be suppressed, but impressed into the service of the majorities. Why? Because you must take the will of the majority as the index to public opinion, and the public opinion as the index of what is right. He would take a case where a joint labor is to be performed, and a certain number of those who are concerned over-rule the others. Those who are over-ruled still owe their aid. The minority must not sit down, and say we will not assist. No; the majority would say you are to participate in all the benefits as much as we are, and you must therefore contribute your aid to the common stock. The claim of the minority involves the assertion of the very principle they reject! They ask to be allowed to extinguish the power of the

majority, in the proportion and to the amount of their own strength. This is to ask, in a contest, that the adversary party should only strike with a given force. The allowance of such a claim would be the principle denounced, of treating political affairs as an algebraic equation, instead of a moral calculation, in reference to public good.

The suppression of minorities is right, because incident to the social law by which minorities are subjected to majorities. Caucus is right, because incident to the best mode of collecting the public will. It is inevitable in the operations of the General and State Governments; and we had as yet, whatever the future might exhibit, seen no good results from its abandonment. That which is relative good, is right in the view of a wise man. The general ticket system is the best mode of collecting the public will, in relation to the election of President, as affording a more efficient, as well as a more depurated expression of public opinion. Why not, then, have a general ticket system throughout the Union? There are two reasons against this system. No proposition being true, universally, this of the superiority of the general ticket system, has qualification. 1st. It is true only of an Executive office; 2d. It is true only to a certain extent. Where there is a general affinity of interests, there can be no injustice from over-ruling a minority. Where a very considerable discrepancy is made, there might be injustice; but there is no injustice in suppressing minor differences. There is this affinity of interests between the parts of a State. A State population must be in a manner, homogeneous. Any differences, therefore, subsisting between portions of that population, are not very important. Between different States, however, discrepancies of greater magnitude may arise, so that, although the general ticket system may be considered good in its bearing on the different parts of a State, it would not be good in its extension to different States. Thus there is a limit in the mode of election by general ticket system.

But the great consideration is derived from the federative view of the subject; and this would suffice, exclusive of any other. We live under an excellent form of Government, which is mixed in its constituent principle. It was first purely federative. This is merely a graft on the first stock. The mode of ratification was purely federal. Who were the individuals sent to form it? The representatives of States, sent by the States; and the instrument itself was ratified by the States separately and *seriatim*. Politicians may deny this intermixture of a federal character, but such was not the opinion of the framers who handed it down to us. The Government would be one of the worst, if it were to lose this character. It would be defective in every requisite of knowledge, of leisure, and of affinity of interest among the several parts. It would be unable to govern the whole of this vast continent. Situated here, it could not provide for all its wants. It would resemble celestial bodies, of large orbits, and long periodical revolutions, scorching in some places by its approximation, and, in other parts, cold and languid. It could not have an equal affinity to the People every where. Are there not discrepancies in different States, as wide as those between different nations? The interests of Maine and Massachusetts are essentially different from those of Missouri. What sort of Government then should we have? A Government impelled and administered in reference to particular interests and party considerations only. It would be a Government destitute of all efficient control. What information would a member from Maine or Massachusetts possess of the interests of Missouri? He would necessarily subserve party views. He must obtain his impressions from a Representative from that peculiar section of the Union, who will be more desirous to obtain his co-operation, than to communicate clear and correct expositions of fact. Thus, would legislation be converted into something worse than a system of juggling—a system of party machinery, contrivance, and jobs.

Our representative State systems involve the federal principles. What are the true principles of federation? Local interests managed by local agents—managed by those who have interests in the State, and who act under responsibility. Our sub-divisions of police are founded on these admirable principles. Our counties are federations of townships; our States of counties. The recommendations to this principle are—that it gives the exercise of authority to those who are to feel it—that it gives the supervision of interests to those who partake them; it gives knowledge from local position; and affords more leisure, from the sub-division, to every department of authority.

A federative system implies a balance of authority between two Governments. These balances and equipoises are hard to be sustained. They are *ex vi termini*, liable to disturbance. There is a continual struggle in the different powers to destroy it. The subordinate power will seek to withdraw authority, and the paramount to absorb it. The corrective of the first tendency is, to render the General Government independent of the State Governments for its operation. This has been done by the change from the Confederation. The General Government was dependent on the States absolutely. This form of dependence has been destroyed, and the old system of requisition has been given up. Here we have the correction of the second tendency, which is to allow the subordinate a check on the paramount power. This is done by the mode of organizing its functionaries. The State Governments appoint the Senate. But this is not sufficient. Why? Because the Senators are not all appointed at one time, and misrule may be sustained by two-thirds. The control of the State Governments over the election of the House of Representatives is very slight. The effective control which is given is that over the election of the President. The President is not only the active power, but is part of the Legislature. Nothing can be done without him. His acts are a part of the acts of the Government. He is the neck in relation to which you may realize the policy of Caligula, and strike with decisive effect. Control held over him is efficient on the whole Government. For this reason—in consequence of this view, in the first plan of the Constitution, the Convention gave the appointment of Electors to the State Legislatures. Two propositions were made to expunge this feature, without success. It was finally surrendered for the present system, which was considered to be tantamount. The Legislature has now the appointment of the mode of the choice of electors. The design was to give control by the power to consolidate the vote of the State. A district system would divest this control, and subvert this material part of the plan of the Constitution.

The utility of the State Legislatures as the rallying points of public sentiment, is admitted. This is what the oppressed have always stood in need of; and the continuance of oppression is owing to the want of it. What is the cause of despotism in all parts of the world? What causes millions to submit to the control of one man, frequently the most insignificant, worthless, or brutal among them? Because, when misgoverned, they have no means of combination to put down the usurpation of power or its abuse. We have the remedy. The State Legislatures are admirable for this purpose, on account both of the adequacy of their expression of public sentiment, and their regular periods of assemblage. But they require an instrument by which to reach their object. Remonstrance is not sufficienly powerful; coercion would derange the equipoise of the system. What has the Constitution provided? It has given this control over the Presidential election as the instrument. Here all disorder is prevented, and the system is kept subordinate to

the federal principle, and to the general safety. The State Legislatures are the foci to collect rays of public sentiment. But what is required of these foci? The rays are not to be scattered, but some mode was to be provided for throwing them, concentrated, on the object to be affected. A prismatic instrument which dispersed them would frustrate the design. The policy was to provide a *lens* to throw them in a concentrated form, or a given point. The District system is the *prism*—the General Ticket system is the lens. It realizes the defensive contrivance, the burning glasses of Archimedes; by which, if misgovernment from a single point should attempt to operate on the system, we can meet it in its first efforts to consolidate, and reduce it to ashes.

He was asked, if this faculty of operating with consolidated strength, and controlling the election of President, was a State right? Let the words of the Constitution answer: "Each State shall appoint, in such manner as the Legislature thereof may direct," its number of electors. Was this a right of the States in their political, and not of the People of the States in their general, collective capacity? Let the language of the most authoritative commentary on the Constitution, the Federalist, reply:—"the immediate election of the President is to be made by the States in their political characters." Nor was this a mere barren right of the States. It was a most beneficial power; not beneficial to the States only, but to the Union. It was not a mere question of relative power, among the States, as the gentleman from South Carolina had supposed. Each State has an interest in it belonging to the other States. The interest is common that public opinion should act efficiently. Would the divestiture of this right tend to give the form of consolidation to the General Government? The idea was, that this result could not ensue, because the power divested, though taken from the Government, would be given to the People of the State, and could not, therefore, have an effect of State divestiture. Let all powers, then, be taken from the State Governments and given to the People—the State Governments be effaced—would that be consolidation? No, it was said: for consolidation expressed the concentration of all political powers in this Government, and this Government would still have no more than its former amount of power, if the powers divested from the State Governments were only reabsorbed in the general political capacity of the People. But how long would this amount of power, in the General Government, remain the same? The functions and authority of the State Governments displaced, how long must it be, before the functions and authority of both Governments must become vested in the General Government? All necessary powers must exist somewhere. The political functions and authority, required for the well-being of the community, were not to be remitted. His friend from South Carolina knew, and had stated this truth with great force, for a purpose of his own. If there were but one Government in a community, all the political powers, required by its well-being, must be vested in that Government. If this were not done by grant, it must be by assumption: for the objects of civil association could not be allowed to perish—its functions must go on. If these powers were not acquired by assumption, then they must be obtained by grant. In one or the other mode they must vest, by a necessity that was indefeasible and irresistible. It was the knowledge of this truth which furnished those who looked beneath the surface of political science, with the important axiom, that one of the modes of giving to Government the character of despotism, under its worst form, was the denial of power really requisite, for the attainment of its designs. But he would furnish the solution, as to the mode in which the powers of the State Governments would be acquired by the General Government, in the event of the extinction of their authority, through the channel of its absorption by the People. The mode was one, with the activity and efficiency of whose operations, we had unhappily already become familiar. This mode was the extension of the charter defining the limits of the general power, by the process of a constructive interpretation of its provisions. In the multitude and variety of the questions which had arisen, now that the State Governments retained a menaced and struggling authority, who ever heard of a decision on the construction of the Constitution, in which any really important claim of power, on the part of the State Governments, had been admitted, or its arrogation, on the part of the General Government, subdued? If a construction of this kind, in some auspicious moment, or from some accidental cause, had heretofore occurred, who was now so uninstructed and credulous a child, as to expect again to witness this event? All power incident to the undefined, general, illimitable, objects of civil association and political institution, had already, in effect, been asserted on behalf of the general authority. The varying and flitting horizon of the "general welfare" was now not assigned, he might almost say it was established, as the boundary of this authority. It had even been regarded as an imputation on mental perspicuity and sanity, as a negation, not in an ordinary, but an "ineffable" degree absurd, to deny to the General Government a power which conduced to the general good. This was the way, then, Mr. A. said, by modes of construction like these, that the General Government would come into possession of all, and much more than all, the subsisting power of the State Governments, if the authority of these Governments should be broken down. If that effect were to occur, this event would be inevitable. He only wished the effect might wait for that period; which, if the signs of the times were to be regarded, would itself be not very remote.

Then, did the subduction of the power in question, from the States, tend to consolidation, in the sense in which the gentleman from South Carolina had himself defined it, as importing a concentration of powers in the Government? Here were two Governments set in operation over the same territory and People, with a view, (whether wise or not, was not now material,) to their affording a system of counterpoise and check upon each other. If you deducted from the power of the one, no matter in what manner the deduction was disposed of, did not the deduction enure to the augmentation of the power of the other? If the weight were taken from one scale only, without encroachment on the other, did not the equipoise of the beam, nevertheless, sustain subversion? We had the balance in both of our systems of two popular branches of Legislature, to whose conjoint operation the discharge of the office was assigned. If power were deducted from one of these jurisdictions, no matter how bestowed, would the equipoise of the two jurisdictions remain the same, in its adjustment, or the control which this equipoise was intended to subserve undisturbed in its efficiency? If all power were vested in a single branch of Legislature, would the form which the Government would then assume, be consolidated, and would the result of it be despotism? What, then, was this same operation as related to the two Governments intended to subserve the same design identical as two branches of Legislature in the same Government? Would the annihilation of the State authorities, or what was tantamount, the gradual *dilution* and reduction of these authorities to insignificance, amount, in its effect, to consolidation: that is to say, the absorption of power in this Government? The want of a just comprehension on the part of his friend from South Carolina, in relation to this branch of the discussion, was astounding, and was to be explained by the influence of prepossession on his mind. He had spoken of the effect of the system he

mmended, to produce a consolidation of the People: e very reason why it ought not to be adopted; and had ted the authority of General Washington, as giving untenance to his doctrines. The authority he had ted concluded to the exact reverse and subversion of his osition. "In all our deliberations," said this venerated thority, referring to the proceedings of the Assembly which the Constitution was produced, "on this subct, we kept steadily in our view that which appears to the greatest interest of every true American, *the consolidation of our Union*; in which is involved our prospe-y, felicity, safety—perhaps, our national existence." his was, indeed, high authority, deserving to be held in rpetual memory, as well as reverence, and which ought be inscribed in the front of every constitutional delibetion in this Government. What did this authority assert to be the greater interest of every true American, hich the initiative organ of the Government had held rpetually in view, as involving prosperity, felicity, safe-, perhaps national existence?" The object ought to be ried in every heart, as it was first in the heart of him ho was "first in the hearts of his countrymen," as he as, and deserved to be, in the admiration of the world. his first of interests, to which all deliberations was to kept steady, was—what? The answer ought to sound every corner, and find a response in every bosom. *It was the consolidation of our Union.*" And what as imported by the consolidation of our Union? Not, surely, consolidation *into unity*. Union did not imply nity. It implied exactly the reverse. The unity of the tates was their submergence. Precisely that condition which their union became extinct—Union, like other ving things, had its condition of death, and this was nity. The gentleman from South Carolina wished to onsolidate the People. The District system he recomended, did not even tend to that effect, but to their disaction. On his own principles, he ought to reject this istrict, and adopt the General Ticket system: for the reat principle on which he had so strongly insisted was just as it was valuable—that the most efficient form ould be given to the action of the opinion of the comunity; and the General Ticket mode of election is this rm.

If, then, Mr. ARCHER was asked for the danger he pprehended to State jurisdiction and safety, the answer was as obvious as explicit. These great interests ad a two-fold form of safeguard. The first was that hich resulted from the definite limit of the amount of he general power inscribed in the letter, as it would ave been implied in the outline, by fair intendment om the design of the Constitution. To the views hich suggested doubt of the validity of this safeguard, erived not from conjectural speculations, but the intructive testimony of events, he had already had occasion o advert. Then, here was danger to State Rights, in he debilitation of this guard: for he admittted that t had not yet been entirely subverted. What was he remaining form of State safeguard? The pow-r of action on the administration of the General Gov-rnment, through a control on its elections. This afeguard, the only form, as had been shown, which afforded a real protective efficiency, it was the object, he ad almost said, in reference to its tendency, the frantic bject of the proposition of amendment he was resisting, o demolish. Then, here was the danger to State rights, ot only from the possible success of the proposition, but rom the evidence (an ominous evidence it was) which the xhibition and entertainment of the proposition afforded; of the condition of the public mind in relation to the safeguards of the States and the Constitution. The defences, indeed, remained; the ramparts were uncrumbling and unmouldered; but the ranks which were to man these defences, the artillery of public sentiment, which could alone render these ramparts effective, where were they? What was to be the fate of this proposition? Men doubted. Where were the presses, the organs of public feeling, in which it had been denounced? Lethargy was not the incident of the commencing, but of an advanced stage of the progress of disease. The termination of this disease, it was but too probable would be death—the death of Federation. "And in that sleep of death," where we had thrown off, not this mortal, but Federative coil, "what dreams may come, must give us pause." Clouds and darkness hang over every condition of future destiny. But that the destiny in the present instance must be evil, no revelation was required to assure us. The form could be twofold only. Disrupture into fragments, or national consolidation. Suppose the first of these results; and what was to ensue? Among the separated confederacies, commercial and political rivalry—oppressive foreign connexions—hostile strife—standing armies—heavy taxation for their support—and the termination, (for these things have but one issue) despotism of some form. This was one alternative of the rupture of Union. What was the alternative of its extinction by the mode of national consolidation? We should then, indeed, have a General Government, and what would be its character! What a detestable form would it exhibit, however it might be popular, and guarded by the show of responsibility! It would have no adequate knowledge—no sufficient common interest—no real responsibility—no leisure for the supervision of the great interests it would control; all would be a system of partisanship and jobbing! One Government—and what must it be? Not the gulf which had been laughed at, but worse: a vortex, a Charybdis, engendered by the multitude of confluences and rocks, in which all tides and regular principles of motion would be submerged. It is only the principle, then, of the consolidation of State strength, which can avert the character and form of consolidation in the Government of the nation. State consolidation prevents general consolidation. If there be a pressure towards unity, it is only to be repressed by increasing the weight of the reacting bodies.

It had been admitted by the gentleman from South Carolina that the State Governments were the sentinels of the General Government. Why not give them ward as well as watch? When they stood upon the ramparts, why not confide to them the artillery, which would turn the public sentiment against the enemies who might beleaguer the Constitution? He fears they will be corrupted by the power in question—that they will conspire with the General Government, and communicate to it a morbid activity. This cannot be. Whoever heard of one Government being anxious to usurp, not for itself, but for another? For this reason they will not conspire with the General Government. At any rate, a double conspiracy will be requisite. This is not to be presumed. If they conspire, they produce no new evil, and make no addition to that which would otherwise exist. If they counteract each other, on the contrary, they are exceedingly beneficial. What harm has the stream of State concurrence done for twenty-five years? What good did not the power of legislative action do in 1799? If pressed by the suggestion in question, a reference to the results of this action in that period was the reply.

The principles of his friend from South Carolina especially demanded a concurrence in these views. He has insisted much on the great source of danger to be apprehended in the Executive. The patronage of our Executive is represented as greater than that of England. The peculiar construction of our society, our fondness for office, and avidity to be seduced, have all been urged. Yet his friend from South Carolina endeavors to knock down the only check. His argument is irreconcileable to his principles. Here is a check by which the Executive is kept in complete control to public sentiment. His friend's

rejection of this check must spring from his idea of the inefficiency of checks. There is no safety in political institutions without checks and balances. Organized power can only be restrained by organized power. The want of an organized check was the reason of the submission of Rome to the Neros and Caligulas. Let us look at Roman history. A bad Emperor was put down. Did any benefit result? None. Things immediately relapsed into their former state. This was no action of restraint which was regular or steady. The evil was aggravated, indeed, rather than alleviated: for fear was rendered more unsparing, and tyranny more implacable. The only institutions which can alleviate despotism are organized powers. What is the alleviation of despotism in Turkey? Religion—an organized power. The press is this check in more enlightened countries. The historical evidence is in favor of checks, and not against them. When Rome was founded, Romulus instituted a Senate, a Popular Assembly, and a King. Here we have balanced powers. Servius Tullius, the wisest of her Kings, added to these the influence of property. This was another check and balance. The design of the Tribunes was to give greater effect to these balances; but they destroyed the balances, and gave the ascendency to democracy. Then the rabble introduced Cæsar. The State would not afterwards have a free Government, when some Emperor wished to re-establish it, because it knew that the monarch was better than the anarch: that any despotism was more tolerable than that of unbridled multitudes and confusion.

All historical analogy exhibited the same results. The gentleman from South Carolina seemed to think that England has not a system of checks and balances. He maintained, on the contrary, that England flourished by her balanced Constitution. To that she owes her uncommon power. It was said that the corruption of the House of Commons had destroyed this balance. This corruption was, however, countervailed by another power. The apparent disturbance of the balance is corrected by the Press. Lord Coke said, Parliament was a place where the People speak their mind. England is represented fairly by her newspapers. These are, in effect, her Parliament, where the People speak their mind. These keep the House of Commons from entire subservience, and counteract the evils of the septennial system. This is the balance system. Melancholy, indeed, would it be for the human race, if there were no instance of balanced Government. If he were to define despotism, he would call it unbalanced Government. We have not only a Legislative, a Judiciary, and an Executive, but we add a second balance of two Governments; and a third, of two principles in one General Government—a Federal and a National. We have, therefore, carried this excellent doctrine of balances further than any other People.

He put this discovery amongst the greatest which the world ever saw. It was next to those of Copernicus, Newton, and Columbus. Columbus gained his immortality by the discovery of a new World: we have discovered a new method of governing this World, by making it the seat of free principles, the influence of which is felt to the remotest corners of the Universe. Yet this admirable system is sought to be destroyed for the sake of a political abstraction—the abstraction which required the reference of all power to popular agency for its discharge But, allowing the justice of the abstract principle, it had no application in the present discussion; because the real import of the principle required the reference of power to the constituent body, whatever it might be: and the States, the People contemplated, and acting not in an aggregate capacity, but as members of political communities, were the constituent bodies contemplated by the Constitution, in relation to the election of the President. This was not only apparent from the terms of the Constitution, in the clause which it was sought, by the present proposition of amendment, to reform, but it was reflected in the express authority of the commentary of the Federalist, in which it was explicitly asserted, that this election was to be made by the States in their "political character." But neither was this principle just, in its application to the ordinary representative system, or the expediency of conferring every species of political agency directly on the People. It conduced neither to the security, the dignity, or the real efficiency of the People, to have agency forced on them to this extent. The avowal of such a doctrine might be unpopular; but he had no objection to the avowal of unpopular doctrine, if he knew it to be sound and just. He would not shrink from opposing a torrent of error, because it approached him in a broad and foaming torrent. The effect of this doctrine of the reference of perpetual and engrossing political agency to the People was, to make them tyrants first, and slaves afterwards. What have we seen in the popular governments of Greece and Rome? The effect of this principle, in those cases, was, first a necessity for the distribution of obolis and bread, then general venality, corruption, and violence, throwing every thing into confusion. Had he lived then, he would have preferred despotism. The despotism of an individual would have been a relief. Representation the true safeguard of the People.

The assertion had no foundation, that representation necessary in large States only. It is as necessary in a small as in a large State. Representation is better than Members, although they are no wiser than the P. Popular sentiment is fermentive in its first concoction requires to pass through a cooling medium, to purify make it fit for legislation. Popular opinion would be tinually liable to the influence of improper excite Representation changes its nature. The People, direct capacity, would not be responsible: they subject to no control. Representatives know acting as agents, and under deep responsibilities.

The popular Assembly of Athens was superior other which had ever existed, as respected a quali for the direct exercise of political power. What legislative body, derived from this Assembly, has to expel Aristides and Anaxagorus from the S send Socrates and Phocion, and, on one occasi whole body of the Naval Commanders, for losing without fault, to execution? Instead of doing ever by their own agency, as is now proposed, he would them to do nothing by themselves, but every thing agents, secured from misconduct by adequate guards responsibility. Those who overlook the same consider it best. What would we think of the sanity of any dual, who, instead of confining himself on his farm exercise of a supervising authority, should undertake perform all the offices himself? The true principle popular efficiency are, to vote by large masses, and by representation. Let not the whole body of the Peo ple be distracted by vices and local interests, but political action be depurated by representation.

Applying these principles to the present subject wished to retain every part of the Constitution as sent form, but that which refers the election to the of Representatives. His plan is to retain the ge election and the Electors, and to send back the elect any mode. If we agree on the principle, we can fix mode. We must have a form of General Govern None could be safe but the Federative form: an State power which this proposition for a district aimed to sacrifice, was an essential conservative pr and safeguard of that system.

We have reason to regard ourselves as the fortu nate and blest of People. All the population of other quarter of the world have suffered from mis while we, with all the elements of misrule in our Gov Government, have such powerful guards, that, hereto

can be brought into efficient operation, the People themselves must conspire for their own destruction. They must conspire in a double capacity, and in a two-fold mode: by their direct representation in this House, in their aggregate capacity, and in their political character as States, through their action on the appointment of the three branches of Federal Legislature, and especially of the President.

He could only consent to change the Constitution where experience and time, the great masters, have taught us it is defective; and that is in the reference of the election to the House of Representatives.

But it is said, we must adopt the district system, on the necessity of compromise with the small States. Compare the terms of compromise. The small States are asked to give up what threatens the general good: the large States, what is essential to the general good. Was a principle of malevolence to be imputed to the small States? If the small States desire a sacrifice from the large States, yet they ask no sacrifice from the People. The value of the vote to the small States is none. It does not come until after the contingency which they would avert. It is not then a general choice, but only a choice out of three persons. Suppose a small State votes as the majority would do, then the vote is supererogatory: suppose a small State votes against the majority, then the responsibility is to be deprecated. But the small States have a direct interest in the preservation of the power of the great States to consolidate. Their first interest is not in the election of an individual, but in the preservation of the Federation. The small States will, and ought to, surrender any rights, for the public good. They held power, not for the small States, but for the whole Union. What is the highest interest? Self preservation. How is the Federation to be preserved? How is the life of the small States to be preserved? If danger threatens the Federation, only the great States are adequate to give it protection. The Teucers must fight under the shield of the Ajaxes, in the day of battle, for the rights or existence of Federation, if that day should ever come. It would be an act of madness in the small States, by stripping off its folds, or reducing its verge, to bring the shield to the weight of their own arms. They will, if wise, fight in the armor of Achilles. He hoped no wily effort would be made to obtain this armor. He trusted that wily influence and persuasion may not prevail, as of old, to the destruction of one of the bulwarks of the National Government, and of freedom. If they should, it would still be his consolation to have given his honest, though feeble counsels, to avert such an event.

But a few words more. We must have some form of General Government. We can have no security for our freedom, but in the principle of States acting on the General Government, in a Federal capacity. It is impossible to separate this Federal principle from our institutions, without opening the door to evils of the most fatal character. But the divestiture of the House of Representatives of the power of election, he regarded as essential to the conservation of the Union. He believed the election of Chief Magistrate to be the vulnerable point in the Constitution. It is there that the stability of the Government is most doubtful. This election is the Roman Gulf, into which we should throw whatever is most precious to us, if it can only be closed by such a sacrifice. He believed the whole human race interested in the experiment of free government we were conducting. We must not, then, permit this source of danger to remain. Take this power from the House of Representatives. Such was his object: this he would do at all events. The interests of freedom, of all countries and ages, are tied up, bound, and incorporated in our experiment. No less, then, as a philanthrohist, than as a patriot, he was prepared for every sacrifice. And, as the act of Curtius, supposing him to have saved his country, exerted an influence on all other countries and times—so would our act redound, in effects incomparably more extensive, and imposing, and beneficent, if we should be successful, by auspicious councils, in closing this chasm, which yawned in the Constitution, from the perilous jurisdiction of the House of Representatives, over the election of the Chief Magistrate of the Union.

Mr. ARCHER closed his remarks by expressing a hope that the first resolution would prevail, and the second be rejected.

The House then adjourned.

FRIDAY, FEBRUARY 24, 1826.

AMENDMENT OF THE CONSTITUTION.

Mr. THOMSON, of Pennsylvania, offered the following:

Resolved, That, for the purpose of electing the President and Vice President of the United States, the Constitution ought to be so amended, that the citizens in each State, qualified to vote for the most numerous branch of the Legislature thereof, shall vote directly for the officers aforesaid. That returns shall be made to the Governor, of the whole number of votes given, who, with such persons as the Legislature shall appoint, shall cast them up, and ascertain what candidate has the greatest number of votes given in the State, who shall be thereupon declared to have received the number of Electoral votes, to which such State, on the principles at present contained in the Constitution, is, or shall be, entitled.

Resolved, That, if, for either of the said offices, no candidate shall receive a majority of the Electoral votes of the United States, the matter shall be again referred to the People, in the same manner as before; except that the election shall then be made from the two candidates who have received the highest number of Electoral votes.

The resolution was referred to a Committee of the Whole House.

Mr. HEMPHILL offered the following resolution:

Resolved, &c. two-thirds of both Houses concurring, That the President and Vice President of the United States shall be chosen as follows: The People of each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in Congress; but no Senator or Representative, or person holding any office of trust or profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, on the first Thursday, and succeeding Friday, in the month of August, in the year one thousand eight hundred and twenty-eight, and on the same days in every sixth year thereafter, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same State with themselves, and they shall make lists of all the persons voted for, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, one to the Governor of the State, one to the President of the United States, one to each of the members of the Senate in Congress from such State, and one to the President of the Senate. The Congress of the United States shall be in session on the second Monday of October, in the year one thousand eight hundred and twenty-eight, and in every sixth year thereafter, and the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed. And if there be more than one who have a majority, and have an equal number of votes, or if no person have a majority, then the citizens of each State,

qualified to choose electors, shall hold a second election, on the first Thursday, and the succeeding Friday, in the month of December, then next ensuing, to vote directly between the persons having the two highest numbers for the office of President; which second election shall be conducted in such manner as the Legislature of each State may direct. And the judges of the elections, or persons finally ascertaining the number of votes in each State, shall transmit sealed lists to the persons aforesaid. And the certificates shall be opened and counted in the presence of the Senate and House of Representatives, in the manner aforesaid. But, in this second election, the votes shall be taken by States, each State to have one vote, and a majority of all the States shall be necessary for a choice; and the person having the majority of all the States, shall be the President of the United States, and the other person shall be the Vice President of the United States.

And if it should happen at the first election that no person shall have a majority, and that more than two shall have an equal number of votes, or, if, at the second election, that the two persons shall have an equal number of votes, then, in each case, the choice of the President and Vice President shall be made according to the Constitution, as adopted on the 17th day of September, one thousand seven hundred and eighty seven. And if any person shall be elected President at the first election, then the Vice President shall be chosen according to the Constitution, as last mentioned.

No person shall be eligible to the office of President of the United States of America, who shall not have attained to the age of forty-five years; and the terms for which the President and Vice President shall hold their offices, shall be six years, and the President shall be ineligible forever after to hold the office of President of the United States of America.

The resolution was referred to a Committee of the Whole.

Mr. SLOANE offered the following:

Resolved, That the Constitution of the United States ought to be so amended, that the free white males of the several States, above the age of twenty-one years, by a general vote, *per capita*, throughout the United States, shall elect the President and Vice President thereof.

The resolution was referred to a Committee of the Whole.

Mr. WARD offered the following:

Whereas it seems to be generally admitted that the Constitution of the United States ought to be amended, so far as it relates to the election of President and Vice President, and the only question to be determined is, in what manner it shall be done—some contending that it ought to be so amended, as that the choice may be made by electors, to be chosen by districts by the People, other that the electors should be chosen by the People by general ticket; whilst others maintain that the election should be submitted directly to the People: In order, therefore, to obviate the many difficulties which must inevitably result from the various plans, which have already been submitted to the House, it is

Resolved, That a Committee be appointed on the part of this House, to join such Committee as may be appointed on the part of the Senate, if the honorable the Senate shall concur therein, to consider and report whether any amendments ought to be made to the Constitution of the United States, so far as it relates to the choice of President and Vice President, and, if so, then, that they report such amendments thereto, as to them may seem most likely to prove acceptable to the People.

This resolution was laid on the table.

Mr. WEEMS offered the following:

Resolved, That the Constitution of the United States ought to be amended, so that, after the next election, when the President has served out his term of four years, he shall not again be eligible to fill the office of President of the United States for six years.

Resolved, That one uniform system of voting by Districts should be established in all the States.

Resolved, That the Electoral College, hereafter, shall elect the President and Vice President of the United States by a plurality of votes.

Resolved, That, in the event of the election of the President or Vice President devolving on Congress, the vote shall be given *viva voce*.

Resolved, That all such Members of Congress as shall stand recorded, as having voted upon the election of President and Vice President, shall be thereby disqualified from holding any office within the gift of, or Constitutionally requiring the nomination by, the President, for four years.

The resolutions were referred to a Committee of the Whole.

Mr. LIVINGSTON observed, that the table of the House was already loaded with various propositions for amending the Constitution, and if he had seen among them all, one which touched the point contained in that which he now held in his hand, he would not have offered it to the House; but there was not one of them which proposed to carry the Presidential election directly to the People, and let them do that for themselves, which they are now compelled to do by attorney. He, therefore, submitted the following:

Resolved, That the Constitution of the United States ought to be so amended, as to vest the choice of the President and Vice President directly in the People, without the intervention of Electors.

The resolution was referred to a Committee of the whole House.

Mr. MINER offered the following:

It is unwise frequently to change the fundamental principles of Government.

The Constitution of the United States being peculiar in its structure, founded in compromise, and compounded of Federative and popular principles, of delicate and difficult adjustment, it should only be altered in cases of obvious and imperious necessity.

Any change would be unwise which should diminish the relative power of the States, to the United States.

The present mode of electing the President and Vice President, is based on the master principle on which our Republican institutions are founded, namely: That the People are intelligent and virtuous; that their Representatives are worthy of confidence; that the security of the People lies, not in refusing to delegate power, but in exacting from their Delegates a rigid responsibility.

Therefore, resolved, That it is inexpedient to alter the Constitution of the United States, in that part which relates to the election of President and Vice President.

In introducing the resolution, Mr. MINER observed that a great many propositions to amend the Constitution had been laid upon the table; and he was not without some fear the People would be led to believe, that it was universally conceded here, that the Constitution was defective, and needed amendment. I, for one, said Mr. M. make no such concession. I am satisfied with the Constitution in its present form, and am willing to take it and keep it, word for word, and letter for letter, without any change whatever. I am desirous of saying so, and placing a resolution to that effect on your table, among the numerous propositions to alter it. With this view I have, upon this paper, placed three or four, what I consider sound political axioms, in relation to the principles of our Government; and deduced, as a corollary therefrom, a resolution, which I beg leave to submit to you.

consideration. I hope it may prove a rallying point for the friends of that sacred instrument; and when the whole subject shall have been fully discussed, I flatter myself with the hope, that a large majority of the House will be found in favor of preserving the Constitution as it is.

The resolution was referred to a Committee of the Whole House.

The House then, on motion of Mr. McDUFFIE, went into Committee of the Whole, on the state of the Union, on the resolutions offered by him, for an amendment of the Constitution.

Mr. SAUNDERS addressed the Committee as follows:

As the change sought to be effected by one of the propositions now under consideration, originated with the Legislature of my own State, some years since, and as it has always had my support, I will be pardoned for asking the indulgence of this committee, for a short time, in expressing my views upon the subject. It is with some, a matter of objection, that amendments of any kind, should be made to the Constitution, viewing all propositions as alike calculated to impair, rather than improve that sacred instrument: whilst others seem disposed to amend, wherever experience shall have pointed out the smallest defect, without considering the consequences likely to arise from the remedy. I am willing, sir, to yield to no man, in an attachment to the Constitution, in my belief of its exhibiting one of the brightest samples of the refinement of man; nor am I second to any one, in a proper and becoming respect for the memory of those, to whom we are indebted for its formation; yet I cannot, like the gentleman from New York, (Mr. STORRS) or my friend from Virginia, (Mr. ARCHER) carry this veneration so far, as to suppose them divinely inspired, and that the humblest individual of that body possessed more information upon this subject, than all the politicians of the present day. The infirmities of human nature forbid the idea of perfection in the Constitution, and that it is beyond the reach of all amendment. It may be true, that it has thus far stood the test of experience, and though in operation near forty years, affording few grounds of just complaint. That, under it, the nation has advanced, in the full tide of successful experiment—that, under it, the citizen has enjoyed

"Health in the breeze, and shelter in the storm"—

still, in the particular provision now under consideration, embracing an important branch of the Government, if the voice of the whole community is to be credited, it demands some amendment. For, if any can doubt the unanimity with which this demand is made, none can hesitate in believing, that a majority of the American People require some modification, and this, in my view, ought to be sufficient to induce us to lend our aid in effecting it. What, sir, are the evils complained of, as incident to the existing provisions of the Constitution? They are, *first*, a want of *uniformity* in the choice of Electors for President and Vice President, and that this choice is not made by the American People. *Secondly*, that the election is not sufficiently guarded against devolving upon the respective Houses of Congress, in the last resort. I shall consider the propositions under this arrangement, and it will be my purpose to assist in showing, that the evils are not chimerical, but well founded, and that the remedy now sought, would lessen, if not remove them.

In other countries, sir, it may be difficult for the historian to trace the origin of their Governments to their true foundation, as they have most usually sprung from fraud, corruption, or violence, in which the object has been a change of one dynasty for another. But, with us, every thing is easily traced to its source. We know ours is a written compact, entered into by the agents of the People, ratified and confirmed by their assent. That the Revolution which gave birth to this Government, was commenced, prosecuted, and terminated, by the People. That the great object of this Government is what is merely professed by the Governments of the old world—the political happiness of its People. For, whilst they profess the same object, the real problem with them is, what form of Government will most effectually enslave the subject, without disclosing the chains that bind, or the hands which impose them. These are cardinal truths in our political faith, which should be borne in mind, whenever we approach that instrument, which secures and perpetuates their enjoyment.

In examining this particular provision of the Constitution, it may not be amiss to turn to the records of that Convention which gave it birth; and, though composed of some of the purest spirits of our Revolutionary Fathers, with the Father of his Country at their head, we shall find, that, upon this subject, "involved in mazes, and perplexed with doubts"—there existed great division of sentiment: for, on this point alone, there were eight or ten distinct propositions. It originated with the celebrated resolutions of a member from Virginia, (Governor RANDOLPH) declaring in favor of a "National Executive;" its progress was, that he should be chosen by the "National Legislature;" and its termination in favor of his choice by the People, through the agency of electors. The division of opinion was, as to the time of his service, whether for the term of good behavior, for a greater or less number of years; and, as to the manner of electing him, whether by the National Legislature, or the People. Fortunately for the country, the democratic principle prevailed in both cases; the term of service was fixed at four years, and the election was intended to have been given to the People.

It is, sir, however, a melancholy fact, that what was expressly negatived by the wise framers of the Constitution, themselves, has, in practice, become a part of it. It cannot now be questioned, that the election of President must, and will, hereafter, most usually devolve upon this House. It is useless to inquire into the cause that shall produce this result. Whether it be that the sages of the Revolution are no more, from sectional prejudices, or the ambition of individuals, we cannot shut our eyes to the certainty, that the number of candidates will so distract public sentiment, as to defeat an election in the primary colleges. Is it then consistent with the character of our Representative Government, or with the future welfare of the country, that Congress should choose its highest officers? The distinguishing characteristic of our form of Government is its representation. Great Britain may boast of her representation, but none will pretend that the Executive power there rests upon representative principles. There the King reigns by divine right or hereditary succession: here the Chief Magistrate is intended to be elevated to his high estate by the voice of the People. This principle of representation, which has the People for its basis, is defeated, in taking from them the power of choosing, and the intention of the framers of the Constitution is defeated: otherwise, it would have been useless for them to have changed the election from the National Legislature to the People. And, though they provided for the contingency under which this House was to choose, it must have been in that spirit with which all contingencies are provided for, as a dernier resort.

It is, to me, sir, apparent, from what transpired in the Convention, that it was intended to have given this election to the People; and this is the more manifest from the expositions of that day. In that celebrated work, the Federalist—which, if for nothing else, would be entitled to the highest respect from the fact of having been written pending the discussion of the ratification of the Constitution before the People—it is said: "It was desirable that the sense of the People should operate in the choice

of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any pre-established body, but to men chosen by the People for the special purpose, and at a particular conjuncture." Again—"They have not made the appointment of President to depend on pre-existing bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it, in the first instance, to an immediate act of the People of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment."

The reference of the choice of Electors to the immediate act of the People, precludes the idea of their appointment by any other body; and if it is to be their immediate act, this can only be effected, as I shall attempt hereafter to shew, through the means of Districts. It is idle to talk of the immediate act of the People, unless they are to vote directly for the President themselves, or for persons, as Electors, whom they know, and in whom they have confidence.

But, Sir, we have been told in substance, if not in words, that this was an election with which it was not intended that the People should have any direct agency—that it was to be a Federal, and not a National appointment. I at all times listen with pride and pleasure to all arguments in support of State rights; and though I may not consider them as endangered, still I am pleased to witness volunteers in their defence. I would now ask of those who contend for this exclusive Federal power against popular right, in the election of President and Vice President, if they are prepared to go the full length to which the principle of their argument will carry them? If they are, then the Constitution should be so amended as to abolish the electoral college altogether, and to give to the States, in their sovereign and independent capacity, the power of making this election. If it is admitted that this is going too far, and that the States ought not, as distinct sovereignties, without regard to wealth or population, to have an equal influence, then it seems to me, the question is given up—that we are left to consider this feature of the Constitution as a compound, in which the popular principle should prevail to the fullest practicable extent. If it was proposed to break down your State limits, to disturb the qualification of the voter, and the manner of voting as designated by the Constitutions or Laws of the several States, to say that the *freehold* qualification of Virginia should no longer exist, nor her *viva voce* mode of voting be practised—that the People of these States should be thrown into one common mass—then I admit we should not only be approaching, but thrown into the "vortex," yea, into the very "gulf of consolidation." Yet, nothing of this kind is proposed: so that the gentleman from Virginia, (Mr. ARCHER) who prizes his freehold so highly, and the oral mode of voting of such importance, may rest contented in the land of his fathers, and not banish himself to the "benighted regions of Africa." It was to this extent, alone, that it was intended to carry the federative principle in the election of the Chief Magistrate:—that the States should retain the power of prescribing the mode in which the People should vote, which is now proposed to be fixed and rendered uniform by Districts; of saying who should vote, and in what manner. Preserve this, and you retain all the power that is necessary or proper for the States. Again, Sir, if this proposition should prevail by the constitutional majority, still it will have to be submitted to the People of the States, who will have to sanction and ratify, through their Legislatures, "three-fourths" approving. This, too, may be added to the calculation of Federal powers. But, Sir, if we are not disposed to regard the supposed intention of the framers of the Constitution, or if we differ as to what that intention was, still, time and experience, which are admitted as superior to the divine wisdom of those who framed the Constitution, have pointed out various considerations in favor of the amendment. The question is not alone, what system of voting is best, but whether any system be good, and expedient to be rendered uniform? It is now contended against the present state of things, that you have no rule, that all is uncertainty, dependent upon every whim or caprice of your State Legislatures, changed and altered agreeable to their notions of policy or of party, and that the People have no agency in the change, but are merely to hear the reasons and excuses of those who may have produced it, and to submit quietly to the evil after it has been consummated. At the late election twelve States voted by General Ticket, six by the Legislature, four by Districts, and two in a compound of Districts and General Ticket. In this there has been nothing like uniformity, because in several States the system was altered to accommodate the ruling party. The State from whence I have the honor to come, has afforded a strong illustration of the want of some uniformity in this election. And here I may be pardoned for expressing my acknowledgment to the gentleman from South Carolina (Mr. McDUFFIE) for his tribute of respect to the Republican principles of that State. I do not mean to boast, but modesty does not always receive its merited reward, and hence, I suppose, so little regard has been paid to the just claims of that State. She has been steady in her principles, firm in her attachment to the Union, asking little, and willing in times of need to contribute, without a murmur. Yes, Sir; since I have had the honor of being a member on this floor, I have never offered a picture, or claimed any thing at the hands of the General Government, save only a post route, or something connected with your post office regulations. I am happy in being the Representative of such a People: for of all offices I should dislike that most of "knocking as a shivering beggar at a bolted door." To return to the history of the system, if system it may be called, in my own State. In the outset, the State was divided into districts, in conformity, no doubt, with the supposed injunctions of the Constitution. In the celebrated contest between Mr. Adams and Mr. Jefferson, the vote of the State was divided, though given by her delegation here for Mr. Jefferson. When Mr. Madison was brought forward in that way by the Republican party, which has since been so much abused in public, and practised upon in private, the Legislature of the State, desirous of giving an effective vote, assumed to themselves the responsibility of appointing the electors. The vote was in conformity, no doubt, with the wishes of a large majority of the State, yet the People, who had before been somewhat indifferent to this election, was roused from their apathy at what they considered so daring an usurpation of their elective franchise—the whole State was thrown into the most violent commotion, and this act was well nigh changing the power of the two great political parties of the State, that, before the next Presidential election, the ascendant party was compelled to compromise between the district system, and the appointment by the Legislature, and adopt the general ticket. Thus has stood the thing ever since. The People have acquiesced, not through choice, but because they have been taught to believe it was necessary for the preservation of the relative influence of the State. In other States, there has been as great a contrariety in the mode of choice, and in some much greater extent, where the Legislature, though unwilling to assume the responsibility of appointing themselves, have laid the State out into districts, not of contiguous territory, but securing the end of the majority, whilst they professed to regard the rights of the minority. Again, Sir, have we not witnessed the excitement and unnecessary consumption of time by several of the Legislatures of the

Union, upon their assumed authority of instructing us, in their Legislative capacities, as to what we should do here, or rather as to what we should not do, in our private capacity, touching the candidates for the Presidency? If it be true, that the power of appointing these electors, belongs directly to the Legislatures of the States, or if they have the exclusive right, whether by secret or open means, of designating whom the People are to choose, then I should be more disposed to respect their mandates on such occasions. I do not, however, recognize in them the power to choose or to dictate; and should, upon such occasions, act under my own responsibility to the People. It is important to take from the Legislatures of the States all control in this business, as calculated to disturb the harmony of their proceedings, and to give it to the *People* of the *States*, to whom properly it belongs.

I come now, Sir, to an examination of the particular advantages and objections of the general ticket and district systems. Before I enter into this inquiry, it may not be amiss to notice a remark of the gentleman from New-York, (Mr. STORRS) which he seems to consider as meeting us at the threshold in this business. That gentleman asks, with some degree of triumph, if we are prepared to disturb the compact of our slave representation, and to permit the popular principle to enter fully into this election? For one, I answer, that we are not. That compact rests upon a different principle, and we are disposed to leave it where the wise framers of the Constitution themselves have placed it. They considered this as an anomalous species of property, directly subject to the hand of taxation; and that, as regards it, number and contribution should constitute the rule of apportioning Representatives among the several States. It should be remembered, too, that, at the time of framing the Constitution, most of the States were interested in this property, and the advantage was not particularly insisted upon by those who had the strongest prospect of its continuance. That the provision, as adopted, was on the motion of a distinguished member of the Convention from Pennsylvania, (Judge Wilson,) and I trust it will long remain as a memento of his sagacity and profound penetration. The gentleman, too, has attempted to excite our fears by telling us, that the period may come, when, from an increase of population, in the non-slave-holding States, they may possess the Constitutional majority in this House; and then the same gentleman tells us, with much kindness, that the subject itself ought not to be discussed. This is very considerate, and we thank the gentleman for touching the spring himself, and then coolly telling us to be on our guard. We are not thus to be deterred: for if ever the period should arrive, (and with some the disposition seems already at hand) we shall look to the other branch of the National Legislature for the preservation of our rights. For I suppose the hand of sacrilege will hardly attempt to "deprive a State of its equal suffrage" in that body, "without its consent." If the rights of the slave-holding States should be disregarded in that body, then we will look to the Legislatures and to the People: for the gentleman seems to have forgotten, in his anxiety for our privileges, that it is not merely necessary for Congress to propose, but that a constitutional majority of the States should confirm, in order to render any proposition a part of the Constitution. Upon that subject, therefore, we stand on grounds not to be shaken; or, if ever shaken, it will be like the air engendered in the bowels of the earth, which, at some mighty rarification and explosion, carries every thing in its progress, and leaves ruin and desolation in its train. I pray God, that the day may be distant, ere another Volney shall thus be called on to mourn over the ruins of this Republic.

I will now proceed, Sir, to point out some of the objections to the general ticket system, and to show the superiority of the district mode, although the continuance of the present state of things must, *ex necessitate*, drive every State in the Union to vote by general ticket, or by the Legislature. I have pointed out some of the objections to the appointment, by the Legislature, to say nothing of its unconstitutionality, though I concur in opinion with those who consider it as a violation of the spirit of the Constitution, and therefore it constitutes with me an argument for rescuing it from such abuses. We are told, however, that it is desirable that all the States should be driven to the necessity of resorting to the general ticket, as that establishes the Federal power of the States in the election of President. I shall not inquire into that system of policy which recommends itself by the force of necessity; but so far as my own State is concerned, though amongst the number of the large, I am perfectly willing to surrender this engine of power. It is said, in favor of the general ticket mode of voting, that it not only elicits the true sentiments of the People of a State, but always gives the true majority. I deny, Sir, this conclusion, and think I can easily demonstrate its fallacy. I will suppose there are three candidates for the Presidency, (and we are not likely to have less) and I will take new York to illustrate my example. There are three parties in that State, the *Buetails*, *the Clintonians*, and *the People's men*. We will suppose the first to be the stronger party, though not equal to the other two combined. They meet in caucus, designate their candidate and electors. The other two are willing to combine—they will not enter into caucus, yet are willing to have a convention. They meet in convention, nominate their electors, and by their united exertions prevail over their opponents. What is the result? The vote of the State is proportioned agreeable to their strength. Twenty votes are given for the one candidate and sixteen for the other. Is this giving the vote of the majority of that State? These combinations are likely to occur, and thus you divide the large States into "fragments," so much to be deprecated, in the view of some gentlemen, and deprive a large portion of the People of their choice, which would not occur if all things were fair, and each candidate could receive his due support. Again, Sir, if you take six of the largest States, by whom a majority of the electors may be appointed, and give to a particular candidate a majority in each of these States, it will be found that about one-third of the whole population might elect a President—an occurrence that could not well happen in an election by districts. It seems to me nothing can be said in favor of the general ticket, save only, that it has the tendency of giving a united vote in each State, which I have shown it does not always effect. When it does succeed, how is it brought about? Not by the agency of the People, but through some arrangement, some previous concert, in which they are called upon to carry into effect the views of others. Sir, gentlemen have been loud in their denunciations of caucusses, as the mighty central power, which controls and governs every thing. Yet the gentleman from South Carolina, while he distinguishes it with all the fashionable epithets of the day, is candid enough to admit that, if he belonged to a large State, and it was necessary to give effect to its vote, he too would go into a caucus. Yes, Sir; and the gentleman will pardon me for saying, he would be found behind the curtain, as one of the political jugglers, working of the wires. The gentleman, too, from New York, has been forced to admit the necessity of some previous arrangement, and the caucus plan as inseparably connected with the general ticket system. *He* tells us, however, that that system only renders a central caucus, in each State, necessary—that the monster will then be found to present his hydra head in a single form; whereas by districts he appears in a thousand shapes, governing and contaminating the whole community. That when this mighty power is brought to a single point, it will be an easy matter for the People, led on by some cunning

spirit, to defeat the recommendations of your caucus; and, I will add, to defeat any election by themselves, and thus bring the decision to this immaculate Hall, where, being all *honorable* men, we will act *honorable* parts, and discharge our duty with fidelity to ourselves, if not to our constituents. That gentleman, (Mr. STORRS) has seen proper to allude to the caucus recommendation from this place, with feelings not of the kindest character, and to say the People have responded to that nomination, and but one from his own State has been spared—a solitary monument—from the indignant wrath of the People. I shall not inquire, Sir, how many have escaped the indignant wrath of the People, who attended that meeting, or how many will escape, who made the election of President in this House, as their day is yet to come; but I will say to the gentleman, whether they are to be found here or elsewhere, they remain monuments of men, firm in principle, and fixed in purpose; and whilst your social elements were thrown into commotion, and *others* were found shifting to every point of the political compass, they remained steady to their object, and open in the expression of their opinions, adopting neither the arts of disguise or the creed of some modern political St. Paul—"all things unto all men"—not for purposes of good, but for self-promotion. Let others, then, who have been *more fortunate* in scenting the popular gale, enjoy the fruits of their momentary triumph, whilst they have been driven to the "post of honor in a private station," with the consolation that their object was the best interest of their country. In proceeding to examine the merits of the district system, I will first notice the examples selected by the gentleman from Virginia, (Mr. ARCHER) against it, which will more strongly illustrate its advantages. He supposes that Rhode Island, who is entitled to four votes, and Virginia, who has twenty-four, should elect by districts, might be equally divided, the first giving two votes for each candidate, and the latter twelve for each. If indeed it is so desirable for a State to contribute to the election of President, then these States would be fortunate in their division, as they would have two strings to their bow. But I would ask the gentleman if it is not perfectly consistent with representative rights, and justice too, that one half of a State should vote as effectually as the other half? It is evils of this kind that the district system is intended to remedy.

But, Sir, the great recommendation in favor of the district system, above all others, is, that it enables the People to act for themselves, and elicit most truly the public sentiment. The State is divided into proper and suitable districts; they remain fixed until after the taking of each census; a friend of each of the Presidential candidates voluntarily offers himself to the People; the merits and pretensions of the respective candidates are examined; the objections to each are made known; and thus, after a free and full discussion, the People commune with each other, discard all local feeling, and vote for the man whom they believe best qualified to fill the station. It is thus that your public men, of every section of the country, are brought directly before the People, and impart such information as their situation and leisure may have enabled them to collect. You transfer the arena of the contest from the halls of legislation to the bar of the People, and they are brought to participate in the conflict, and impartially to decide the controversy. You thus establish a direct communication between the great body of the People and their Chief Magistrate. You render the chain of connexion, though consisting of many links, tangible and susceptible, to the view of every understanding. You establish something like confidence between the People and this high officer—that confidence which constitutes the brightest gem in the diadem of a Representative Government. The President can then say to the People, "You are my Constituents—it is to you I am indebted for my station, and your happiness shall be my object;" and they, in turn, can say, "you are our political trustee, constituted as such by our act and choice, and to us you may look for confidence and support." For, difficult indeed would it be, for any administration to sustain itself against the current of popular opinion. I know, Sir, the disposition of men to yield obedience and support to power, when once established. History tells us, that, however doubtful the claim of the heir apparent, so soon as you seat him firmly upon the throne, the timid and cautious, the sycophant and office seeker, are prepared to give in their adhesion and support. I am persuaded, too, Sir, that the People of this country have more to apprehend, from a too pliant disposition on the part of their Representatives to yield to the wishes of the Executive, than to oppose his wishes, whether the public interest is to be advanced or not. As the People of this country hold in their own hands the only true and permanent support to any administration, it is important that their will should have a more direct and immediate effect in the formation of that administration. That it should be constituted, in some degree, with an eye to their favor, and directed with an eye to their advantage; and whatever may be said of their *mobocratic* spirit, virtue, talent, and integrity would thus as likely find a place in your Executive cabinet, as when filled from motives of gratitude or personal favor.

Another advantage in the district system is, that it keeps alive opposition; and this, of some kind, is necessary in a free country. It makes the functionary honest and faithful; it awakens the People, and keeps them informed as to the state of their public concerns. And unless you have opposition about measures, turning upon principle, you will have party about men, engendering local feeling and personal prejudices—the most degrading, and at the same time, the most dangerous of all parties. The district system does not alone keep alive this watchful jealousy—this scrutiny into public matters; but, as the People have a direct agency in the election of their officers to them they feel responsible for their acts. You may talk, Sir, of responsibility, and of that responsibility being controlled by public opinion; but the only effectual control which the People have over their public servants, is to be found in the ballot-box. Your press may enlighten public opinion—it may disseminate information—and infuse a spirit into public sentiment; but the great means of its concentration, and of its action, is the right of suffrage. It is this which constitutes the touchstone of your public acts, and enables the constituent to pass in judgment upon the Representative: and it is to this test that all public agents should be brought, from your Chief Magistrate down, in a free country. Such, Sir, seem to me to be some of the prominent advantages of a vote by districts: that, whilst your leading politicians look to the *ins* and *outs*, the great body of the community are enabled to consult the interest and prosperity of the whole.

I come now, Sir, to the second proposition—the expediency of providing more effectually against the election devolving upon the respective Houses of Congress. I may be permitted here to remark, that this proposition to amend has not arisen from any feverish excitement of the moment, growing out of recent occurrences—that it has long been a source of serious apprehension, among many of the best men of the country—that the Constitution does not sufficiently guard against the election of President devolving on this House, in the last resort. The question now propounds itself, Which is safest? to entrust the election to the Representatives, or to the People themselves? And as we shall vote upon this proposition, so shall we respond to this question. Can any hesitate as to the reply? But, I may be told, however desirable it may be to remove the election from the House of Representatives, there is a power, conceded to the small States, by that compromise, which led to the adoption of

the Constitution, that they will never willingly surrender. I should be amongst the last to disturb this compromise, if I believed it important to the interest of the small States to retain it; and should be willing to give them this power ultimately, did I not believe they would receive more than an equivalent, in having every State fairly represented, in this election, in the primary vote. What advantage are the small States to derive from the retention and exercise of this power? They are only called on to vote after the large States shall have failed in making a choice. They then exercise this right of deciding. And do they then gain any influence over the measures of the Administration, or the policy it may pursue? So far from it, they are likely to incur the hostility of the large States, and reap no particular advantages from Executive favor. The Executive may feel some gratitude for their assistance, but he will be found to look to the more powerful States for support; and while your small States share this cold feeling of political gratitude, this precious manna will be distributed elsewhere. The People will never submit as quietly, and with the same satisfaction, at an election made here, as they would do when settled by themselves. They will feel a disrespect for the Executive, and a want of confidence in the integrity of those who may have elected him. For, however pure their intentions, and patriotic their designs, feelings of jealousy will necessarily intrude: human nature must change, to stifle sentiments of this cast.

The election, then, should not be brought to this House, if it be practicable to avoid it. To do this, something must be conceded, both by the large and small States. "The worst of men (as is correctly remarked by an American historian) can be urged on to make a spirited resistance to the invasion of their rights, but higher grades of virtue are requisite to induce freemen, in the possession of limited sovereignty, voluntarily to surrender a portion of it"—yet, if the public good and harmony require it, the surrender should be made. North Carolina (though among the large States) has set the example, in proposing the District system; New York has decided in favor of it; Virginia, Massachusetts, and other States, have, at former sessions of their Legislatures, adopted it. We have been told, by the gentleman from New York, that the question has not been determined in such a way, as to give any certain indication of the sentiments of the People of that State—that of three hundred thousand voters, only forty-seven thousand voted for, and forty-three thousand against it. If a majority of four thousand has thus been found in favor of it, in the largest State in the Union, what would be that majority if submitted to the People, with the knowledge of the system being uniform? It would prevail not only there, but in every State, an hundred fold. Yes, Sir; I hazard nothing in this prediction, as it is that system which accommodates itself most directly to the favor of the People, to their notions of *rights*, and to the just preservation of power. It matters not how indignant may be the strains of the eloquence of gentlemen against the charge of corruption in this House; but so long as you shall retain the power of deciding the question here, so long will you be liable to this charge. It is not in an open and tangible shape, that this corruption is to make its appearance: we must not expect to hear the candidate for the Presidency present himself to a Member, and offer him a share of his salary. No, Sir: but it is in the secret whisper of some wily friend, who says to him, "vote for this man, and he will place you in a situation commensurate with your merits, and where you can be of service to your constituents and country." If the individual shall not repel the first approach of this kind, he will find himself bribed, under the deceitful belief of promoting the interest of the People. Another, and with me, the great objection to suffering the election to be made by this House, is, the influence which it gives to the Executive, in sustaining himself in power, and of assisting, in no small degree, the individual who is to come after him. What is the state of things? So soon as your President is elected, he calls to his Cabinet men from different sections of the country, through whom he is to extend his influence into the various ramifications of society. He brings into the Department of State, an individual who is looking forward to his own situation, and thus gives effect to the influence of his own patronage, in the prospect held out to the friends of the aspirant. Have not our Secretaries so regularly succeeded our Presidents as to have rendered it almost a matter of routine? If not absolutely regarded as heir apparent, yet "conformity with safe precedents," as has been modestly said, has certainly conferred on that high officer a most imposing pre-eminence. Who can be blind to the influence which this frequent recurrence of the same event is gaining over public opinion; or, rather, who so blind as not to see the mighty facilities which the situation affords, to realize the most flattering suggestions that may have accompanied its attainment? It is my wish to see this election placed in a situation free from all influence, and that the People may be permitted to determine for themselves as to "safe" or "fearful precedents."

An independent Chief Magistrate of this Republic, deriving his authority from the suffrages of a free People, supported and sustained by their confidence, stands, in every view, superior to the mightiest potentate of Europe, addressed by the proudest titles, attended by the most magnificent retinues, or decorated by the most splendid regalia; but this majesty of office will lose all its charms and its brightness, when the individual is placed there through intrigue and management, and against the wishes of those over whose interest he is called to preside. Let us, then, adopt the proposition, transfer the exercise of this power to its legitimate hands, the People, and not lay ourselves open to the charge of the immortal Henry, who, contending against the adoption of the Constitution, in the Convention of his own State, said, "unworthy men would get into power, and, through unworthy motives, prevent future amendments." Many of his fears and predictions have not been realized, and let this be added to the number. Let us not be told, that, if the People desire this amendment, it is competent for them to obtain it through their State Legislatures: for then, two-thirds of the State Legislatures are necessary to a Convention. That is the extraordinary mode of effecting amendments, whereas this House is the ordinary channel, and the one, no doubt, contemplated by the framers of the Constitution. We do not ask that the Constitution *shall* be amended: but, we say, the public voice demands some alteration, and we desire that the question shall be submitted to the decision of that voice. Are gentlemen fearful of trusting the People? Shall we hear, at this day, the slavish doctrine avowed, "that the People have nothing to do with the laws but to obey them, and no concern with the Constitution, but to live under it?" No: it comports not with the spirit of our forefathers, who considered a recurrence to fundamental principles not dangerous, but necessary to the preservation of liberty. This right to amend, has justly been pronounced, by a late writer, to have been "a marvellous prudence, which foresaw, and regulated by anticipation, the alterations in the Constitution which time and experience might render necessary." It is idle, therefore, to say, a respect for the fame of its framers forbid any amendment to the Constitution, and the provision is a mockery, if to remain a dead letter.

Ours, Sirs, is a government yet in its infancy. To raise itself to maturity, as a pyramid grand and magnificent, it is necessary that the affections, the wishes, and the interest of the People, should constitute the basis. To obtain these, you must consult their will, in the choice of their rulers; and this you can only do by accommodating your

system to your widely extended territory, so that the voice of every section of the country shall be heard. Without it your Government may go on, but it will be administered by hands not of their choosing.

The motion for the rising of the Committee was made by Mr. STEVENSON, of Virginia, who, however, suspended it, at the request of Mr. CAMBRELENG, who said he wished to give a notice, of importance to the future course of this present debate. He then gave notice to the House, that it was his purpose to reply to the speech of his colleague, (Mr. STORRS) who had remained absent from the House almost ever since the speech had been delivered. It was desirable he should be present when the answer was delivered, and he hoped that gentleman would not act as the flying Parthian.

The Committee then rose, and the House adjourned to Monday.

MONDAY, FEBRUARY 27, 1826.

A message was received from the Senate, announcing the death of the Honorable JOHN GAILLARD, and that his funeral was appointed to take place to-morrow, at eleven o'clock; whereupon,

Mr. WILSON, of South Carolina, presented the following:

Resolved, unanimously, That this House will attend the funeral of the Hon. JOHN GAILLARD, late a member of the Senate from South Carolina, to-morrow, at 11 o'clock, A. M.; and, as a testimony of respect for the memory of the deceased, will go into mourning, and wear crape for thirty days.

The resolution was unanimously agreed to, and

The House adjourned.

TUESDAY, FEBRUARY 28, 1826.

This day was appropriated by both Houses, to paying the customary ceremonies of respect to the memory of the Hon. JOHN GAILLARD.

WEDNESDAY, MARCH 1, 1826.

The bill allowing the importation of spirits, gin, and brandy, in casks of a capacity not less than fifteen gallons, came up as the unfinished business.

Mr. CAMBRELENG said that, at the request of the Chairman of the Committee of Commerce, (who had been instructed by the committee to make the motion) he would now move to recommit the bill, for the purpose of making a small amendment, not varying the principle, but extending it. He understood a strong opposition was intended to be made to the bill. He had not anticipated any objection to a measure so moderate in its character, and, at the same time, so important to our commerce, in our intercourse with South America; and he hoped that, when the measure was well understood, it would not be opposed. He would, in the mean time, call the attention of the House to a very able memorial of the Chamber of Commerce of New York, which he presented a fortnight since, upon the subject of our South American trade generally. It had been ordered to be printed, and would be laid upon the tables to-morrow. He thought every member who read that memorial would be satisfied of the expediency of the bill.

The bill was then recommitted to the Committee on Commerce.

PENITENTIARY FOR THE DISTRICT.

On motion of Mr. THOMSON, of Pennsylvania, the House then went into Committee of the Whole, Mr. TOMLINSON in the Chair, on the bill to provide for erecting a Penitentiary in the District of Columbia, to reform the penal law of said District, and for other purposes.

Mr. THOMSON said, the bill now submitted to the consideration of the committee, is one embracing principles of considerable consequence. He would desire it to be read through, before he proceeded to make any remarks on the subject, but it was very long, and would, of course, occupy considerable time. He thought a statement of its general scope and design would be sufficient to enable the committee to understand the arguments he had to offer. It proposes to establish, in this District, a Penitentiary, and so to alter the criminal law of the District, that confinement to hard labor shall be inflicted on most crimes, instead of the irrational punishments now in use.

When, said Mr. T. this subject was, by a resolution of the House, referred to the Committee on the District, it became their duty to inquire into the provisions of the present code of criminal law, administered in the District; the condition of the jails; and to provide a remedy for the evils they found prevalent in both. I will now, as briefly as I can, exhibit to the committee the facts on these subjects, which have come to our knowledge, and the reasons which have induced us to propose the remedy for the evils of the present system which this bill provides.

In the year 1791—2, the District of Columbia was ceded to the United States by the States of Maryland and Virginia. By an act of Congress on the subject, the laws of Maryland, as they then stood, were adopted for the government of that part of the District ceded by that State, and the laws of Virginia for the government of that part of the District South of the Potomac, until they should be altered by act of Congress. As far as relates to criminal matters, the laws of the District have not been ever altered.

The States of Virginia and Maryland have since changed their whole system of criminal jurisprudence. They have discarded the cruel system of hanging, whipping, and disfiguring malefactors, and substituted in their stead, the more mild and efficacious one of confinement to hard labor in a Penitentiary. But these improvements do not extend to this District.

It is a maxim, in legislating on subjects connected with criminal law, that the prevention of crime is the only legitimate object of punishment. That system which secures to society the greatest amount of prevention, is the best, and ought to be adopted; and that which experience has proved is defective, in this respect, ought at once to be abolished. If we look into the practical operation of the present system of criminal law, in this District, we will find it wholly inadequate to produce the great beneficial results to society, which ought to flow from the administration of the penal justice of a country.

On the South side of the river there are above three crimes punished with the dreadful penalty of death: and on this side of the river, there are above fourteen for which the same punishment is provided. It is unnecessary for me to recite the whole of these bloody enactments. It will be sufficient to mention two or three, to illustrate the spirit of the whole code. Feloniously breaking and entering a store or warehouse, by day or by night, and stealing there to the amount of four dollars: breaking out of prison, if the prisoner were confined under the charge of a capital felony, whether he were guilty of the felony or not: a slave, preparing or administering any medicine with ill intent, or attended with any bad consequences: maliciously burning *any* house, whether it be a mansion house, or whatever may be its use. On this side of the river, breaking and entering a warehouse, store-house, or tobacco-house, and there stealing to the value of five shillings, is punished with death. Thus, on one side of the river, the life of a man is valued at four dollars,

while on the other, the law fixes its price at but five shillings. But the most horrid of all the bloody denunciations of the law here, is, the judgment which it requires to be pronounced on a slave, convicted of petit treason, murder, or arson. It requires that he should be hanged, his head cut off, and his body divided into quarters, and his head and quarters set up in the most public places of the District. Future generations will scarcely believe that in this enlightened age, after the District had been under the exclusive government of the Congress of the United States for thirty-five years, its laws would tolerate such a dreadful spectacle. What will they say when they are informed that the law not only tolerates, but commands it? How should we feel reproved for our supineness, in legislating for this District, if, unfortunately, a poor slave should be convicted of murder or arson, and we should be compelled to witness the execution of the dreadful penalty, by seeing the bleeding and mangled quarters of the unhappy malefactor exposed on the public avenues of this City?

It is certainly unnecessary for me to prove that this system is wholly inconsistent with the genius and spirit of the present age. Its operation and effect proves this more forcibly than any argument I can use. The great first principle of our system of government is, that the law is the expression of the *public will*. This is not only true in theory, but it is true in practice. When any statute falls under the general displeasure of the People—when the popular will is decidedly against it; if it be one which must be executed through the medium of Courts of Justice, and more especially if it be a penal one, it soon loses its force, and becomes a dead letter. This is the case with these severe enactments in this District. The unwillingness of the witnesses and prosecutor, the humanity of the Jury, the lenity of the Judge, and the clemency of the Executive, interpose themselves, aided by the irresistible force of public opinion, between the criminal and the execution of the sentence of the law, so that in all those cases falling within the range of the penalty of death, the offender is never punished, and society is left wholly without protection.

The laws now in force contain penalties wholly disproportioned in severity to the enormity of the offences against which they are enacted. It is true that no human ingenuity can devise a system of such perfection, in this respect, that every offender shall receive the precise amount of punishment due to his guilt. Human reason is imperfect, and human laws must necessarily be general in their provisions, and partake of the imperfections of those who framed them. But, because we cannot do every thing, we are not to conclude that, therefore, we ought to fold our hands, and not attempt to do any thing. If we are denied the power of making a system theoretical, beautiful, and perfect in symmetry, this furnishes no good reason why we should wholly disregard all proportion, and inflict the highest penalties upon the lowest grades of guilt. How atrociously unjust it must appear in the eyes of an enlightened and civilized People, to see the dreadful penalty of death inflicted on an offender whose only offence is, that he has escaped from prison, where he was detained on the charge of a crime punishable with death, and this, whether he was guilty of the crime for which he was detained or not—a crime, to the perpetration of which there is the highest possible temptation. How does the heart of humanity revolt at the thought of hanging a man, because he has stolen to the value of five shillings! What can justify the barbarity of consigning to the gallows and the grave, the unhappy slave who administers medicine which has some bad effect? The injustice of these terrible judgments of the law is too glaring to require the least illustration.

Death, as was said by one of the ancients, "of all dreadful things, is the most dreadful." It ought, therefore, never to be inflicted, except for the very highest degree of guilt. There are few systems of law which set a high enough value on human life. Legislatures frequently forget the magnitude of the subject, when they are called upon to deliberate upon the life and death of their fellow citizens. When the question is proposed whether we will consign a rational being to the untried destinies of a future world, to take up his abode, perhaps, in that house of pain, from which, throughout the never ending flight of future years "there is no escape," we cannot make up our opinion with too much caution.

But this is not the only part of this system which is objectionable. It is, throughout, a system of impotent cruelty. Its only instruments of punishment are, the gibbet, the whip, and imprisonment without labor. Its only end seems to be the infliction of corporal pain; and the only effect it produces is the hardening and confirming in crime, those upon whom its sentences are executed. The only punishment which the law presents in the District, besides that of death, is whipping, imprisonment without labor, and fines.

When crimes are committed, it is the duty of an enlightened Government to examine its laws, and the structure of society; to look to the peculiar genius of the age, and carefully to inquire into the habits, temper, and character, of the offenders, and the temptations which may have given occasion to their crimes; that it may ascertain what punishments will be best calculated to reform the habits of offenders, and give the highest security to society. In ancient times of barbarism, Governments, instead of calmly making this investigation, fell upon their criminal subjects, not like a father, intent upon reforming their children, but like infuriate maniacs, resolved to inflict upon them the highest possible corporal suffering. And I regret that too much of this spirit is still to be found in the world. Reasoning from the nature of things, one would be led to the conclusion that whipping and other corporal punishments could not have a tendency to reform the character, improve the morals, heighten the civilization, soften the temper, and correct the habits of those on whom they are inflicted. But experience has proved this truth with tenfold more power than abstract reasoning.

To bring the results of experience to bear upon this point, let us compare the effects produced by the system in this District, with those produced by the Penitentiary system in those States where it has been applied. An instance occurred lately of an offender who was in prison at the commencement of the session of the Court, for the crime of larceny, who was tried, whipped, and discharged, and for two successive similar offences was twice afterwards arrested in succession, tried, whipped, and discharged, before it rose. Another person was, in the space of four years, convicted for larceny seven times. The population of the District is about 34,000. The convictions for the last four years, of crimes which usually are, and ought to be, punished by confinement to hard labor, were at the average rate of sixty per year; that is in the ratio of one to about 560 of the population. In the State of Maine, last year, the convictions of offences punished in the Penitentiary, was in the proportion of one to 6,000 of the population. In the State of New Hampshire, the prisoners in the State prison, at the end of last year, were 67. If we suppose that one half of these were received during the year, which is a large number, and, no doubt, above the truth, we will find, that, even on this comptuation, the convictions were, there, during the last year, in the proportion of 1 to about 7,400 of the population. In Connecticut, the convictions were, last year, in the proportion of 1 to 7,000 of the population. In Vermont, the convictions were as 1 to 6,000. In the State of New York, from the year 1797 till 1814, the convictions average, annually, at the ratio

of one to about 5,000 of the inhabitants. In Pennsylvania, from 1794 to 1816, the average is, annually, in the proportion of 1 to about 6,200 of the population. During the latter part of this period, in these two States, their Penitentiaries had become so crowded as, in a great measure, to destroy their moral effect. Yet they were nine times as efficacious, to prevent crimes, as the punishments inflicted in this District. In Massachusetts, the convictions average, from 1806 to 1816, annually, at the ratio of 1 to about 8,000 of the population. And in Virginia, where the system of law is mild, and the Penitentiary has been conducted on principles well calculated to give it moral effect, the convictions were, last year, in the proportion of 1 to 10,000 of the population.

This statement of facts exhibits, with a thousand times more force and clearness, the effects of the system in this District, than any abstract reasoning possibly could. It is true, that the population of the District is nearly all a city population. It must, therefore, be expected that crimes will be more numerous here than in agricultural States, in proportion to the number of inhabitants. But it must also be considered that the States I have mentioned, have large commercial cities in them. So that, making every allowance that could be asked for the character of the population of the District, we will find that the penal laws of the States I have mentioned, are, upon an average, more than seven times as effectual to secure society against crimes, as the system of hanging and whipping which prevails here. But I need not refer to statistical calculations to prove that the system of penal law, which governs the District, is one of the worst in the United States, or perhaps any where else to be found. We have almost every day occasion to see its total inefficacy, and some of us are every session taught, by personal experience, to know, that the law furnishes but slight protection to the rights of property.

When Congress see this District, over which they hold the direct dominion and absolute sovereignty, suffering the greatest evils that can be inflicted on a community, for want of a code of criminal laws, suited to the spirit of the age, and calculated to improve public morals: when they see crimes multiply, and criminals go unpunished: when they see property insecure, and that the laws, which ought to stand as an impenetrable wall of adamant round the civil rights of every individual, have lost their protecting powers: when they see that, instead of improving the morals of society, its condensed energies are poured out upon it, hardening the hearts and rendering obdurate in guilt, those on whom its penalties are inflicted, and disgusting and corrupting the rest of mankind—they must feel that a powerful appeal is made to their paternal justice, and that the authoritative voice of duty enjoins it upon us to give a system of an opposite tendency to this subject People.

I have thus endeavored, as briefly as possible, to state the facts exhibiting the provisions and moral tendency of the present system of criminal law of this District. These facts, without any argument from me, prove, in the most conclusive manner, that there is nothing in it which suits the present condition of mankind. The cruelty of its penalties has roused against it public opinion, and, of course, they are but seldom executed. This argument alone, if there were no other, furnishes sufficient reason to abolish it.

I will now turn the attention of the committee to another subject—the state of the prisons in the District. It is an unpleasant one; but it is one which we must understand before we can act on the bill now before us. The prison in this City, for every thing that renders it unfit to be the habitation of human beings, has not, perhaps, its equal on this continent. This is using strong language; but it is not speaking more strongly than the subject warrants. In describing this prison, I do not mean to cast any reflection on the Marshal of the District, or his officers. The great fault is in its construction and the laws relating to its management. It is an oblong square building—an entry runs through it from end to end, on each side of which there are eight cells. The lower floor is [illegible] with brick. These cells are each eight feet square: under each range of cells runs a large sewer, and in the corner of each cell is a hole through the brick floor, into the sewers, used for purposes I shall not here name. These sewers communicate with the open air, and by the rarefication of the air in the cells, by the heat in them, there is a constant current of air passing through the sewers and the cells. This carries into the whole prison a smell which is absolutely intolerable. The upper story of the building is divided into apartments for debtors. Each apartment is furnished with a sewer, which communicates with the large sewers below, by means of an opening in the wall of the prison. These openings are now choaked up, and all that passes into them above finds its way through the wall into the cells below, augmenting the sufferings of the tenants of that part of the building.

In these sixteen cells, the Marshal of the District has sometimes been compelled to confine seventy, and sometimes as many as eighty persons. He has been obliged to crowd together, in the same room, the young culprit with the old, hardened, experienced villain, and the convicted felon with the person committed for trial. The sufferings which these unhappy beings endure, some of them innocent men too, can be more easily conceived than described. The cruelty and injustice of confining the untried defendant along with the convicted felon; and the juvenile offender, who has committed, perhaps, his first petty offence, with hardened villains, skilled in all manner of wickedness, to take his initiatory lectures in the science of crime and infamy, must be most apparent. Not only are untried defendants, who, on trial, are found innocent, confined in these abominable dens, but even the witnesses on the part of the United States, who are, in many cases, found unable to give security for their appearance to testify at Court. And cases have occurred, I am told, where the witness and the defendant have been confined in the same cell.

This prison has been the frequent subject of presentments of the Grand Jury of the county of Washington. Several of the most respectable physicians of the City have also visited it, and pronounced it, in the strongest terms, unfit for the habitation of human beings. One of them, in his written report, speaking of the filth collected in the sewers, says, that it constantly produces a putrid exhalation, poisonous to the health of the prisoners. He attributes to this cause a dysentery, which prevailed in the prison some time before the date of his report, and says, that, although at that time "no ostensible disease existed, still the pale and cadaverous appearance of the persons who have long been confined, plainly shew that their constitutions are suffering from some secret cause." Last session, when these facts were disclosed to the committee, I visited the prison twice, that I might myself ascertain their truth. I found that the descriptions we had had fell short of the reality. This Winter I have not visited it—I was unwilling to expose myself to the disease and danger of disease which every one must encounter who comes within its walls.

In the beginning of last Winter, one of the cells was condemned, as wholly unfit for use; one was vacant, and three occupied as lumber rooms; eleven only were used. In these eleven cells were confined, day and night, without being permitted to leave them at all, forty-four persons, among whom were five women and four children. Two of these were detained as witnesses against a defendant, who was discharged at the Court, no bill being found against him. In one of these cells were confined at that time seven persons—three women and four [illegible]

dren. The children were confined under a strange system of law in this District, by which a colored person, who alleges he is free, and appeals to the tribunals of the country, to have the matter tried, is committed to prison till the decision takes place. They were almost naked; one of them was sick, lying on the damp brick floor, without bed, pillow, or covering. In this abominable cell these seven human beings were confined, day by day, and night after night, without a bed, chair, or stool, or any other of the most common necessaries of life; compelled to sleep on the damp floor, without any covering but a few dirty blankets. The prisoners in the other cells were in no better condition. I forbear to describe more minutely the uncleanliness of this abominable place.

I am sorry that I have been compelled to state these facts, and to say, that in this city, and almost in the very presence of the Congress of the United States, such a prison exists. I have not exaggerated its horrors—the description falls short of the reality.

I have not visited the prison in Alexandria; but, from the reports of the Marshal, and the statements of men on whom full reliance can be placed, it is no better than the one in this city. It is a private building, no way fitted for the purposes of a prison; and, as an additional objection to it, it costs the Government, in rent and guard hire, $ 1,030 annually.

Thus I have endeavored to bring before the Committee the evils of the system of criminal law in force in the District, and to inform them of the state of its prisons. It is a picture on which neither the imagination nor the heart can dwell with pleasure; but it is nevertheless true; or, if it falls short of the truth, it is in not coloring with sufficient strength and distinctness the miseries which it inflicts on society.

These are the evils which were brought under the consideration of the Committee for the District of Columbia, and for which it became their duty, under the resolution of the House, to provide a remedy. The remedy which they propose, is a system of punishments by confinement in a Penitentiary, to hard labor.

This system of punishments, by confinement to hard labor, is not new to the laws of the United States. Congress, at its last session, determined that it should form a part of our criminal code. In the "Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," and the "Act to reduce into one the several acts establishing and regulating the Post Office Department," the system was distinctly recognized and adopted. I might take this decision of the House as settling the question. But I am aware that there are strong prejudices existing, in several States of the Union, against this system, which it is my duty to remove, if it be possible. When this subject was referred to me by the Committee, I entertained the same prejudices. I commenced the investigation with the full belief that every step I proceeded would confirm me in the conviction of its total inadequacy to suppress crime. But the very contrary has been the result. I am fully convinced that it is not only the most humane, but, at the same time, the wisest system of punishments which the ingenuity of the human mind has yet conceived. To remove the prejudices I have mentioned, I have no speculative reasons to offer, but matters of fact.

Many think that the Penitentiary system has produced no good moral effect; and that, where it has been established, it has been a charge upon the public. Neither of these suppositions is true. There is no penitentiary in the United States, however badly its affairs may have been conducted, that has not, upon the whole, saved money to the Government which has established it. If crimes are not punished by this mode, they must be by some other one. The punishments usually inflicted where there is no Penitentiary, are whipping, imprisonment, and fine. Executing those parts of the sentence relating to the whipping and the fine, cannot cost the Government much, but the imprisonment of offenders without labor, is a heavy expense, which must fall somewhere. It is true, that in those States where this system prevails, there will not be so many imprisonments as in States where there is a Penitentiary. Suppose there are but half as many, these must cost the State, to support them in idleness, more than double the number would at labor, even if they were injudiciously employed. So that, when you come to compare the two systems together, even in this respect, the balance is greatly, in a pecuniary point of view, on the side of the Penitentiary. But suppose it were even more costly than the system now in force—does it follow, on that account, that it ought not to be adopted? Certainly not. If it gives greater security to society, its pecuniary cost is but a small matter. Government was not instituted to be an engine of speculation upon either the virtues or vices of its citizens. It was established to promote the public welfare. Government cannot be administered without pecuniary support. Why do we appropriate three millions, annually, to support a Navy? It is not because it produces any direct pecuniary profit to the Government, but because the peace, security, and commerce, of the nation require it; and it has been found, by experience, that no system, less expensive, can be adopted, which will equally well answer the purpose. Why do you appropriate large sums annually for the support of the administration of justice? Not because it is a profitable thing to the Treasury to hold Courts, but because the tranquillity and happiness of the country cannot be secured without justice is administered among its citizens, at the common cost. You adopt a system of military defence for the country, not because it costs less than any other that could be devised, but because it is best calculated to promote the end for which it is designed, and best suited to the dignity and honor of the nation. On the same principles, we ought to adopt that system of penal justice which the public good requires: not because it costs least, but because it gives to society the greatest security against crimes.

But this is a subject on which there is no need of speculation. Society has a right to punish crimes in such a manner as to make the criminal, while under sentence, support himself, and add to the public wealth, if that be possible, without diminishing the moral effect of the infliction. That it is possible, experience has fully proved. It has shown, further, that, wherever a penitentiary has failed to support itself, it has been, in every case, owing to its being located where the labors of the convicts could not find a profitable market, or to some mismanagement of its officers.

In the State of Pennsylvania, where the Penitentiary system was first introduced into the United States, the officers of the institution were directed, by law, to keep a separate account for each convict; in which he was charged with the costs of his prosecution, and of his support in the institution, and credited with the proceeds of his labors. For many years after the system was adopted, it was conducted to such advantage that nearly all of the convicts were found, at the expiration of their term of service, to have balances on the books, in their favor. Some of these balances have amounted to as much as ten pounds, which were paid to the convict, at his discharge. Thus the Penitentiary supported itself, and more; but the State did not appropriate to itself the surplus of the earnings of the convicts. She paid it over to them, when their term of service expired, that they might have some means of commencing a life of honest industry. These happy results continued to flow from the system, till the number of convicts had increased so much that the buildings did not afford sufficient room to execute it properly. The present condition of that prison furnishes

no argument against the system. For want of a sufficient number of separate cells, the convicts are, in numbers, confined to the same room at night, which, in a great measure, destroys its moral effect, and for want of sufficient room in its yards and shops, the convicts cannot all be advantageously employed, which interferes, materially, with its pecuniary profits.

In the State of Ohio, the Penitentiary has been a small charge to the State. This, however, is easily accounted for. In keeping the accounts between the institution and the State, it is charged with the costs of prosecution of every convict brought to it. This item of expense amounts, annually, to from $ 4,000 to $ 6,000. As this is an expense which the State must incur, whether it has a Penitentiary or not, it is not properly chargeable to the institution. The present highly respectable keeper of that prison says, "that, exclusive of the expense, the institution is nearly, if not quite, able to meet its own expenditures." This Penitentiary is located at Columbus, in a thinly inhabited country, far from any populous and mercantile city, which might afford it a ready market for its manufactures. If it had been placed on any of the great navigable streams of that State, or near the city of Cincinnati, where its manufactures would have found a ready market, it would not only have supported itself, but afforded a revenue to the State. In this prison it costs $ 18 a year per head, to support the convicts in food, while this article costs, at Auburn, in New York, but about $ 13 50; and at the States' Prison, New Hampshire, and in Massachusetts, it costs about $ 14. This shews the immense disadvantage which this institution labors under, in being obliged to barter its manufactures for the means of its support.

In the State of Virginia the Penitentiary has been conducted more with a view to its moral than its pecuniary results. It is charged, last year, with a balance of about $ 10,000. This sum is made up of items, some of which ought not to be charged to a penitentiary, in any shape, and of others, which a little more experience will enable its officers to remove from its accounts. One of these items is the transportation of prisoners, amounting to the sum of $ 5,069, another of interest upon the stock employed, amounting to $ 812, and a third of $ 4,131, expense incurred in disposing of its manufactures. The two first of these items are not properly chargeable to the institution, and some arrangement will, no doubt, soon be made to prevent so great an expense from being incurred in the sale of its manufactures. When these items are deducted from the charges against this institution, its accounts will about balance. But the small pecuniary cost which Virginia has incurred, in supporting this Penitentiary, has been money expended to the best purpose. Its moral effect has made her a rich recompense.

The State Prison in the City of New York has always labored under the same disadvantages with the Pennsylvania Penitentiary, as to room for its convicts; and, until within a few years, the system of discipline and government in that institution were exceedingly defective. These causes interfered both with its moral effect and pecuniary profit. In both these States, an impression began to prevail, that this humane system had entirely failed. This, so far from inducing its friends to give it up in despair, only stimulated them to higher efforts. They investigated the cause which had given rise to this impression on the public mind. They found them in the plans on which the prisons were constructed; in the circumstance that the prisoners were permitted to sleep in numbers together in the same room at night, and hold free conversation with one another during the day; and in the want of an energetic and efficient system of government. They candidly laid the state of the Prisons before the Public. This produced the effect which truth must always produce on the public mind of an enlightened People. They saw the defects did not exist in the system, but in the manner it had been carried into execution. And so firmly are those two great States now convinced, not only of the humanity, but of the superior efficacy, of the system, that the State of New York is building a new Penitentiary on the banks of the Hudson; and Pennsylvania is building two—one at Philadelphia, the other at Pittsburg.

In the State of New York there has been a Penitentiary constructed on the best principles, and under the best discipline, at the village of Auburn. In 1824, as appears by the Report of a very able Committee, appointed by the Legislature to investigate the concerns of the State Prisons, there were 310 convicts confined at the Prison at Auburn. Part of these were employed on the buildings of the Prison, part were sentenced to solitary confinement, without labor, and part were in the hospital. The remainder were employed in manufactures for the profit of the Prison. Those gentlemen, who, examining the accounts of the Prison, and ascertaining the amount of earnings of those who were employed for a profit, found that if but 260 of these convicts were constantly employed at the same rate of profit, they would be able to support the institution, and earn for the State $ 3,752. In the calculations of those gentlemen the highest confidence may be reposed. They are men devoted to practical views.

In the State of Kentucky, for some years, the Penitentiary was a charge upon the Treasury of the State. Last year, however, an enterprising gentleman, of the name of Scott, proposed to the Legislature to take the institution into his hands; to conduct it under such regulations that the public authorities should be satisfied its government was well administered, and the convicts well taken care of; to secure the State against its becoming a charge to the Treasury; and to ask no emolument but the one-half of the profit of the labor of the institution, after paying for all its expenses. The Legislature acceded to the proposition. Mr. Scott has had it one year, under his care, and, I am informed, his share of the profits has amounted to $ 1000.

In Vermont, the State Prison has, for the last six years, supported itself, and paid a small revenue to the State. last year it paid into the Treasury, of profit, $ 1,100.

In New Hampshire, the State Prison paid into the Treasury last year, a profit of $10,000—an honorable member near me, says $ 11,000.

In Massachusetts, the profits to the Treasury arising last year from the labors of the convicts in the State Prison, were $ 10,051 32.

Thus I have shown, not by speculative reasoning, but by a plain exhibition of matters of fact, that a Penitentiary can be made not only to support itself, but to produce a small revenue to the State. I have proved, also, that in the cases which had come to my knowledge, in which Penitentiaries had not supported themselves, it was owing either to some defect in the management of the institution, to the manner in which its accounts have been kept, or to the circumstance that it has been located injudiciously, where it had not a convenient and profitable market for its manufactures. I have also endeavored to show, with what success the Committee will judge, that the confinement of criminals to hard labor, even under a system of defective management, is less expensive to the State than the present system, which confines many malefactors in the prisons, without labor; and that, if it were even true that the Penitentiary system was more expensive than the one now in force, it does not follow, from that circumstance, that it ought to be rejected; but that, if by experience, it has been found to be the most beneficial system to society, to give the greatest security to the persons of persons and of property, to prevent most efficiently

the commission of crimes, and, in a word, to have the highest moral effect, it ought to be adopted.

I will now turn the attention of the Committee to the moral effect of the Penitentiary system: for, after all, it is its superiority in this respect which gives it the decided preference. It is on this ground I stand here its earnest advocate. It is because I am convinced that its mild and rational system of penalties renders the administration of the penal justice of the country certain and pure, by preventing courts and juries from sacrificing their integrity on the altar of humanity; because it tends, if any thing can tend, to reform the morals and habits of the criminal; and because it relieves society from the pain and degradation of witnessing the infliction of a set of cruel and bloody punishments, at war with the best feelings of the human heart, and with the spirit of this enlightened age, that I urge the adoption of it in the present bill.

Before I proceed to lay before the Committee the argument on this most interesting part of the subject, it will be necessary for me to give a brief sketch of the history of the criminal law of Pennsylvania. The principles of the Penitentiary system were introduced into the law of Pennsylvania at a period coeval with the existence of its Colonial Government. In the laws agreed upon in England, between the Proprietor and the first settlers, it is provided, "that all prisons shall be workhouses for felons, vagrants, and loose and idle persons, whereof one shall be in every county." The Legislature, immediately after the establishment of the colony, under the auspices of its enlightened founder, proceeded to enact a system of penal law, by which treason, burglary, arson, rape, and other great offences, for which thousands had suffered death in Great Britain, were declared to be no longer capital. The crime of wilful and premeditated murder was the only one punished with death; and the Legislature seemed to have retained that punishment for that crime, not because they were convinced of its political necessity, but because they supposed it was enjoined upon them by the law of God. This mild system was continued by reenactment, from time to time, till its beneficial effects became apparent. It was then made perpetual, and sent to England to receive the Royal assent. It stood in opposition to the policy of the mother country, and was rejected by the Queen in Council. The Legislature, however, persisted in its benevolent design, and immediately reenacted it, and continued it in force till 1718.

About this time a contest arose between the Crown and the Colony. The Quakers were threatened that if the criminal code of England was not adopted in the colony, a act of 1st George I, prohibiting an affirmation in cases of qualification to office, and to give evidence in criminal cases, should be extended to the colony. Disputes arose between the Colonial Legislature and the Governor, which gave occasion to charge the Colony with disaffection, and to widen the breach between it and the Mother country. The declining health of the Proprietor deprived it of his influence, and threatened it with a surrender of the government into the hands of the Crown, and it was finally forced to yield. To compose these differences, the act of 1718 was passed, and the inhuman code of England, with its 160 felonies of death, was adopted. This system continued to stain the statute book with blood, for a period of sixty-eight years, till 1786, when the Revolution had accomplished our emancipation. There is no historical record which shows very conclusively what has been the effect of the system prior to 1718, but the unanimous resolution with which the Legislature adhered to it, shows that they, who had the best opportunity of judging, were convinced of its excellence. In 1786, the crimes of robbery, burglary, and the crime against nature, ceased to be capital, and a system of punishment by hard labor in public, on the streets and highways, was adopted. In 1790, the Penitentiary system was introduced, on nearly the same principles on which it now stands, and in 1794, the many cruelties of the code of 1718 were finally abolished, and the present one commenced, by which the penalty of death is inflicted on no crime but murder of the first degree.

I have been able to collect accurate materials, from which to exhibit to the committee a comparative view of the operation of these several systems, from 1779 to 1818, a period of thirty-nine years. The crimes to which I will turn the attention of the committee are, murder, robbery, rape, burglary, crime against nature, arson, and forgery of the current coin, and of the bills of credit of the State, all of which were capital till 1786.

I have no statistical tables to shew, accurately, what the population of the State was in 1779. It was, however, somewhat above 250,000. In 1790, it was 434,373. In 1800, it was 602,545. In 1810, 810,091; and in 1820, 1,049,458. The convictions in the State, for murder, were—

From 1779	to	1786,	- -	20
1786		1794,	- -	14
1794		1802,	- -	14
1802		1810,	- -	18
1810		1818,	- -	19

From 1794 to 1818, the convictions were nearly all for murder, in the second degree, which is punished by confinement in the Penitentiary.

The convictions for burglary were,

From 1779	to	1786,	- -	54
1786		1794,	- -	57
1794		1802,	- -	22
1802		1810,	- -	55
1810		1818,	- -	62

The convictions for robbery were,

From 1779	to	1786,	- -	35
1786		1794,	- -	25
1794		1802,	- -	9
1802		1810,	- -	9
1810		1818,	- -	22

The act of 1794 may be considered as having nearly abolished the punishment of death for the crime of murder. Since the passage of the act, the convictions of murder in the first degree, are not one-tenth of the whole number. These facts shew, that, as the population of the State was more than three times as great in 1818 as it was in 1779, the mild, but certain punishment of confinement to hard labor has proved to be more than three times as efficacious to prevent the crime of murder as the penalty of death: that it has proved, at least, three times as efficacious in the crime of burglary, and more than four times in the crime of robbery. That I do not attribute more force to this argument than it warrants, will appear, most conclusively, when I come to mention to the committee some facts which I have to lay before them on another branch of this deeply interesting subject.

From 1779 to 1786, the convictions in the State, for the crimes of murder, arson, rape, robbery, burglary, crime against nature, and forgery of the current coin, and paper bills of credit of the State, all, at that time, capital felonies, were 141, and the executions were 73. During the next period of eight years, from 1786 to 1794, after robbery, burglary, and the crime against nature, had ceased to be capital, the convictions were 128, and the executions but 15. During the next period of eight years, from 1794 to 1802, after the punishment of death had been abolished, except for murder in the first degree, and while the Penitentiary was under the best system of government, and producing great moral effect, the convictions were, for the same crimes, but 71. During the next period of eight years, from 1802 to 1810, after the crime of arson had been extended, by statute, so as to comprehend a number of malicious burnings, not punished by that name under the

act of 1718, and the subsequent acts, prior to 1779; after the crime of forgery had, by legislative enactment, entirely changed its nature, being extended to embrace almost every species of writing; after the introduction of a paper medium of commerce, much more liable to be forged than the current coin; and after the population had increased to double its amount in 1779, the number of convictions, for the same crimes, was 105; 24 of which were for forgery, not known to the law of 1779: so that the real number of convictions, for the same crimes, was about 81. During the next period of eight years, from 1810 to 1818, when the crime of forgery had become still more extensive, by the creation of forty new Banks, and the entire banishment of the metallic currency from the commerce of the State; when the Penitentiary, by being over-crowded by convicts who were, necessarily, confined together in large numbers in the same room, had lost much of its moral power; when the population was nearly a million; and when crimes had greatly increased throughout the United States, by the disbandment of the Army, at the close of the late war; the convictions, for the same offences, were 213; 62 of which were for forgeries, either wholly unknown to the law, or not known to it as felonies in 1779, and 16 of them for arsons, nearly all of which were not known to the law by that name, at that period.

I will now recapitulate these facts, in another shape, which will make the argument arising out of them still more clear and forcible. From 1779 to 1786, the convictions for the offences I have mentioned, then capital, were in the proportion of one to about 1770 of the population. From 1786 to 1794, the convictions for the same offences were in the proportion of one to 3,400, though burglary, robbery, and the crime against nature, were no longer capital. From 1794 to 1802, after the abolition of capital punishment, except for murder of the first degree, the convictions for the same crimes, were in the proportion of one to about 8,486 of the population. From 1802 to 1810, after the alterations in the crimes of forgery and arson I have mentioned, the convictions for the same crimes were in the proportion of one to 7,714 of the population; or, excluding from the calculation all those forgeries and arsons not known to the laws by those names, till after 1779, in the proportion of one to about 9,000 of the population. And, from 1810 to 1818, after the operation of all the causes I have mentioned, tending to the increase of crime, the number of convictions for the same offences, was in the proportion of one to 5,000 of the population; or, excluding from the calculation all those forgeries and arsons, not felonies, or not known to the law from 1779 to 1786, and, therefore, not computed in the calculation for that period, in the proportion of one to about 9,000 of the population.

I will now proceed to lay before the committee another set of facts deeply interesting to every friend of humanity, as they at once add immensely to the force of the argument to be drawn from the views I have already submitted, and clearly disclose one of the principal reasons why the dreadful penalty of death has not been as effectual to prevent crimes as the mild system I now advocate. It is because its severity made the execution of it uncertain and precarious.

From 1779 to 1786, while robbery was punished with death, the number of prosecutions was 55; the convictions 35; the acquittals 20; and the executions 20. That is, a little more than the one-third of those prosecuted were acquitted, and not quite two-thirds of the number condemned were executed. From 1786 to 1792, after the crime had ceased to be capital, but one-tenth of the number prosecuted was acquitted.

From 1779 to 1786, while burglary was capital, the prosecutions were 77; the convictions 54; the acquittals 23; and the executions 25. That is, one-third of those prosecuted were acquitted, and less than one-half of the condemned were executed. From 1786 to 1792 when the crime was no longer capital, the number of prosecutions was 59, the convictions 46, and the acquittals 13: that is, a little more than one-fourth of the number prosecuted were acquitted. It is impossible, perhaps, at this period, to ascertain the reason of the difference in the operation of the present system on these two crimes. Several circumstances have led me to conclude that some cases of unusual atrocity had exasperated the public mind, and that therefore the juries convicted with less difficulty.

From 1779 till 1792, the number of prosecutions for murder was 72; the convictions 34; the acquittals 38; and the executions 26. Between the same years, the number of prosecutions for rape was 18; the convictions 9; the acquittals 9; and the executions 5. During the same period, the prosecutions for arson were 13; the convictions 5; and the executions 1. During the same period, the prosecutions for forging the bills of credit of the Government, were 23; the convictions 11; and the executions 5. From 1779 to 1782, when the last prosecution took place in Pennsylvania, for the crime of treason, the prosecutions were 8; the convictions 4; the acquittals 4; and the executions 2. It is worthy of remark, that the number of acquittals in cases of prosecution for robbery and burglary, in proportion to the number of prosecutions, gradually decreases annually, as you recede from 1786, the period when these crimes ceased to be capital. This shews that the juries did not at once realize the fact that they were no longer called upon to pronounce upon the life or death of the accused.

These facts throw immense light on the proposition that it is not the *severity* but the *certainty* of punishment that deters men from the perpetration of crimes. Men never commit crimes on the speculation of enduring the penalty of the law, whether it be light or heavy, but upon the expectation they will be able to escape punishment entirely. Therefore, the more certain the infliction of punishment, the more perfectly will society be secured against the commission of crimes. From 1779 to 1786, in Pennsylvania, men who meditated the perpetration of any of the high crimes I have mentioned, could reason, justly, that if they did commit the crimes, there were many chances that they would never be overtaken by a prosecution: that, if they were prosecuted, there were many chances, from inattention of the officers of the law, accidents happening to witness, and other casualties, that no bill would be found against them: that, if a bill were found, there was at least an equal chance, that, on a trial before the petit jury, they would be acquitted; and that, if the worst should come, and they should be condemned, and sentenced to endure the punishment of the law, there were still equal chances that they would be reached by the clemency of the Executive, and that a pardon would prevent the execution. By the facts above stated, it appears, conclusively, that after a prosecution commenced, and a bill of indictment was found, the chances that a guilty offender should suffer for his crime, were not one out of four.

That wicked men calculate on this uncertainty of the law, is evident from the fact that, while robbery was punished with death, the number of convictions were annually about the same. But as soon as the more certain system of punishments, by confinement to hard labor, was introduced, and had time to be felt on society, in the term of twenty-four years, the number of convictions was reduced from thirty-five, in a period of eight years, to nine, in the same period. At the same time, and by the operation of the same cause, the number of convictions in burglary, were reduced, in a period of eight years, from 54 to 22. The power of the operation of this system appears prodigious, when we recollect that, while the number of these crimes had thus diminished, population

doubled, luxury had increased, the means of subsistence had become more difficult to obtain, and every temptation to crime had been augmented.

Thus I have shewn to the Committee, not by reasons drawn from speculative science, and the philosophy of the human mind—reasons which have for more than a hundred years been urged by the enlightened, eloquent, and benevolent men, who have been endeavoring to persuade the Governments of the Old World to adopt more mild codes of criminal law; but by the undeniable results of experience—of the experience not of a few years, which might be fallacious—but of an experience of forty years—that the system of Penitentiary punishment, by confinement to hard labor, as a means of preventing the commission of crimes, is not only more efficient, but is, at least, five times as effectual as the punishment of death itself.

The powerful effect of this system, in Pennsylvania, which I have exhibited to the Committee, in an abstract form, did not fail soon to become visible on the face of society. The humane Caleb Lowndes, in a report on the subject, published in the year 1793, says, that "out of 200 convicts who had been recommended and pardoned, only four were returned on second conviction. Several of those discharged were old offenders. Many of them were before at the bar of justice, and had often received the punishment of their crimes, under the former laws.

"Our streets now meet with no interruption from those characters that formerly rendered it dangerous to walk out in the evenings; our roads, in the vicinity of the City, so constantly infested with robbers, are seldom disturbed by these dangerous characters. There have been but two instances of burglaries in the City for the two last years. Pick-pockets, formerly such pests to society, are now unknown. Not an instance has occurred of a person convicted of that offence for two years. The number of persons convicted at the several Courts has considerably decreased. Thirty or more at a session have heretofore been condemned. Now, when both the City and County Courts are but a few days distant, there are but five for trial."

Thus, Mr. Chairman, I have shewed the evils of the present code of criminal law of the District; and I have presented, in as dense a form as I could, the argument I have to offer in favor of the system of reform, which it has become my duty to propose. It is a system which will purge the statute book of the cruel and bloody penalties which it now contains; which coincides with the genius and spirit of this enlightened age; which, instead of setting the public will and the law at variance, reconciles them together, and makes them co-operate for the public good. A system which, by rendering punishments commensurate to the degree of guilt, removes from Courts, juries, and the executive ministers of the law, the temptation to swerve from the faithful discharge of their public duties, which thus purifies the fountains of public justice, and gives to its beneficient streams the power of imparting security, political vigor, and health to the body politic through which they flow—a system, which has for its advocates the greatest and best men now living; and which numbers among its friends, some of the most distinguished men who have lived, for the last two hundred years.

I am sorry, that, on some of the questions connected with the subject under the consideration of the committee am not able to present the results of experience in the clear and cogent manner I could wish. I am not able to substitute the same kind of comparison between the operation of the system of confinement to hard labor and other systems of punishment in other States, that I have presented to the Committee in relation to the State of Pennsylvania. Nor am I able to shew the operation of the proposed system on minor offences, in the same manner that I have exhibited its operation on the great crimes to which I have drawn the attention of the Committee. But, on these points, we are not without conclusive argument. That system of punishments which experience has proved to be so highly beneficial in one State, cannot fail to be equally so in others. As to its operation, on minor offences, we have this conclusive proof: that wherever it has been tried, all offences are much less numerous than they are in this District, where a different set of punishments prevails. Here, crimes are in the proportion of 1 to 560; of the population in Virginia, in the immediate neighborhood, they are in the proportion of one in 10,009. From what I have seen of prison statistics, I am inclined to be of opinion that about two-thirds of all the convicts in the several Penitentiaries are common thieves. Thieves are an idle, lazy, dissipated race. It is this idleness, laziness, and dissipation, which makes them thieves. Confinement to hard labor, accompanied with solitude, at all times, except during the hours of work, and entire silence during the hours of labor, is, of all others, the mode of punishment best suited to their characters. Their idle, lazy habits, are changed into habits of labor, which, after long continuance, you fix, in some measure, in their physical constitutions. By seclusion from society you deprive them of all means of dissipation, and by regulating their animal enjoyment as you may think fit, you have it in your power to enforce on them habits of temperance.

I am not one of those who think that it is in the power of the human mind to invent a system of punishment which will ensure the repentance and reformation of the convict. All that human legislation can do on this point, is to bring the offender into contact with the means of reformation. That the Penitentiary system, properly conducted, does this more effectually than any heretofore tried, is most apparent; and if it even fail to reform the offender, it secures society for the present against his depredations, and finally turns him out improved by the acquirement of new habits of industry. But what does the present code promise or what does it affect in this respect? It lacerates his body with the whip, and, while he is writhing with pain, and exasperated, to the last degree, against the brutal cruelty of the law, he is turned loose upon society, not reformed, but hardened in his crimes, immediately to avenge himself by resorting to his former vices.

I have proved, I hope to the satisfaction of the Committee, that a Penitentiary can be made to support itself, and yield a revenue to the Government. There is no place in the United States where such an institution can be so advantageously conducted, with relation to its pecuniary profit, as in this City. Here labor is high, and a profitable market is open, by means of the coasting trade, for all the manufactures which can be carried on in the institution. But, if a ready market could not be found, the United States can always keep the convicts profitably employed in manufactures for the use of the Army and Navy.

I regret that I have so long detained the Committee. It is entirely against my own inclination, and from a sense of duty alone: for I never address the House without a painful sense of the weight of the task imposed on me. I have presented the facts I have collected, in as condensed a form as possible; and if I have succeeded in conveying these facts to the minds of other gentlemen with the same clearness with which they are impressed upon my own, I cannot doubt but that they will produce on the Committee the same conviction of the importance and propriety of this measure which they have produced on my own mind.

Mr. VERPLANCK followed Mr. THOMSON. He adverted to the experience of New York, in relation to the Penitentiary system, respecting which there was a division of opinion, but of which he declared himself the decided friend. He thought, however, that, to be successful, it required to be conducted in a particular manner, which could be learned only by a careful reference to the

experiments which had been made. He then proceeded to point out some particulars in which the bill stood in need of revision.

Mr. THOMSON stated, that the Committee who had reported the bill were aware it might be improved, and had prepared some amendments which they should bring forward in due time.

Mr. VERPLANCK resumed, and, having stated other points in which the bill seemed defective, said he should wait till the Committee suggested, more fully, their own views, before he made any motion to amend. He thought, however, it would be better to appoint three Commissioners to prepare and report a system of Penitentiary law, and of Prison discipline, together with a plan for the construction of the Penitentiary building itself.

Mr. POWELL replied to Mr. V., combating the objections he had stated, and deprecating further delay in the application of remedy to a crying evil.

Mr. BRENT thought it would be better to recommit the bill, and let the Committee engraft into it such improvements as they might think proper.

The bill was then about to be read by sections; when

Mr. LIVINGSTON, after paying a deserved tribute to the efforts of the gentleman who had presented the subject to the Committee of the Whole, moved that the Committee rise.

The motion prevailed—and the Committee rose accordingly, and obtained leave to sit again.

The House adjourned.

THURSDAY, MARCH 2, 1826.

THE SLAVE TRADE.

On motion of Mr. MERCER, the following resolution was taken up:

"*Resolved*, That the Committee on the suppression of the Slave Trade be authorized, if necessary to the discharge of their duty, to send for persons and papers."

Mr. MERCER, in supporting this resolution, offered a few remarks explanatory of the object. It would probably, he said, be the means of detecting one of the most stupendous frauds which had ever received the inadvertant sanction of a Court of Justice, any where, and at any time. It would be attended with no expense, he said, as the testimony was, at this moment, within reach.

Mr. FORSYTH said that he believed the custom of the House never sanctioned the giving of the authority to send for persons and papers, unless the Committee asking for it expected to prove that some person or persons had been guilty of an offence against the United States, which could be punished by the intervention of this House. But, if no such expectation could rationally be entertained, in this case, and the subject of inquiry was a mere matter of suspicion, and total uncertainty, there could be no propriety in granting this power. If an offence had been committed by private individuals, the law was open, and sufficient penalties were provided, without any interposition of Congress. He, therefore, desired the honorable gentleman from Virginia to declare whether he expected, if thus empowered, to be able to prove that any public officer had been guilty of malfeasance in office, so as to call for the interposition of the authority of this House.

Mr. MERCER replied, that there were two objects in view which he expected to accomplish by the resolution. The first was, to supply the defect of information obtained by this House, in answer to its call on the President of the United States, for a report of the proceedings of the Federal Court of Alabama, in relation to the African captives taken on board certain vessels, which fell under its jurisdiction. The Marshal of that Court happened to be, at this moment, in the City, and could supply, by his testimony, the knowledge sought by the Committee. He had inquired of a Member from Alabama as to the credibility of this witness, and had been informed his testimony was entitled to respect—whether it would condemn or acquit the Judge concerned, he was unable to say. It might lead to his acquittal. One other object he was obliged, in candor, to state. He understood that there had been a very flagrant omission to execute the laws of the Union, in the case of these slaves; which omission had led to the stupendous scene of fraud to which he had before alluded. He hoped, and believed, that the Judge had had no participation in that fraud; and he wished to see his character vindicated, if he were innocent.

Mr. FORSYTH said, he had never understood that any such charge as that mentioned by the gentleman from Virginia, had been brought against the Judge to which his remarks referred. If, however, the gentleman had any expectation of being able, by the exercise of the power of this House, to inculpate his conduct, he should have no objection to grant him the authority asked for. But it would seem, the object of the gentleman was, rather to exculpate, in which case, he should object to giving the authority required. He was well acquainted with the Judge alluded to, and did not think his conduct needed vindication.

Mr. MERCER said, that it was not his object to exculpate any one; but to investigate the state of the facts. He did, to be sure, hope that the Judge's character would be exculpated; but he did not, by any means, know that such would be the result. He thought it was the duty of every gentleman, when speaking publicly, on this floor, of the character of another, to use the utmost caution, and not to express any opinion to his disadvantage, without proof.

Mr. FORSYTH now waived his objection; and the resolution of Mr. MERCER was agreed to, without opposition.

AMENDMENT OF THE CONSTITUTION.

The House then again resolved itself into a Committee of the Whole, Mr. McLANE, of Delaware, in the Chair, on the resolutions offered by Mr. McDUFFIE, proposing Amendments to the Constitution of the United States.

Mr. STEVENSON, of Virginia, rose, and said there were few subjects which could be discussed in that House, without commanding the attention of the Nation. The character and station which the House held before the People, was well calculated to give importance to its discussions upon subjects of ordinary legislation: but, upon questions touching the fundamental principles of the Government, and the sacred charter of our Union and liberties, the proceedings and discussions of that House must be looked to, by the great body of the People, with deep and intense interest.

In a Government like ours, based upon public confidence, this was not only to be expected, but it was desirable; and it was this living principle of watchfulness and attention, on the part of the People—this right to think, and in the Press, to discuss the merits of public measures and public men, which constituted one of the chief excellencies of our free institutions.

The subject now under consideration, Mr. S. said, was one peculiarly calculated to attract and fix the public attention. It had produced a strong and general excitement in every quarter of the Union, and there was evidently an anxiety in the public mind to have it fully investigated and solemnly decided. He felt gratified, therefore, to witness in the House a disposition to discuss the subject with the calmness, deliberation, and fairness which its elevated and important character demanded. In mingling in this discussion, it was due to himself to say that he was not urged to it alone by the importance of the subject, or the principles involved in it. He felt him-

placed in a delicate situation, and he was about to incur a responsibility deeper than any he had ever met in the course of his public life. In voting against the proposed amendment, for *Districting the Union*, he should probably not only differ with a majority of his colleagues, and with many of his political associates and friends, (with whom he had acted, and in whose opinions and judgment he had much confidence,) but, from what he had recently heard, he should probably differ with many of those whom he had the honor to represent upon this floor—those to whose confidence and kindness he was indebted for any portion of public honor or distinction he might have received, and to whose *approbation* he had always looked, as the highest reward for his public labors. These considerations, he said, must and ought to have weight. They had been well considered and justly appreciated by him. But, impressed as he was, with the dangerous consequences of the amendment—believing that it was calculated to take from the States some of their *most vital* and important powers, and to infuse a principle of mortality into a Constitution that should live forever, he was constrained, by the duty which he owed himself, his country, and its union, not only to vote against, but resist it by every effort in his power. It was under these circumstances that he asked the indulgence of the Committee, whilst he submitted to them, as briefly as he could, his views upon the subject, and the reasons which would govern his vote.

The two resolutions of the honorable gentleman from South Carolina, Mr. S. said, he considered as wholly independent propositions, and containing, essentially, distinct principles. They did not rest on each other; nor were they, in his view, necessarily united. He should vote for the first resolution, and against the second. But, in giving his assent to the proposition to take the election from that House, he did not intend to disturb, in the slightest degree, any of the rights or powers secured to the States by the existing provisions of the Constitution, nor to unsettle any of the great principles upon which that compact was based; nor was he to be understood, in the course which he should take, as *denying the right to amend* the Constitution. He knew very well that the right existed, not only to *amend*, but *destroy*, when those in whose hands the power was, should choose to exercise it: but this he would say, that it was worthy of consideration whether the time had not arrived, when this right to amend the Constitution, must, and ought to be, confined exclusively to the operation and modification of existing principles and rights, rather than to the destruction of those principles and rights themselves. In other words, whether the *proportion of political power*, now vested in the States of this Union, were not to be considered as unalienable, essential, and intangible rights—never to be assailed by the hand of innovation. His opinion was deliberately formed, and he did not hesitate to say, that, looking to union as the only means of safety to his country, he never would consent to make any amendment to the Constitution, which should diminish or impair the *relative rights and powers* of the States, secured by the compact.

There were many and powerful considerations, which, in his opinion, forbade it: and, whenever the attempt should be made, it would be found to be one full of difficulty and danger to the peace of the Union. The great error into which gentlemen fall, in relation to the character of our Constitution, and, indeed, in the administration of this Government, is, in considering us, for all purposes, as one People. In our *external* relations, and for many great purposes, it is true, we are one Nation—but internally, and for other objects, we are distinct and independent Societies of Freemen, enjoying and exercising separate and independent sovereign powers. To the world, and against the world, we are one, and indivisible: amongst ourselves, we are many!

How strongly, said Mr. S., does the situation of our country, at this moment, admonish us of the danger of innovation upon the fundamental principles of our Union!

Our situation, Mr. Chairman, I admit is one of great prosperity. We are marching on, with giant strides, to wealth, and power, and greatness.

Our population is rapidly spreading itself over this vast Continent, and the star of our empire is winging its way to the remotest regions of the West.

Soon will the arm of this Government be stretched from the Atlantic to the shores of the Pacific, and our People will be found on the banks of the Columbia!

Already we number twelve millions of People—in ten years more we shall reach to twenty.

We have now twenty-four States in the Union; a few more years, and when Florida shall open her bosom to the thousands who are ready to pour into it, we shall have thirty.

Heretofore we have been divided between two great interests—the agricultural and commercial: latterly, we have seen a third rising up, which I fear is to curse rather than bless us.

In such a country, with its millions of inhabitants spread over such a surface; differing so essentially in their principles, religion, habits, and customs, nay, in their prejudices; so diversified in their employments and pursuits; with new combinations and interests daily springing up—is there not, and must there not be, great danger in attempting to disturb the deep foundations of this great Confederacy? Do you believe, Mr. Chairman, or does the honorable gentleman from South Carolina, that if this Constitution were now to be abrogated another could be formed, upon those principles of *compromise*, and concession, and equality, upon which this was based? Does any man believe that the rights and powers now secured to the States of this Union, by our present Constitution, would be preserved by any new one which could be formed? Sir, I have as much confidence in the virtue and intelligence of the People of this country as any man ought to have, but I do not hesitate to say, that such an expectation would be vain, and worse than vain. Let the honorable gentleman from South Carolina assemble his Convention, (and he has told us that if this amendment does not succeed, he shall be in favor of one)—let him fill it with the most enlightened and patriotic men from every part of this great empire; bring into it the survivors of that noblest and purest band of Patriots that the world ever saw: and yet, I do not hazard too much when I say, that the result of their united efforts would be any thing but union, upon the terms on which it would, or could be accepted, by the States who now compose this Union.

Do you imagine, sir, that we should not hear, in that Convention, of geographical and sectional interests? Of large States and small? Of slave-holding and non slave-holding States? Of the principle of majorities ruling? Of representation according to *population* alone, and that population free? Do you imagine that the small States would be permitted to hold the high and equal station in this Government which they now do?

Would the State, Mr. Chairman, which you have the honor to represent, (Delaware)—that little State, who poured out her blood and treasure so freely to save us, and who contributed with her elder and larger sisters, their full portion of suffering and sacrifice, for independence and union—would she, or they, be permitted to stand, do you imagine, in a co-ordinate branch of this Government, with the power to vote down Pennsylvania, with her thousands, and New York, with her tens of thousands? No, sir: never! never! When that time shall come, if it ever does, (and God grant that it never may!) when such a Convention shall meet, then, I fear, we shall witness a struggle full of danger to the freedom and happiness of our country, if freedom and happiness are alone

to be preserved by *union*; then, indeed, may come that night of despotism, of which the honorable gentleman spoke, whose darkness will be too thick to be penetrated, and upon which no sun of liberty ever may arise. These were no idle dreams. The world has never seen such a Government, over such a country, and such a People. Consult those men who are now alive, and who were in the Convention that formed the present Constitution. They will tell you that the fate of America was then suspended by a hair. Never, in the flow of time, was there a moment so propitious as that in which the Convention assembled. The States were satisfied, from experience, that they were inadequate, as then united, to the management of their national concerns. The passions of the People were lulled to sleep. State pride, too, slumbered, and the Constitution came into being; and well may we say, with the Father of his Country, "That it seemed as if the hand of an Almighty Being was in the great work." Let us, then, sir, beware how we break down the fences of this sacred charter, or pluck from it any of its federative features. It has been wisely framed, in all its parts, strong for the protection of our rights and liberties, and should remain sacred from violation.

It was, Mr. S. said, under the influence of these opinions, that he would never consent, as a member of that House, nor as a citizen of the Union, looking to it as the only means of safety to his country, to make any amendment to the Constitution which should disturb any of its great principles, or the right secured by it to the States. In voting, therefore, for the proposition to take the election from the House, he should take care to guard and preserve the relative and equal rights of the States, and especially the smaller ones. If the House should adopt the first resolution, he intended to offer an amendment, providing that, in case there should be no election in the primary colleges, that then the three persons receiving the highest vote should be returned back to the States, and the Legislatures authorized, by joint ballot, to elect the President, each State giving one vote.

By this amendment, Mr. S. said, equality would be preserved amongst the States; the objections to an election in the House of Representatives would be removed; and the ultimate election placed where it would be exercised, not only purely but free from suspicion. He did not intend at this time to go into a minute discussion of the amendment which he should offer, but he would content himself with one or two remarks upon its general character.

If corruption and Executive influence be feared, Mr. Chairman, this amendment will interpose the best security and the most effectual shield. By it you will not bring the electors of the Union into one body—you will not bring them to the door of the Executive influence, or within the immediate reach of this Government, or any of its departments. You will not give to one man the power of wielding the vote of a small State, nor to a majority of its Representatives that of a large one; but the election will be returned back to the respective States, to be finally decided by the immediate Representatives of the People, in the bosom of each State, and under circumstances most likely to free it from suspicion!

He knew very well that the honorable gentleman from South Carolina (Mr. McDUFFIE) and himself differed in opinion as to the propriety of giving this power to the Legislatures of the States. That gentleman believed, that, as political bodies, they were the last to whom such a trust ought to be confided.

His objections to their becoming electoral colleges were, that they would be more liable to Executive influence and patronage, and State feeling, than a smaller body of electors, springing immediately from the People; and that they might communicate an artificial energy and morbid action to despotism in the General Government! Was this to be apprehended? Mr. S. thought not; and especially, if the principle assumed in debate be correct, that, in proportion as you limit the number of the body to whom power is confided, you render that body more liable to corruption and the power to abuse. Contrast the Legislature of a State with its college of electors. In Virginia, for example, the two branches of the General Assembly amount to two hundred and thirty—its electoral college to twenty-four. Now, if Executive power or influence, or State feeling, is to be seriously apprehended in relation to these bodies, upon which can they operate with most effect—upon the smaller number of twenty-four electors, each having the right to give a vote, or upon that of two hundred and thirty, giving, by joint ballot, but one vote? Why will it not operate as readily and as dangerously, upon electors as upon members of the Legislature? Where would an Executive go, *do* you imagine, to distribute that "delightful manna of patronage," of which we have heard so much? To the electors, or to the Legislature? If success be the object, the question is readily answered. If one man be reached in the electoral college, one vote is obtained, and so in proportion to the number influenced; but, in the Legislature, a majority of the whole body must become corrupt before any benefit could be obtained, inasmuch as only one vote is to be given, and that upon joint ballot of both Houses. But, were not the Legislatures as trustworthy as any body of electors, and as immediately the Representatives of the People? Were they not elected annually? Did they not spring directly from the bosom of the People, and were they not as likely to express their feelings and wishes? Would not the People look to this duty, which it might be necessary to perform once in four years, and elect those best calculated to discharge it? Corrupt your Legislatures! Why, sir, are we to be told, that, in the primary election of this high officer, twenty-four men selected in a State, as electors, are to be free from all influence and suspicion, and yet the immediate Representatives of the same People are too venal to be trusted? Is there any thing which is to shield the smaller body of electors from the hands of power and corruption, which will not equally protect the Legislature? Sir, it is in vain to talk of corruption and intrigue in the Legislatures of this Union. If there are any political bodies *in this* country in whom confidence can be placed, *it is in the Legislatures* of the States. It is to them that the People should look, with undiminished confidence, as the guardians of their rights and the sentinels of their liberty. Corruption and intrigue in our State Legislatures! Why, sir, the efforts of a Machiavel or a Cæsar Borgia, both united, could produce in such bodies no conspiracy destructive to anything but themselves.

He should, therefore, Mr. S. said, feel no hesitation in returning the election back to the States, and authorizing the ultimate decision to be made by joint ballot of both branches of the Legislature. Should that proposition, however, not succeed, he would then vote for the amendment of his friend from Pennsylvania, (Mr. BUCHANAN,) which proposes to send the election back to the States, and leaves the mode of appointment, as now provided by the Constitution, with the State Legislatures.

In voting, however, for the resolution to take the election from the House, Mr. S. said he was not to be understood as expressing any opinion that the House were either corrupt or corruptible. He entertained no such opinion, and he hoped he never should. He had too high a respect for the character of that body, to believe it was liable to any such imputation. If he could be brought, for a moment, to entertain an opinion that this House, which had been justly denominated the People's, and the only organ through which the feelings and wishes of the People could be infused into this Government, was corrupt, he should indeed entertain very just alarm for

security of our free institutions. Then would the whole Government soon become a corrupt despotism, under which no wise or good man would wish to live, and to which no freeman ought to submit. This House become corrupt whilst the People are virtuous and free, and the press unfettered! No, Sir! Never! So long as the People are true to themselves, and worthy of freedom, I entertain no fears from the corruption of this House!

When the time shall arrive, Mr. Chairman, that this House are prepared to barter their "birthright for a mess of pottage," or to sell the liberties of their country, vices will have passed into the manners of your People, and their liberties will not be worth preserving. Sir, when this House shall be stamped with corruption, then indeed may the exclamation of Jugurtha be applicable to our countrymen:

"Venalis, civitas, mox peritura, si emptoram invenias."

But, whilst I do not dread corruption, I feel it important that we should be free from suspicion. Now, I admit that if every man upon this floor was as virtuous and incorruptible as Cato, yet, so long as the election shall be kept here, he must be subjected to unkind suspicion, and the People will be dissatisfied. It is immaterial from what cause this suspicion arises—it may be the effect of prejudice, or delusion, or both. If it was prejudice, then he would say that the prejudices of freemen are entitled to respect. If it was delusion, he believed it had become *general*; and when once delusion has overspread a nation, the illumination of an Angel would only render it darker, until the cause be ascertained, and a remedy applied. He thought that the removal of the election from the House, and sending it back to the States, would free us from every thing like suspicion and reproach.

There was, however, Mr. S. said, another reason with him, for wishing its removal. If we keep it in this House, it is impossible that we can discharge our Legislative duties as we ought. In the remarks which he was about to make upon this part of the subject, he intended no personal allusion. It would be unworthy of himself, the subject, and the House, and he utterly disclaimed any such intention. What he was about to say was as applicable to himself as others. But I appeal, said he, to every Member upon this floor, (who has been here for the last three years) I care not to what party he belongs, or what his opinions may be as to measures or men, and I demand to know whether he does not believe, that the legislation of this House has been influenced, and very greatly too, by its being made an Electoral College? Has it not mingled, both before and after the election, in our deliberations and discussions, and rendered the path of duty both rugged and painful? Has it not been seen and felt in every avenue of legislation? Has it not embittered our social relations, and produced the deepest personal and political excitements—and, might I not say, resentments? Sir, there is but one answer which can be given to these questions. If the election be retained, must it not, will it not, continue to have its influence with the most virtuous and upright amongst us? We cannot throw off the feelings and frailties which belong to our nature. We are but men, and we must continue to feel and act as such. So long as this power to elect, therefore, shall be kept on this floor, we must expect it to shed its influence around us; and we owe it to ourselves and our country, to apply the remedy. That remedy is only to be found, in my opinion, in its removal! But, Sir, I will go one step further, to shield the independence and purity of this House. I will not only consent to take the election from this floor, but I will vote with pleasure for the proposition of the honorable gentleman from Tennessee, (Mr. MITCHELL) to exclude from all Executive appointments the Members of the Senate and of the House of Representatives. Cut off this power of assailing the independence of either branch of the Legislature, (which may, in time, become dangerous,)—remove the election from Congress, and you place this House where it ought to stand—in the confidence and affections of the People. Do this, and you place a "gate of burning adamant" between the Executive and this House, which never can be passed. You throw around the independence of this House an impenetrable wall, against which the waves of Executive patronage will only dash themselves into a foam, as against a rock! Pass that amendment, and take the election from this floor, and you place this House upon the elevated ground which it ought to occupy; and enable it not only to discharge its high trusts with purity and independence, but to become, what our fathers intended it should be, the safeguard of American liberty. These, Mr. Chairman, are the reasons which influence me, in giving my assent to the first resolution of the honorable gentleman from South Carolina.

I come now, Sir, to the consideration of the second proposition, which proposes to district the Union, and which, in my opinion, is much the most important part of this subject.

My objections are of a two-fold character: first, upon principle—because the amendment is calculated to substitute a National for a Federative feature in the Constitution, and to take from the States one of their most vital and important rights. And, secondly, on the ground of expediency—because it will not attain the benefits, nor prevent the evils, which its friends suppose. In all political discussions, Mr. S. said, and especially those which relate to our Constitution and Form of Government, there were certain primary truths and first principles, to which we must resort, and upon which, all reasoning must depend. Connected with the first branch of the argument, and as the basis on which it was to rest, he should lay down the following propositions:

First, That the States were, before and at the time of the adoption of the Constitution, free, sovereign, and independent.

Secondly, That the States were parties to the Constitution, in their political and sovereign character; and reserved to themselves, as such, certain important and sovereign rights: and

Thirdly, That the election of a President was one of the most important of the rights thus secured, and intended to be exercised according to the interests and sovereign pleasure of each State.

If there were any general principles, he said, which might be received as postulates, they were those which he had laid down. But, in these days, he knew very well that there was a fashion of opinion and of interests, and, he might say, of enthusiasm, in favor of the powers of this Government, which forbid that any thing connected with the rights of the States, should ever be conceded here. When power was claimed for this Government, or it became necessary to exercise it, we hear of presumption and implication; but when power was claimed for the States, and their rights asserted, every thing must be proved. He should ask for no concession upon this occasion. The propositions which he had laid down, he should endeavor to sustain, by the early history of the Constitution, by its character and provisions, and by the cotemporaneous evidence of its framers and friends.

It would require very little effort or argument, Mr. S. said, to satisfy the Committee upon the first proposition—as to the independence and sovereignty of the States. He should not go back to inquire into the modes of government adopted by the States, at the time they colonized from Britain. As a matter of history, it was well known to all, that they exercised sovereign powers, wholly independent of the mother country, and of each other. The States did not derive their independence or sovereignty from any grant or concession, on the part of

Great Britain, but from the Declaration of Independence, and the War of the Revolution. That instrument proclaimed to the world the fact, that "The United Colonies were free, sovereign, and independent States; and that, as free, sovereign, and independent States, they had the right to declare war, make peace," &c.—and it will be remarked by the Committee, that the word "*United*" is used, in this instrument, in connection with the words free, sovereign, and independent States. It was the separate sovereignty of each State, and not consolidated, which was declared and established by that monumental act of our Independence. In pursuance of this Declaration, eleven States, in the exercise of their sovereignty, formed Constitutions of civil government. Virginia, as early as June, 1776, put forth her Bill of Rights, and established her Constitution, and Massachusetts just before or after. And such was the jealousy of that ancient and renowned Commonwealth, upon the subject of her independence, that, by a provision in her Constitution, every individual appointed to office, was required, on oath, "To acknowledge, profess, publish, and declare, that the Commonwealth of Massachusetts is, and of right ought to be, a free, sovereign, and independent State" Whether that provision was retained in the late amendment of their Constitution, Mr. S. said he did not know. Again: by the Articles of Confederation, of '77, the independence and sovereignty of the States were likewise acknowledged, and expressly provided for. That was a confederation in the nature of a treaty, between nations equally independent: and the second article declares, "that each State retains its freedom, sovereignty, and independence, and every power, jurisdiction, and right, not *expressly* delegated to the United States." [Vol. I, United States' Laws, page 13.]

So much in relation to ourselves. Let us now look to the first act, on the part of the States, with a foreign Power. In the treaty of '82, which terminated the war of the Revolution, we find an acknowledgment by the King, that the thirteen United States [naming them] were free, sovereign, and independent States—that, as such, he treated with them, and relinquished all claim to their Governments and Territories. [Vol I, Laws U. S. p. 196.] To whom was this relinquishment made, of territorial rights? Not to the United States, as one Nation, but to each State individually, as an independent and sovereign Power. At the time, then, that the Constitution was formed, the States were free, sovereign, and independent, and in the enjoyment of every right and power of sovereignty, not delegated for the general purposes of union, by the Articles of Confederation.

We come now to the second proposition: Were the States parties to the Constitution in their sovereign and political character, or was it formed by the People of America as one Nation? Upon this branch of the subject, Mr. STEVENSON said, he knew very well there was great diversity of opinion, amongst the ablest and most distinguished men of America. It commenced at an early period after the Constitution was formed, and has continued to the present time. Both in the Legislative and Judicial annals of this country, but especially in this Government, we have heard it asserted and maintained, "that the States were not parties to the Constitution;" that our National Union was not a Confederacy of States, but of the People of America; that this was "a National Government, established by one People, sustained by one People, and intended to operate upon one People;" and that the States, as political bodies, have no original inherent rights.

A brief retrospect and examination of the subject, will enable us to see, Mr. STEVENSON said, what were the opinions of the People and the Convention, before and at the time the Constitution was adopted. That various opinions were entertained, about the time the Convention met, as to the character and nature of the Constitution and Government which ought to be established, was very certain. They, however, soon settled down into two great parties. The one for a strong consolidated National Government, to be formed by the American People, as one Nation, invested with supreme powers, and a negative over State laws; the other, for a Federal compact, uniting independent State sovereignties, and creating a General Government, based upon the existence of the State Governments, and with limited and defined powers.

The first step which squinted at a National Government, Mr. STEVENSON said, was in the resolution of the Congress of '87, and was promptly rejected by the People. It was at that period of time, when the Articles of Confederation were found to be a "rope of sand." The Government was unable to accomplish the purposes for which it was formed. There was no obligation to perform any duty, except such as honor or interest might dictate. No coercive authority was possessed over States or individuals. Each State had one vote in the public councils, and no State more than one. We were in danger of having our faith as proverbial as that of Carthage, and our name the scorn of the earth. Well has it been said, that we then touched on the hour of our humiliation, and that the glories of our Revolution, and the liberty of the People, were endangered, by the weakness of the existing Confederation. At that moment, Virginia, (at the instance of Mr. Madison, who was the early, steadfast, and devoted friend of the Constitution, and to whom America is indebted for it, more than to any other man,) came forward and proposed to Congress the necessity of inviting the States to form a Convention. In '87, Congress passed a resolution, recommending to the States the appointment of Delegates, to a Convention, for the purpose of forming a firm "*National Government.*" [See Journals of Old Congress, Vol. IV, page 724.]

That part of the resolution which recommended the establishment of a "*Firm National Government*," was rejected by all the States, and they declared in favor of a Federal Government. Many of them limited their Deputies to "the sole and express purpose of revising and amending the Articles of Confederation." Your own State, Mr. Chairman, Delaware, expressly provided (so jealous was she upon the subject of her own sovereignty, and fearful of a National Government,) that the 5th article of the Confederation, which guarantied to each State one vote, in her Federal character, should not be touched. [See Journal of Convention, p. 33.] Here then the first movement on the part of the People, and the States, was for a Federal Government, based upon the State Governments.

Now, sir, let us look to the Journal of the Convention, which has been recently published, and we shall find that there the first and great battle was fought between the advocates of a National and Federal Government. It was for some time doubtful which would succeed; but at last the National plan was abandoned, and all the resolutions for a "National Government"—a "National Legislature"—a "National Executive"—and a "National Judiciary"—were amended, and "The Government of the United States," "The Congress of the United States," "The President of the United States," and the "Judiciary of the United States," were substituted; and in the address of the Convention, submitting the Constitution to Congress and the People, it is declared to be a "Federal Government for the United States." The States are thus presented, in this address, as in fact they were, separate sovereign Powers, having no relation to each other, but that which resulted from the voluntary compact. Here, in the work of the Convention itself, it is admitted to be a Federal, and not a National Government. [See Journal of Convention, page 367.] But how, Mr. Chairman, we

: received and ratified? for it is to the ratification we must ook for its true character. The inquiry ought to be, ow did the People understand it, and what was their in- ention? because, as it was understood at the time, so nust it be construed; it being a clear principle of mo- ality, (as well as of justice) that no party can be obliged eyond his intent, at the time of the contract. [Vattel, . 140.]

Now, if we look to the Conventions of the States, we hall find that great alarm was entertained as to its charac- er. It was feared by many that it was a "masked mo- narchy," calculated to sweep down the State Govern- ments, and destroy the liberties of the People. It was opposed, on these grounds, in most of the State Conven- tions, with distinguished ability and zeal, and in none more so than in that of Virginia. It was sustained and vindicated upon the ground that it was a Federal Com- pact, based upon the existence and sovereignty of the States. There was no power in these Conventions to amend—the question was, Ratification and Union—Rejec- tion, or Disunion. Most of them, however, ratified, with protests and declaratory amendments; and he would de- tain the Committee, for a moment, whilst he referred to the terms of some of these ratifications.

In MASSACHUSETTS.—"That it be expressly declared, that all powers not *expressly* delegated by the aforesaid Constitution, are to be reserved to the *respective States*, to be by them exercised."

In SOUTH CAROLINA.—"That the States, respectively, do retain every power, not *expressly* delegated by this Constitution to the General Government of the Union."

In VIRGINIA.—"That *each State* in the Union shall, re- spectively, retain every power, jurisdiction, and right, which is not by this Constitution delegated to the Con- gress of the United States, or to the Departments of the Federal Government."

In NEW HAMPSHIRE.—"That it be expressly declared, that all powers not expressly delegated by this Constitu- tion are to be reserved to the respective States, to be by them exercised."

Here, then, in these solemn acts of ratification by the People, and to which the Constitution owes its being, it was considered as Federal, and the States were recog- nized as parties, and all rights not expressly delegated were reserved to them in their political and sovereign characters.

But how did the first Congress which met under the new Government consider it? and it will be recollected by the Committee, that many of the most eminent men who had been in the Convention of 1787, passed into the Congress of 1789.

The amendments offered by Mr. Madison were declar- ed by him to be for the purpose of allaying the jealousy, and quieting the fears of the States, in relation to the Fe- deral character of the Constitution, and for the better security of rights not sufficiently guarded. The Consti- tution had been ratified by eleven States in the Union, under the most solemn assurances, given by its friends, that amendments would be made by Congress, and it was with a view to remove objections, and render it accepta- ble to the People, that the amendments by Congress, in 1789, were passed. The last of those amendments is in these words: "*The powers not delegated* to the United States by the Constitution, nor prohibited by it to the States, are *reserved to the States, respectively*, or to the People." That these amendments were intended to allay the jealousy of the States, would appear, conclusively, from the caption of the resolution of that Congress, re- commending the amendments, viz: "The Conventions of a number of the States, having, at the time of the adoption of the Constitution, expressed a desire, in order to pre- vent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the Go- vernment would best ensure the beneficent end of its in- stitution, resolved," &c. [See Journal of Convention, p. 486.] And, Mr. S. said, it was after these amendments were adopted, that the States considered themselves secure in those great points on which they had been most jealous.

But it is said that the Constitution itself furnishes the highest evidence that it was not established by the States, but by the *American* People, and that it opens with a clear annunciation of the fact, in the words, "We, the People of the United States, do ordain and establish this Constitution for the United States of America." [See Pre- amble to the Constitution.] I shall now proceed to a conclusive refutation of this error, in relation to the theo- ry and character of our Government. This argument on the Preamble has been so often resorted to, Mr. Chair- man, for the purpose not only of showing that the Go- vernment was National, rather than Federal, but for the purpose of enlarging its powers in opposition to those of the States, that I shall be pardoned by the Committee whilst I detain them for a few moments on this part of the subject.

It is admitted by me that the Constitution was formed by the *American* People, but not as one consolidated people or nation; but as distinct and independent socie- ties of freemen; not as the People of the Thirteen States united in *one* body, but as the People of thirteen distinct and independent States. There was no meeting of an American Nation in a Convention, to form a Constitution, but the representatives of sovereign and independent so- cieties. All the elements of political power possessed by the People of the States, and the States as political bo- dies, before the Constitution was formed, were never fused into one homogeneous mass, to be afterwards re- modelled and re-distributed by one nation. The Gene- ral Convention of 1787 were the limited Deputies of States only, appointed, not as the gentleman from New York (Mr. STORRS) supposed, by the People, through Conven- tions, but by the *State Legislatures*, and invested only with the power to propose a plan; and, indeed, many of the States, as I have already shown, confined the Depu- ties to the "sole and exclusive purpose" of amending the Articles of Confederation. The State Conventions which ratified the Constitution had only the power of ratification or rejection. When, therefore, the words, "*We, the People of the United States*," were used in the Constitu- tion, it never could have been intended by its wise framers to mean more than the People of America, as formed into distinct and independent political societies. Now, I beg gentlemen to take the Constitution into their hands, and follow me, step by step, whilst I demonstrate, by its pro- visions, that it is based upon the existence and sovereign- ty of the States, and is, in its character, legitimately Federal.

And first, as to the House of Representatives. This House is the only departure from the Federal principle, and was intended to be the popular feature in this Govern- ment. Now, by whom are the members of this House elected? By electors of the most numerous branch of the State Legislature. Here the right of suffrage is placed on different grounds. If the Constitution had been the act of an *American People, as one*, why not uni- formity in the creation of this House? The answer is ob- vious. It being the act of distinct and independent States, in their political characters, the right of suffrage was per- mitted to remain as settled by the respective States. Sir, this House is based upon the existence of the State Legis- latures, and without State Governments there can be no House of Representatives! To know who are the electors of this House, you must ascertain who are the electors of the State Legislatures. If there be no State Legislatures there can be no electors for the House of Representatives,

and consequently no House of Representatives. Again; each State is to have one Representative on this floor, no matter how small the number of her population may be; and why? As a security for State sovereignty. Look, sir, to the provisions in relation to the Senate. From what source do they spring? The State Legislatures, and intended to represent alone State sovereignty; and there is an express denial in the Constitution of any power to amend so as to deprive the States of their equal suffrage in that branch of the Government. So, too, were those clauses requiring the concurrence of three-fourths of the States in amendments; giving to each State two electors for President, and directing the ultimate election in this House, by States, intended as safeguards of State sovereignty.

Again. The second section of the fourth article provides, "That citizens of each State shall be entitled to all the privileges and immunities of citizens in the respective States." Now, if all the States were, by the adoption of this Constitution and Government, consolidated into one, there could have been no necessity for a provision of this character. But again; there is another clause in the Constitution, which provides that Congress shall exercise legislation, in all cases, within the Ten Miles Square. This power was deemed essential to preserve the authority and dignity of the General Government; but if the States were formed by the Constitution into one entire Government, then the supreme legislative power would extend itself to every part of the Union, and though the States might have a subordinate legislative power, yet all would be under the controlling sovereignty of the United States, in all things; and if so, this provision would have been wholly unnecessary. The whole character of the Constitution, then, shows that the States were parties to it in their sovereign and political characters.

[Upon this point, Mr. S. read the following passages from the Federalist, 1st vol. 256–7, 306:

"The Constitution is to be founded on the assent and ratification of the People of America, given by Deputies, elected for the special purpose; but the assent and ratification is to be given by the People, not as individuals composing ONE NATION, but as composing distinct and independent States.

"That it will be a *Federal and not a National* act, as these terms are understood by the objectors, the act of the People as forming so many independent States, not as forming one aggregate nation, is obvious, from this single consideration, that it is to result neither from a decision of a majority of the People of the Union, nor a majority of the States; it must result from the unanimous assent of the States who are the parties to it.

"Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only bound by its own voluntary act. It will be a *Federal* and not a National Constitution.

"The State Governments are to be regarded as constituent and essential parts of the Federal Government, whilst the latter is in no wise essential to the operation or organization of the former."]

He read, also, extracts from the resolutions of Virginia and Kentucky, in 1798, and the celebrated report of Mr. Madison, which he said was considered as the Magna Charta upon which the Republicans settled down after the great struggle of '99.

The principles of this report, he said, had been justly characterised as sustaining equally the rights and powers of the States, and the safety and independence of the Union. For its truth, perspicuity, and moderation, it probably had never been surpassed. So far, then, Mr. Chairman, as to the manner in which this Constitution was formed, submitted, and ratified, I contend that the States were parties to it in their sovereign and political characters, and reserved to themselves all the rights and powers not delegated to this Government.

Mr. S. was about to proceed, when Mr. BUCHANAN, observing him to be much exhausted, moved that the Committee rise.

The motion prevailed, and the Committee rose accordingly.

FRIDAY, MARCH 3, 1826.

DISMAL SWAMP CANAL.

The House went into Committee of the Whole, Mr. CONDICT, of New Jersey, in the Chair, on the Bill for the subscription of Stock in the Dismal Swamp Canal Company.

Mr. HEMPHILL, (Chairman of the Committee who reported the Bill) rose in its support. I will detain the Committee but a very short time (said he) in introducing this subject to its consideration. If the subscription to this Canal is to undergo any serious discussion, I will leave it in the hands of the honorable gentleman from Virginia, (Mr. NEWTON) who lives near it, and such others as may choose to take a part in the debate.

The bill contemplates a subscription of six hundred shares in the stock of the Dismal Swamp Canal Company. The Committee of Roads and Canals have considered this Canal to be one of the greatest importance, not only to the adjacent States of Virginia and North Carolina, where it is located, but to the Nation at large, as it will form a part of the extensive line of Canals contemplated in the interior, and near the Atlantic coast.

This Canal originated as long ago as the first of December, 1787, by an Act of the Assembly of Virginia, which Act was concurred in by the Legislature of North Carolina. These Acts incorporated a Company, with authority to construct a navigable Canal, from the waters of Elizabeth River, in the State of Virginia, to the waters of Pasquotank River, in the State of North Carolina.

This Canal, according to the original design, is nearly completed, and has been in the receipt of tolls, for a considerable time.

The Canal is twenty-two and a quarter miles in length; in breadth, thirty-eight feet at the surface of the water; and, in depth, about five and a half feet. Its South end terminates at Joice's Creek, which empties into the Pasquotank River, thirty miles from its mouth, at Albemarle Sound.

By an Act of the General Assembly of Virginia, which is concurred in by the Legislature of North Carolina, the Company is authorized to cut a Canal, connecting the Dismal Swamp Canal with the Northwest River, at any point which they may select. This Canal, which will be five miles in length, will accommodate the interest of a large portion of the citizens of Virginia and North Carolina, and so much increase the commerce and profits of the Dismal Swamp Canal, as to make it an object for the Company to perfect this small work.

A short cut of a mile, at the South end, would take the Canal direct to Pasquotank River, and avoid Joice's Creek.

To make the Dismal Swamp Canal correspond with the Chesapeake and Delaware Canal, as near as circumstances will admit, is considered of an important National character; but owing to the depth of water in the Sounds of North Carolina, which it is to connect with the Bay of the Chesapeake, the depth of this Canal need only adapt itself to the depth of these Sounds.

[Here Mr. HEMPHILL introduced and read the following document:

WASHINGTON, *Dec. 24th*, 1825.

SIR: I have the honor to submit to the Department the information I am possessed of, in relation to the Dismal Swamp Canal.

In June, 1818, I visited that Canal, which is one link of the contemplated Inland Navigation, near and parallel to the sea-board, and destined to connect, at their entrance into the sea, all our main streams emptying into the Atlantic.

In February, 1819, this Canal was mentioned in the Report made by the Board, composed of Naval Commissioners and Military Engineers, and appointed to recommend a Road of Rendezvous, and a site for a Naval Depot, on the waters of the Chesapeake.

The Board found that, under a naval point of view, the Dismal Swamp Canal afforded the advantage of supplying, with convenience and economy, in time of peace, and with perfect security, in time of war, the Naval establishments in that quarter. This very valuable advantage had its due weight, in the recommending of Hampton for a Road of Rendezvous, and Burwell Bay (on James River) for a Naval Depot.

Under a Military point of view, the Dismal Swamp Canal would, in time of war, afford the facility to supply and relieve the Fort contemplated at Beaufort, and also would make it easy to transport forces to defend, in time of emergency, our Naval and Military establishments in the vicinity of Norfolk.

Under a Commercial point of view, the Dismal Swamp Canal will contribute to a prompt, safe, and regular interchange of the manufactured produce of the North, with the raw materials of the South. This consideration had great weight with the Board, here above mentioned, in their recommending Hampton Road to be defended by fortifications.

As to the line of Inland Navigation, of which the Dismal Swamp Canal is one link, it is to be observed, that other links are now either constructing, or about to be made, or have been surveyed. The Barnstable and Buzzard's Bay Canal has been examined last year, and surveyed this year, at public expenses; the Delaware and Raritan Canal is about to be commenced; and the Delaware and Chesapeake Canal is in a state of rapid progression. The cross section, and the locks of these Canals, are contemplated to receive the same dimensions, in order to avoid any transshipping, from the Chesapeake to the Bay of Boston. These dimensions, and the depth of water, have been calulated for the crafts navigating our open bays; they are as follows:

Breadth of the Canal at water line . . .	60 feet.
Depth of water from the surface down to the bottom	8 feet.
Length of the Locks, between the hollow groins	100 feet.
Width of the Locks, at bottom, between the hollow groins	22 feet.

To fulfil all the requisites of a national work, the Dismal Swamp Canal needs only to receive the dimensions and depth of water adapted to the object it is intended for, and which is, to connect the Sounds of North Carolina with the Bay of the Chesapeake. Upon that point, my impression is, that, owing to the shallowness of these Sounds, their crafts cannot possess the same draft of water as the crafts of our open bays; and therefore, I think that, with a moderate expense, the present dimensions and depth of the Dismal Swamp Canal might be so enlarged, as to admit of the largest kind of craft navigating the Sounds of North Carolina. As to the Locks, those built of stone, upon the Canal, are of large size, having ninety-six feet by eighteen, in the clear.

I have the honor to be, Sir, very respectfully, your obedient servant,

BERNARD, *Brig. Gen.*

Maj. Gen. ALEX. MACOMB,
Chief Engineer, Washington.]

This bill requires that the United States' Board of Engineers shall examine the Canal, and approve of the proposed enlarged dimensions, and report their opinion to the Secretary of War; and also that it is their opinion that the sum subscribed will be sufficient to complete the work, according to such dimensions, before this Act is to go into effect.

It is believed that a vessel of a capacity to navigate the Sounds, and pass through the Dismal Swamp Canal, will be capable of navigating the Bays, and passing through all the Canals North of the Chesapeake.

The Locks on the Dismal Swamp Canal are, in their dimensions, nearly equal to the Chesapeake and Delaware Canal, and their floors are placed so far below the bottom of the Canal, as to admit the passage of vessels drawing seven feet water, and of the burthen of seventy-five or ninety tons.

A fact is stated, by the President of the Company, that there is, at this time, in the trace of the Canal, a Coaster, from New York, having passed through two locks, taking in a cargo, and bound to the port at which she cleared.

When the Canal is finished, so as to accommodate itself with the Chesapeake and Delaware Canal, a reasonable prospect opens of having a water communication from Boston, to Beaufort in North Carolina, in the course of a few years.

The Taunton and Weymouth Canal, which opens, to the North, in Boston Bay, and to the South, in Mount Hope Bay, a branch of the Narragansett Bay, is thirty-six miles; and, by another route, more to the Eastward, the distance would be twenty-three and a quarter miles only.

The Buzzard's Bay and Barnstable Canal is but about eight miles. The Board of Engineers say, that its practicability does not admit of a doubt, and that the expense will not be great.

The Delaware and Raritan Canal, in New Jersey, is twenty-nine miles in length; and the Legislature of Pennsylvania, in granting permission to the Company which has undertaken this work, to supply a Feeder out of the River Delaware, have annexed a condition, that the Canal shall, in the opinion of the United States' Board of Engineers, sufficiently correspond with the Chesapeake and Delaware Canal.

This, it is supposed, will require the Canal to be eight feet deep, so as to be navigable for Bay vessels—and not to interrupt the noble line of interior navigation contemplated to run parallel to the coast for so great a distance.

The Committee will now perceive how much has actually been undertaken, and how little remains to be undertaken, to accomplish this interesting and grand National work.

These improvements which I have mentioned, and which will not be very expensive, will complete the Inland Navigation from Boston, to Beaufort in North Carolina, a distance of ten or eleven hundred miles: from thence, I hope it will be found practicable to proceed to Georgia. The practicability of a Canal of some useful dimensions, through the Peninsula of Florida, and from thence to the Mississippi, is scarcely susceptible of a doubt. Mr. H. then introduced the following facts:

"*Distances of the Florida Canal and its connection with the Mississippi, at New Orleans.*

1. Florida Canal, 1,200 miles round the Peninsula.
2. Distance across, 90 miles, by the route of the proposed Canal.
3. The cutting is only 12 miles by one, and 18 by another route.
4. For a Ship Channel, twenty-four, or, perhaps, thirty-six miles of cutting may be required.

The connexion with the Mississippi.

1. From the Mississippi to Lake Pontchartrain, either by removing the obstructions in Ibberville River, or by a

Canal across from New Orleans, less than five miles, near the Carondelet, where the river, at low water, is said to be ten feet higher than the Lakes.

2. Thence pass through Lake Borgne and Pascagoula Bay, into Mobile Bay, 170 miles, which may be connected with the Perdido Bay, by a cut of four and a half miles, and this with the Pensacola Bay, through the Grand Lagoon, by a cut of half a mile—making, together, five miles, through easy soil and level country—making fifty miles more.

3. Thence through Santa Rosa Sound and Bay, forty miles, to the Choctawhatchie River, which may be connected, by an easy cut of five miles, with the St. Andrew's Bay, through which you pass, twenty-four miles, and thence may be connected by a cut of two miles, with the Chipola River, which empties into the Appalachicola, by an easy communication—making, in the whole, twelve miles cutting, to accomplish a perfect Inland Navigation, from the Mississippi to the Appalachicola river, where it meets the Florida Canal—a distance of 350 miles, in the whole.

Than these, the country is capable of no improvements which would conduce more to the advantage of internal commerce and military defence. This line of inland water communication would be, from North to South, about fifteen degrees; and the produce of the South could be taken to the Landings and Towns, as far as to the extreme point of the North, and exchanged for the manufactures and productions of the North and Middle States, in voyages of reasonable certainty, as to time, and free from storms, dangerous capes, and piratical plunder. In its course, it would connect itself with all the valuable streams from the Mississippi to the North. On the Keys and Shoals of the Florida coast, alone, it is estimated that more than half a million is lost annually, by wrecks. In military defence, it would be invaluable—as the extent of our coast gives to an enemy, possessing a powerful naval force, the advantage of selecting the place of attack; but by means of such a conveyance, one army could defend a great distance of the sea-board, as the army, and necessary munitions of war, would be transported to any given point, in a short period: under such circumstances, no discreet General would venture far into the interior of the country, when his retreat could be so easily cut off, and his defeat rendered almost certain. Considering the general spirit of the age, on the subject of Internal Improvements, it will not be extravagant to extend our views further. Already the Republic of Mexico has signalized its independence, by a projected Ship Canal, connecting the waters of the Pacific and the Atlantic, through the Isthmus of Nicaragua.

This improvement, connected with our own, will afford the most important and permanent advantages to this country, of which I will not attempt, at this time, to give any description.

The valuable information contained in letters from the late and present Delegates from Florida, on the subject of a Canal through the Peninsula, thence to the Mississippi, merits our acknowledgments. The one was annexed to the Report of the Committee on Roads and Canals, at the last Session, and the other is now on the Journals of the Senate.

I consider the Canal through the Peninsula of Florida as an improvement of the greatest importance that at this time presents itself to the country—not only on account of its intrinsic worth, but because there exists no Constitutional objections to the measure—and, when once completed, its advantages will be so striking, as to carry, irresistibly, the Nation into some general system of Internal Improvements.

It will be necessary here to explain to the Committee the financial concerns of the Company, as it will be seen, by the bill before us, that an attempt, at least, is made to keep the United States free from any liability for the existing debts of the Company. On this head, a difficulty at once presents itself, and that is, whether the United States, on becoming a member of the incorporation, can have privileges or exemptions different from the other members of the incorporation, when no distinction of the kind is contained in the charter? Such an act, however, is not without a precedent. One of the State Legislatures made such a provision, on its authorizing subscriptions to be made to the Chesapeake and Delaware Canal: and the Committee on Roads and Canals thought, at the time, that it was best to introduce the bill in this cautionary way. It is, however, understood, that an honorable gentleman from Virginia, (Mr. NEWTON) who lives near this Canal, intends to move to amend the bill, in this respect, and, perhaps, with a fair prospect of success. This part of the subject is now better understood than when the bill was reported, and new light has been thrown upon it.

The capital stock at present consists of six hundred and forty shares, at two hundred and fifty dollars each, amounting to one hundred and sixty thousand dollars. Of this capital stock, the State of Virginia owns two-fifths.

The Canal has cost four hundred and sixty thousand dollars—consisting of the capital stock of one hundred and sixty thousand dollars; of dividends expended on the work, one hundred and twenty thousand dollars; and of loans, one hundred and eighty thousand dollars. There is due to the State of Virginia, one hundred thousand dollars, being a part of the above loan. Fifty thousand dollars of the loan is to be discharged by the privilege of a Lottery, which has been sold for that sum, and the payments well secured. One hundred and thirty thousand dollars of the loan will remain.

The one hundred and twenty thousand dollars, arising from the dividends, and which has been expended on the work, is not considered a debt, but a loss to the present Stockholders; and we have it from the President and Directors of the Company, that no reimbursement of the dividends will ever be asked for or expected; and any provision may be inserted in the bill, if necessary, to secure this effect.

The whole work has cost four hundred and sixty thousand dollars; and one consideration here very properly presents itself—is the work worth what it cost? The Company say it is, and worth more.

The dividends, heretofore, have been small. When the work shall be completed, according to the dimensions now contemplated, it is expected that the dividends will, at the least, increase to forty thousand dollars a year.

But even if the work is not worth the full amount of what it cost, still, it will not be a bad concern for the Government to enter into, under the existing circumstances, in a pecuniary point of view merely.

There may, in the beginning, have been some improvident expenditure of money, as the subject of canalling was not then well understood. But it would be too extravagant to infer, that there has been a waste to the amount of the dividends expended, and the fifty thousand dollars of the loan, which is to be extinguished by the Lottery—amounting to one hundred and seventy thousand dollars.

It would seem too severe to compel the present Stockholders to discharge the debt, when the United States will participate in its equivalent in value.

When the United States subscribe to a new work, no interest is expected to be received for three or four years, while the work is progressing; but, in this instance, the work will be completed in one season, and the tolls, for two or three years, will discharge the debt, even if no more of it should be discharged by Lotteries.

In the case of the Chesapeake and Delaware Canal, above one hundred thousand dollars had been sunk, on a different route from the one at last adopted. This the

ompany was liable for, without any equivalent in value, nd yet it was not provided against, in the bill which assed on the subject.

In the present case, if this debt of one hundred and hirty thousand dollars was paid off by new subscriptions, he capital Stock would be enlarged, and the dividends iminished in proportion. As the value of the debt is epresented in the work, the United States lose nothing y paying its proportion of it. The United States will ay more than the amount of the subscription, but it is ot without an equivalent.

Impressed with these views on the subject, I shall vote or the amendment, whenever the motion shall be made or that purpose.

The question in regard to the Constitutional powers of Congress to make subscriptions in Companies, incorporated by the States, for the purpose of Internal Improvements, I hope, is finally at rest.

Indeed, repeated decisions had taken place in this House, n the general question, which I need not now enumerate.

In Legislation, as well as in Judicial proceedings, there nust be a time of acquiescence.

The construction of a statute, by a majority of the udges, is to govern, and stand as a precedent for future ases.

It is the genius of all our institutions, that the opinions f the majority of the People is to govern—and any instability in construing the Constitution, by Congress, would have as bad a tendency, as if the same should happen in the Supreme Court of the United States. If the onstruction put on the Constitution is a glaring mistake, r when it is dangerous to liberty, an individual member ught to adhere to his private judgment. But when the onstruction leads to the prosperity of the country, and when the arguments in its favor must be generally cknowledged to be respectable; in such a case, a nember would be justifiable in yielding to the precedent: ve cannot all think alike, and we may, with propriety, cquiesce, and receive precedents as evidence of rightful construction.

In maintenance of this principle, Mr. Madison set a good example. His private opinion had been against the constitutionality of the Bank of the United States; but he gave up his opinion to the right of precedent; and said hat the Constitutional question was precluded.

The precedent, in this case, is supported by the leading nen of the country. Mr. Monroe gave it his sanction; nd every individual that was held up by the People, as qualified to be President of the United States, has, in ome shape or other, sanctioned it. The opinion of Mr. Adams is readily discovered in his Message. The Vice President, in 1817, gave his able support in favor of the power of the General Government. The opinion and tatements of the Secretary of State, we all know, have been more than once employed on the subject. Mr. Crawford, when in the Senate, voted in favor of the principle of making subscriptions to incorporated Companies; and General Jackson, at the last Session, voted in favor of the Chesapeake and Delaware Canal. The weight of opinion seems to me to be powerful and conclusive.

Mr. HOFFMAN said, that he did not rise for the purpose of drawing into question the power of Congress to aid, by its subscription, in the completion of this canal, but merely to ask from the Chairman of the Committee who had reported the bill, an explanation of some particulars which he had not stated to the House. He wished to know particularly, what are the chartered powers of his Canal Company. He desired to know, further, whether the canal was of such a depth, that vessels which navigate Pamtico Sound will be able to pass through it; and, further, whether any security is provided, that if, after this subscription is made, the company will go on to execute the canal.

Mr. HEMPHILL replied, that the charter of the company contains the usual powers given in charters. The canal is now seven and a half feet deep: there always will be six feet of water in the Sound, and any vessel which navigates the Sound, can navigate the canal also. For further information, he referred the gentleman to a member from Virginia, (Mr. NEWTON) whose residence was near the canal, and who was well acquainted with all the circumstances in relation to it.

Mr. NEWTON then said, that it was not his purpose, at this time, to go at large into the discussion of this subject; but, as the gentleman from New York is desirous of further information, he would endeavor to give him all that he possessed. He would inform that gentleman that the Dismal Swamp Canal Company was incorporated by acts of the respective Legislatures of Virginia and North Carolina; that it possessed all the privileges usually given to incorporated companies. The property it holds belongs partly to the company, partly to the State of Virginia, which State holds shares in the company to the amount of sixty-four thousand dollars, and, having advanced the money on them, considers herself as having an absolute property in the effects of the company. As to the navigation, there are at present between seven and eight feet water in the canal, and the company can, at any time, have twelve feet water by raising its banks; but this is unnecessary, because seven or eight feet is sufficient for the use of such vessels as navigate the canal. Any vessel which navigates the canal can also navigate the Chesapeake Bay. Vessels come now from New York for the purpose of carrying shingles; they pass the locks, enter the canal, obtain their load, and go out again, loaded, to New York. The vessels engaged in this trade are purposely constructed to have a small draft of water. The vessels which navigate the Chesapeake, draw from four and a half to five and six feet water: much the greater part draw only five feet.

Mr. N. proceeded to remark, that, if ever there was a subject which deserved the attention and the patronage of this House, the present subject was one No constitutional objection could lie to this measure. The canal is a State work. The company has been incorporated by the States of Virginia and North Carolina, and Virginia is herself a stockholder to the amount of sixty-four thousand dollars. The Government of the United States has had no agency whatever in forming the company, and if it subscribes to the stock, it will come in merely as a stockholder, precisely in the same way with others; it will draw the same shares of the dividends which others do, and it will have the same security for the reception of its dividends as others have. This is not a new case. The United States are at this time stockholders in the Bank of the United States, and in the Delaware and Chesapeake Canal. The canal which now claims their patronage, is a coastwise canal, as important in its place, to the commerce and the coasting trade of the country, as the canal which unites the Delaware and Chesapeake. It forms one important link in the same chain, and its completion is in fact necessary to give full value to that canal. If this canal shall not be completed, and the other shall be, the internal coastwise navigation must end at Norfolk, or be exposed, by going round the Capes, to all the risks of storms and shipwreck; but, if this canal shall be cut, you will have an internal coastwise navigation, extending to the Southern part of North Carolina—extending, in all, to a distance of eight hundred miles. The effects of such an inland communication on the commercial interests and home trade of the country, are too obvious to need illustration. The merchants of the United States will have a navigation of that whole distance, without insurance; the agricultural productions of the country will have a safe and easy access to market, and the canal can, with little difficulty, be made as beneficial to South Carolina and Georgia, as to North

Carolina and Virginia. It is only necessary to clear out the Sound, for a small distance, and to cut through a neck of about two miles, to reach Cape Fear, and thence to the Pedee; and at a small expense it can be extended to the canal which he understood to be now constructing from the Santee to another river in South Carolina, whose name, at this moment, escaped him. Such were the natural features of the country, that this whole extent of communication might be opened for a sum much smaller than that now asked for the present canal; and should it be effected, there will then be an internal communication all the way from Savannah to New York, from New York to the Lakes, and when the Narraganset Canal is completed, the communication will be extended to Boston.

A noble design, and as practicable, as in its effects it will be important. The Dismal Swamp Canal is highly important in a naval point of view. North Carolina contains a vast body of timber, admirably adapted to ship building, and when this canal is completed, that timber can be brought, without an inch of land carriage, into the Navy Yard at Gosport, and be placed at once from the boat which brought it from the spot where it grew, immediately under the axe of the ship builder. This timber will be needed, not merely for the construction of new ships, but for the repairs of those which are already afloat; and, in this respect alone, a saving will be created to the Government more than sufficient to pay the expense of the canal. Besides, should the country be at war, a communication will be necessary between the Seat of Government and the fortifications on our sea-board. This canal will afford the means of keeping open such a communication, and of disposing of the national force by the cheapest, most direct, and most expeditous route. The last war furnished very abundant and very melancholy experience respecting the value of such communications. The want of them occasioned the expenditure of millions of dollars. The flour, for the supply of the Army, cost, in some instances, forty and fifty dollars a barrel. Our Eastern frontier is our most vulnerable point, and an easy mode of communication, by which the national forces could be concentrated for its defence, is all important to the national security. I hold in my hand, said Mr. N., a paper on this subject, which is of great value and importance. It is the report of the Engineers, made to this Government in 1819, but never published.

Here Mr. N. read the following extracts from that report:

"1. Mississippi.
2. Mobile,
3. Appalachicola.
4. Altamaha.
5. Savannah.
6. Santee & Pedee.
7. Roanoke.
8. Chesapeake, including James [River.
9. Potomac.
10. Susquehannah.
11. Delaware Bay and River.
12. Hudson River and Lake [Champlain.
13. Kennebeck.
14. Penobscot.

Of these, the Mississippi, Chesapeake Bay, and Hudson, are most immediately important. The country traversed by these water courses affords minor streams, fountains, and levels, by the aid of which canals and rail ways may be constructed to facilitate intercourse, and bring, with ease, and small comparative expense, the products of the interior to a ready market, and to furnish those parts with all that may be required from foreign countries.

These canals and rail ways may be chiefly included in the following list of connections. Agreeable to the existing knowledge of the face of the country, Mobile and Tennessee, by Tombigbee and Bear Creek. Mississippi, Ohio, and Missouri, with the Lakes, by the Illinois; and Lake Michigan by the Wabash and Lake Erie, and by the Allegany and Erie; Appalachicola and Altamaha, Tennessee, Savannah, Santee, and Pedee, by the two last named, and the Holstein by the French Broad and Tugula. Roanoke, Chesapeake Bay, and the Ohio, by Albemarle Sound, Pasquotank, James, Youghiogeny, Potomac, Monongahela, Susquehannah, and Allegany River; Chesapeake Bay and Lake Ontario, by the Susquehannah and Gennesse. The Delaware, the Hudson, St. Lawrence, the Lakes, by the Elk and Christiana Rivers, by Croswick Creeks and Raritan Rivers, the Hudson, Lake Champlain, and Sorel. New York and Boston Harbor by Long Island Sound, Narraganset Bay, Taunton and Weymouth Rivers. Boston Harbor and Connecticut River by the Merrimac canal and first named river, St. Lawrence, Kennebec, and Penobscot, by the Lakes, at the sources of the two last named rivers common to them and the Claudiere.

The points most liable to attack are the most facile outlets to the ocean.

Of the Atlantic frontier, which extends from Georgia to the District of Maine.

The section which the Commissioners have commenced upon is the Chesapeake Bay. By reference to maps No. 1, A. and No. 2, B. it will be seen that this arm of the ocean may be considered as forming a part of the maritime frontier of the Union. It may also be considered as the centre of the internal navigation of the Eastern and Western States, and also as the rendezvous and deposite of the maritime means of defence for the coast, and for the protection of commerce from Cape Hatteras to the waters of the Hudson.

As a maritime frontier, the Chesapeake presents a development of coast from four hundred to five hundred miles, in the defence of which three States are particularly interested.

The tributary streams of the States of Virginia and Maryland, emptying into that immense bay, expose all their rivers to predatory insult, to real or false alarms, produced by the appearance of a maritime enemy, who can threaten every part, without attacking any, and possessing himself of all the anchorage that the bay affords, without defence, may, for a time, paralyze the whole commerce of the coast.

Besides the advantages that the Chesapeake offers to the States bordering on it, it also seems that, at no distant period, it will be of the greatest importance to the prosperity of the commerce of the Union in general.

The projected canals to unite that bay with the waters of the Delaware, those uniting the Susquehannah and the tributary streams of Ohio, and, lastly, those nearly completed, uniting Elizabeth river and Albemarle Sound, make the Chesapeake bay the common centre of the internal navigation of the North, West, and South, of the Union.

This navigation may, in a measure, be interrupted in time of war, if that bay is left defenceless and open to the ravages of a maritime enemy.

The Chesapeake bay affords an asylum for a fleet destined for the protection of the great open bay between Cape Hatteras and Cape Cod.

Newport in the North, New York in the centre, and the Chesapeake bay in the South, are admirably situated for a defence of the open bay.

The Chesapeake bay, in relation to the Atlantic frontier, produces, as may be said, the transition of defence of the before mentioned open bay to the coast South of Cape Hatteras, whereas Newport establishes the transition of defence between that bay and the one between Cape Cod and Nova Scotia.

This indicates that the Atlantic frontier of the Union naturally divides itself into three parts, as it respects naval operations, as follows: South of Cape Hatteras to Florida; from Cape Hatteras to Cape Cod; and from Cape Cod to New Brunswick. Each of those divisions must have its particular system of defence, and their naval and land establishments, which are absolutely necessary to them, as well as to the means of transition to unite those systems

with one another. The Chesapeake, besides the advantages which have been assigned to it, is that of furnishing every material for the construction and equipping of fleets. The live oak from Georgia and the Carolinas; yellow pine from those three States and Virginia; tar from the Carolinas and Georgia; iron from Virginia; hemp from Kentucky; and, lastly, the Chesapeake has the advantage over Northern anchorage, by possessing harbors at all times free from ice—and labor here may be performed in open air more than three-fourths of the year."

From this paper, said Mr N., it will be perceived, that these Engineers, when they surveyed the Chesapeake, with a view to fortifications and the establishment of naval stations, had respect also to its maritime and commercial advantages. I will now proceed to consider the subject before us, as it is connected with agriculture, manufactures, and commerce. When this canal is completed, one of the first results will be, that the value of the lands in its neighborhood will immediately be increased, and the consequence resulting from this, must be, that industry will be quickened, and the land be better cultivated. The farmer will be able to bring all his surplus produce to market, by a cheap and easy route; he will be able to attend the sale of it in person, and make for himself his own purchases. The benefit, therefore, to agriculture, will be manifest and important. As to the manufacturing interest, let us first contemplate it as in peaceable times; it is progressing rapidly, and God send it may flourish more and more. I have ever been the advocate both of manufactures and of internal improvements, on a grand scale; I consider them as intimately connected with each other, and both of them vitally connected with the prosperity of the country. But supposing, by any unhappy occurrence, we should be engaged in war. The war will, of course, be with some maritime power. How will our manufacturing establishments at the North then be situated? All their communications with the Southern States, whether for the sale of their manufactures, or for the obtaining of the raw material, must be by the ocean; and the whole coasting trade, of course, exposed to the enemy. Insurance will be high, freight will be high; and if, through all these difficulties, they succeed in getting the raw material at all, the price will be so high as almost to destroy the market. Great Britain, in the mean while, under some neutral flag, will send her manufactures into the United States at a cheaper rate; thus our manufacturing establishments will be ruined. But, if these internal communications shall be open, all these effects will be prevented; as soon as war is declared, the merchants of the United States will prudently withdraw their capital from the risks of commerce, and will invest it in manufacturing establishments. The consequence will be, that the quantity of our manufactures will greatly increase, competition will take place, the price of manufactures will be reduced, we shall be able to clothe ourselves at a cheap rate; we shall also be able to supply our Army and Navy, and the Southern interest will have all the home market secured to them for the raw material. From this view, it is plain that a refusal to patronize our coastwise canals must have a most injurious effect upon the manufacturing interests of the United States.

There is another advantage, which renders me peculiarly anxious on this subject. It is not in your power to remain at peace so long as you choose; it must depend on the conduct of other nations; and wars in Europe may take place under such circumstances as to render us a party against our will. But, if our line of internal communication is once complete, it affords us a great means of binding over the maritime nations of Europe to keep the peace with us. Great Britain is a manufacturing nation; a large part of her wealth depends upon her continuing to be such; a market for her manufactures is all important to her; she has a valuable market in the United States. Should she go to war with us, she drives us, of course, to cherish our own manufactures; and if she finds that you have a line of internal communication, protected by fortifications, which prevent its being interrupted by her fleets, she will soon perceive that her fleets can do us but little injury; and while she is unable to interrupt the internal trade of the country, she will only have turned our capital into a manufacturing channel, and thereby injured her own vital interests. Be assured of this, that there is nothing she dreads more than the growth of the manufacturing interest in this country.

But, Mr. Chairman, this bill, though it appropriates one hundred and fifty thousand dollars to a canal, which, in that case, will be the first finished of any of our coastwise canals, has one provision in it which I cannot approve. I have legislated ever since I came into Congress on the principle of justice. I have opened my hand and my heart alike to every section of the United States. I have run every personal risk to promote the general interest of the whole country. I have even made an offering of my popularity to promote that end, and I must say, that it is with regret I perceive, that now, when I come forward to ask you to appropriate money for a great and confessedly useful object, it is proposed to be done in a manner which shews an entire want of confidence in those who are to receive and to apply the money. This I did not expect: I do not think it is what I have deserved. I only ask the committee to do to me, as they, under the same circumstances, would wish me to do to them; and I trust that they will not refuse to strike out the proviso which is inserted in the second section of the bill, and which is in these words:

"That the dividends becoming due to the United States, on said stock, shall be the same as if the amount of expenditures on said canal had been made from actual subscriptions, and that no debt or debts, on the part of said company, existed."

On this subject, I ask the committee to lend their attention to a simple, honest, undisguised statement of facts, and they will be convinced that I am requesting nothing improper; that I am asking for nothing which they ought not to grant. The State of Virginia authorized this Canal Company to raise, by lottery, the sum of $50,000, for the purpose of paying a part of their debt. $100,000 was loaned to them by the State of Virginia, (such is the confidence reposed by that State in the integrity and ability of the Company.) About $30,000 was loaned to them by private individuals, and there is not now due by the Company more than this $130,000. It has the means of defraying this debt, provided Congress will take the canal under its protection. So soon as that canal becomes a thoroughfare, the annual tolls will amount, at the very least, to from thirty to forty thousand dollars. So that, in three years, the whole debt will be paid. That the money will be thus applied, you have the strongest of all bonds, the bond of interest. It is the interest of the stockholders to pay this debt as soon as possible. The tolls, in the present state of the canal, amount to 9,980 dollars. From this fact, it is easy to estimate what they will be when the thoroughfare is completed. They will at least be four or five times as much as they now are. Now, then, I ask, if it is fair, when the United States come in at the eleventh hour, after all the other stockholders have been laying out of their money for so long a time, that the United States should say to those stockholders, Your dividends shall go to pay the debts of the Company, but my dividends must be paid to me; I will immediately have my whole share of the profit, but I will have none of your burdens at all. I ask gentlemen if this is honorable—if it is generous: if this can be called a liberal policy? This House, last year, invested 300,000 dollars in the Delaware and Chesapeake Canal, though that canal would require three years to complete it. The interest on those three amounts to 18,000 dollars a year, being 54,000 dollars. The interest on the

Dismal Swamp Canal stock is just half that amount. Shall we, on a great subject, such as this, stickle like Shylock? No, sir.

As to the other provisions of the bill, I care comparatively but little about them. The Board of Engineers, after carefully examining the coast, have decided that this canal is a proper one to be constructed; that it is judiciously located; that it is possessed of great commercial advantages; that it will subserve valuable purposes to the Naval and Military interests of the country; in a word, that it is an important national work. Under these circumstances, I throw myself entirely on the justice and liberality of this committee. I ask of them nothing but what, on due consideration, they must be convinced they ought to grant: nothing that will not promote essentially the national interest; and I thank God, that, in making this appeal, I need not bring myself down to local considerations.

Mr. FORSYTH said, that he should be glad to have some information on this subject, which he had not yet been able to obtain, either from the statements of the Chairman of the Committee, or those of the gentleman from Virginia, who had just taken his seat. This Canal, said Mr. F., if I understand the matter, is partially executed, and is now proposed to be extended in two different directions. The first thing I wish to know is, whether these extensions of the Canal are included as a part in the corporate rights of the company. I further understand, that the whole original amount of stock has been subscribed, and that new stock is now wanted to be subscribed for by the General Government. This new stock, then, is an addition to the first amount of incorporation. I should be glad to know if the act of incorporation authorizes such an addition.

Mr. HEMPHILL (Chairman of the Committee of Roads and Canals) replied, that the act of incorporation does authorize the extension of it.

Mr. NEWTON, in answer to the first inquiry of Mr. F., quoted the terms of the act of incorporation, to shew that the extension of the Canal was provided for.

Mr. FORSYTH then resumed. He did not perceive, from what had been read of this act, that it was at all contemplated by the act, that the Government of the United States should take any part in this work; and he should be glad to know, if the great State of Virginia, who holds so large a portion of the stock, has been consulted, and has given her consent to the part now asked to be taken by the General Government. He believed, he said, that that State never had been consulted, and he thought that both prudence and decorum required that we should first consult her and know her sentiments and wishes on the subject. The gentleman from Virginia, (said Mr. F.) informs me (aside) that Virginia knew that this application would be made. The gentleman may know this, but I do not know it. Does this Committee know it? And, if any such application was contemplated, why was it not provided for in the act of incorporation? The third section of the bill requires that the Board of Engineers shall first have examined the route of this Canal, and reported, in writing, whether it does or does not form a part of the "contemplated" chain of internal communications—"contemplated" by whom? I wish to know who it is that "contemplates" this chain of internal communication. Is it "contemplated" by the President of the United States? By the Secretary of War? By the omnipotent Board of Engineers? or by the Congress of the United States? Sir, I know of no plan or chain of internal communication that is "contemplated." Perhaps I shall be referred to that omnipotent report of the Board of Engineers, by which a vast system of fortifications was not only "contemplated," but was adopted also. Sir, this bill appears to me to form one part of a system of argumentative legislation, on which another bill is afterward to be founded. I am opposed to this argumentative legislation. I am opposed to any system of measures by which Congress is to be seduced or drawn into a course of appropriations for a general system of internal communication. Does the section of the bill, to which I allude, refer to a famous report of Mr. Gallatin on Roads and Canals? I suppose so. I rather judge that it refers to the same celebrated report of the Board of Engineers; that it is part of what is called a system of defence; that it forms one, not of the Canals "contemplated," but of the Canals adopted by the same authority as adopted the system of internal improvements. Before he could vote for this bill, he wished for more particular information on the subject of this Canal than he was now possessed of.

Mr. MERCER rose in reply, and said, that, to the best of his recollection, he had not heard the voice of the gentleman from Georgia in support of a single measure, which had been discussed in this House, during its present session. He, however, thanked his honorable friend for his late vote in favor of the continuance of that humane policy which restored to an afflicted and much injured Continent, those unfortunate victims of cupidity, torn from its bosom, by remorseless pirates.

If I were equally assured, said Mr. M., that the honorable member meant to vote for the present bill, I would not raise my voice against his argument, but trust its influence over the Committee to the same control which limits its operation, upon the judgment of the gentleman himself. But, while I remain uncertain of his intended course, I hope I shall be pardoned for attempting to diminish the force of his objections elsewhere.

I cannot be mistaken—and if I am, the honorable member will set me right—in believing that he voted with my colleague and myself, and a large majority of Congress, last year, in favor of an appropriation to the Delaware and Chesapeake Canal; yet, the act of incorporation, under which that work was begun, contained no clause expressly authorizing a subscription to its stock, by the Government of the United States. The honorable member, therefore, overcame, on a former occasion, the very obstacle which he now represents as a formidable impediment to this bill. And he did not then err. What, Mr. Chairman, is a Canal Company? A creature of law; the true character of which is manifested by the charter of its existence. According to the provisions of this charter, the Dismal Swamp Canal Company may receive, under a limitation, in amount, prescribed only by the cost of its enterprise, subscriptions from any part of the Globe. The Emperor of Austria, the Sultan of Constantinople, the Khan of Tartary, may all subscribe, if they please, to the stock of this Company. The subscription book is now open, under the authority of Virginia; and if we choose to subscribe, as we are earnestly invited, we need not ask her consent. Nor could she, were that necessary, consistently deny it, on the grounds assumed by the honorable member, since, through the agency of her Board of Public Works, and of the President and Directors of her Literary Fund, she has often been a joint partner in the stock of the Bank of the United States, against the Constitutionality of which, her sentiment is as strong, and as widely diffused, as against the power of this Government to appropriate any part of the public revenue to roads and canals.

In what aspect can the present bill be presented to this Committee, which will discriminate it, in principle, from that by which the gentleman from Georgia, and this House, with unprecedented unanimity, authorized a subscription to the Delaware and Chesapeake Canal, of twice the sum now asked for the completion of another link of not less importance to our chain of inland navigation?

Did the gentleman from Georgia, then call for the rules and regulations of the Canal Company, to whose stock we were about to subscribe?

The general principles, on which the power of Congress

o aid this and similar objects of common interest to the Union was founded, had just been discussed, and, as I hope, efinitively settled. If the gentleman wishes to unsettle that ecision, let the discussion be renewed. But I understand hat he neither intends, nor desires to draw into dispute, gain, a principle, which he continues to sanction.

With regard to the part I take, in relation to this measure, it is true that I live in the same Territory, a part of which is so ably represented by my colleague who has recently taken his seat, after affording to the Committee much valuable information, relative to this Canal: but I reside on the opposite verge of a large State, and my immediate constituents have less local interest in this work, useful as it is, than in that which is about to unite the Delaware and Chesapeake Bays, or the more noble, because more difficult enterprise, which, to the honor of the largest State of this Union, already unites the waters of he Lakes and of the Atlantic.

I may, therefore, be regarded, both as a competent and credible witness of the facts which I am about to state. t was accidentally my lot to visit this Canal, more than a welve-month ago, in company with the Secretary of War, nd several members of the Board of Engineers; and in elation to that part of its works which fell under my obervation, I can, with truth, affirm, that I never saw any of etter execution. The locks, especially, constructed of usquehannah granite, were the best that I ever saw. One f them did not, when under a pressure of ten feet of vater, leak, apparently, a single drop; and, by our vatches, we ascertained the truth of a disputed and interesting fact, in regard to both, which, at this moment, ocurs to my recollection, that, managed by a boy, they were ogether filled and emptied in five minutes. They are of nusual size, being ninety feet in length; eighteen and an alf in breadth: and, although unequally divided, of sixeen feet lift.

That portion of the Canal which is next to Elizabeth iver, and the town of Norfolk, has attained a breadth of ixty feet; and, for a great extent, I understood it to be orty. The additional capital, which we are now invited o subscribe, will enable the Company to deepen, and viden the Canal, throughout, so as to make it accord with he entire line of inland navigation, of which it constitutes o essential a part. Its feeder, Lake Drummond, a singular phenomenon in the natural history of that country, is so elevated in surface, above the present surface of the Canal, that its draft of water can be deepened, either by raising its banks, or by sinking its base; or the work accelerated by a combination of both those expedients.

The Canal is about twenty-two miles in length, and its cost not great; for such a work has been augmented by the peculiar difficulties which obstructed its commencement, but which will not impede the improvement in the mode now contemplated. It was, at first, a sub-marine Canal. The Cypress and Juniper morass, through which it passes, was almost a Lake. The thick forest of lofty trees and tangled vines, appearing like so many islands, environed with tussocks of grass and matted roofs, the abodes and resting places of innumerable bears, panthers, and wild cats. This swamp has been drained, in part, by the aid of the main canal, and lateral cuts made to reach the valuable timber with which it abounds. The bottom of the Canal has been already sunk below the cypress knees and stumps, and the labor of deepening it, which was the work of the axe, may now be performed with the hoe and the shovel.

Part of the expense yet to be encountered, to fit the Canal for steam-boats and mast vessels, will consist in substituting, at its Southern extremity, open stone for wooden locks. The locks, hitherto used, being too weak to sustain the pressure of the earth at their sides, were braced above by transverse beams, which obstruct the passage of sail vessels. Those at the other extreme, have, as I have said, been some time finished; and here let me suggest to the member from New York, who sits near my friend from Georgia, that, in the obvious and urgent interest of the company to complete this work, by widening and deepening it, where necessary, for Bay craft, and employing suitable locks throughout, the public have a better security than any law could provide, that the sum, now sought to be obtained, will be promptly and beneficially applied. When completed, along with the Canals of Jersey and Delaware, an inland navigation for mast vessels will have been provided, from Newport, in Rhode Island, and Albany, to Georgetown, in South Carolina. There, I believe, in the event of any future improvement, the hazard of the sea must be met; but it will be encountered after passing the stormy and dangerous Cape Hatteras.

There is one objection to this bill; the unfavorable operation of which I anticipate, though it has not been expressed, which it may not be improper to notice. One hundred and fifty thousand dollars is not a very large sum, and it may be thought that Virginia, the first State in Territory, and the third in population, should herself supply it.

Sir, said Mr. M., the natural aspect of the surface of this State furnishes a reply to this suggestion. The very beneficence of nature is injurious, in one respect, to the Commonwealth, which I have, in part, the honor to represent. Intersected by more large rivers than any State of the Union—all needing the improvement of art for the perfection of their navigation, she has not only more local interests to harmonize, but a much larger demand upon her revenue, for this object of expenditure, than any State of this Union. Her resources have been early, in order of time, and liberally in amount, applied to this beneficent purpose; but, if I may be pardoned for using a proverbial phrase, she has "too many irons in the fire" at once; and she verifies the sequel of the adage, by finding it impossible "to prevent some of them from burning."

Imperfect as was this Canal during the late war, the country upon the Chesapeake, and even the interior of some other States, received, through this channel, a large portion of their surplies of West India commodities from North Carolina. The very impediments to the foreign trade of this State, operating as a protection of its harbors from hostile fleets, the small vessels engaged in the commerce of the West Indies, and the prizes made in those seas, found a shelter from danger in Carolina, and through the Dismal Swamp Canal a market for their cargoes. All the sugar which Virginia then consumed, reached her inhabitants either by this route or by the boats which ascended to Pittsburg or Wheeling from Louisiana and the land transit thence towards the waters of the Atlantic.

I regret, said Mr. M., that the gentleman from Georgia should have complained of the application of the term, "contemplated," to the line of inland navigation, stretching along the sea-board of the Atlantic States. "Contemplated," he asks, by whom? I answer, by the People of the United States. It has been the subject of animated discussion, and anxious anticipation, from one extremity of the Union to the other, insomuch that there is not an intelligent man to be found, either in the Federal or State Legislatures, or without them, to whom this idea is not old, or by whom the sense of this phrase is not well understood.

The report of the Board of Engineers does propose, but unquestionably does not originate, that system of commercial intercourse, as well as National defence, of which this channel of communication constitutes a leading feature. A system of defence, not designed for the waters of the Chesapeake, or their adjacent shores, alone; but to furnish, near the centre of our Atlantic frontier, the means of construction, a harbor to refit, and a secure asylum from danger, for the entire commerce, and for all the fleets of this wide-spread Union.

A point of concentration, for the maritime strength of the United States, not only safe in itself, and commodious, and amply supplied with all the necessary materials for the prompt construction and speedy equipment of a Navy, but a sally-port, from whence this Navy can, at all seasons of common danger, fly to the defence of our own commerce, or to the annoyance of that of our enemy, when it shall be our misfortune to have one—a bulwark, it may prove, still more effectual, imparting the confidence of security to the People of the United States, and keeping the foe at a distance, by the terror which it carries to his bosom. In such an object there is one common, one universal interest. I ask pardon of the Committee for so long, and to me so unexpected a trespass upon their attention. I would not have said one word upon this topic had I felt assured that the gentleman from Georgia did not design to vote against this bill. On that subject, I will still cherish the feeling of uncertainty; being not without some hope that he will yet give to it the support of his vote.

That, said Mr. FORSYTH in reply, will depend on the information I receive. If no more ample and more satisfactory statement is afforded than that which has been given by the Chairman of the Committee, and the two members from Virginia, the gentleman will find himself mistaken in counting on my support to this bill. The gentleman observes, that he has not heard my voice in support of any measure which has been brought forward during this whole session. I am flattered by finding that the gentleman keeps such a vigilant eye upon my motions: very possibly he may be correct. The task of approving is a very easy one: there are always persons enough ready to perform it—to approve almost any thing that is proposed. The task of censuring and of opposing is not so easy; it is an unpleasant duty—but it is not on that account a less important duty of this Hall; it is a duty which I have hitherto, at all times, discharged, and which I shall continue to discharge, come the proposition, which requires it, from where it may. The gentleman further says, that no such objections were made when a similar bill was before the House last session, and that I voted for that bill. Sir, it may be so; but it is of no consequence whatever to the present argument; the question is not, whether this House, or any particular member of it, did their duty last session, but whether the present bill ought to pass. But the gentleman ought to remember, that a very different state of opinion exists in Virginia, on the subject of Roads and Canals, and in Delaware, Maryland, and Pennsylvania. I know, indeed, that the gentleman exerted himself with great zeal and perseverance to teach the Legislature of Virginia to hold better opinions on that subject; but, heretofore, his exertions have been vain. Now, I hold it to be important for us, before we pass this bill, to know what the great State of Virginia thinks of our becoming a partner with her in this undertaking. I want to hear what is the opinion of the Ancient Dominion, that venerable State of which I myself am a native as well as the gentleman. She has told you, more than once, that you have no power to engage in such undertakings; and if she is opposed to this measure, and refuses her assent to it, what will you do? The Company, no doubt, will have no objection to take the money and expend it; but will the State be willing that the profits should be paid to us, or to allow us the powers proposed by the bill? If not, how will you get them? Will you send a military Prætor into Virginia, and take them by force? Such means have been already resorted to in my State. We have had in our country, a military Prætor, with his band of hired ruffians at his back, sent among us, not, it is true, to seize upon our money, but to act, if necessary, upon State property and State rights—sent, not, indeed, about Canal dividends, but about Indian lands. Does the gentleman want to see the like in Virginia?

Shew me that the money ought to be appropr[illegible] I will vote for the appropriation: but, till the[illegible] have full evidence before us, we are in advance [illegible] subject—we are acting imprudently and improp[illegible]

The gentleman has thought proper to allude to [illegible] topic, in the course of his remarks: that of the [illegible] slave trade. "Sufficient for the day is the evil the[illegible] When that subject comes before us, we shall, do[illegible] hear from the gentleman, and he shall hear from me [illegible] as it has been dragged into a debate with which it has [illegible] connexion, I shall refrain from touching it further [illegible] sent. He says, that, when the bill for the Delaware C[illegible] was before us, I did not ask to see the rules and regu[illegible] tions of that Company—and what then? Is that a rea[illegible] that I should not ask in the present case? Does this [illegible] son satisfy the Committee that these rules ought [illegible] before them? What are to be our powers and privileg[illegible] if we do subscribe? I cannot tell—I have not heard. [illegible] Committee who reported the bill, seem themselves not [illegible] know. They say in the bill, "That it shall be the [illegible] of the Secretary of the Treasury, before the payment of [illegible] part of the money subscribed, on behalf of the United States, to adopt such measures as shall ensure the applica[illegible] tion of the same to the completion of the said Canal, [illegible] cording to the plan proposed, and to no other purpo[illegible] whatsoever."

What does this language mean? Is the Secretary to [illegible] gislate? Is he to ask Virginia to legislate? Something, [illegible] seems, remains to be done, to give the United States [illegible] per security for the application of the money to fi[illegible] the Canal before the money is to be invested. So, I hope we shall hear something further before we proceed. I hope that the Committee will now rise, and that, when [illegible] sits again, the Chairman of the Committee of Roads [illegible] Canals will be prepared to give us all the information [illegible] ought to possess, to enable us to legislate safely, especial[illegible] whether Virginia is satisfied with our subscribing [illegible] Company in which she holds so large an interest—[illegible] important whether we look upon her as a State or stock holder.

The Committee then rose, and having reported pro[illegible] gress, obtained leave to sit again.

SATURDAY, MARCH 4, 1826.

DISMAL SWAMP CANAL.

On motion of Mr. STEWART, the House then went into Committee of the Whole, Mr. CONDICT in the chair, on the unfinished business of yesterday, which was the consideration of the bill "authorizing the Secretary of the Treasury to subscribe for stock in the Dismal Swamp Canal Company."

Mr. NEWTON moved to strike out the following pro[illegible] viso in the second section of the bill:

"*Provided*, That the dividends becoming due to the United States, on said stock, shall be the same as if the amount of expenditures on said canal had been made from actual subscriptions, and that no debt or debts, on the part of said Company, existed."

Mr. NEWTON observed, that, if this feature were stricken out, the present bill would resemble that passed at the last session, for the Delaware and Chesapeake Canal, and he presumed it would be the wish of the House to put both Companies on the same footing.

The question being taken, the motion was agreed to without a division.

Mr. MALLARY then addressed the Committee, in be[illegible] half of the bill, which he considered it expedient to pass in every view that could be taken of the subject. There existed no constitutional objection to it, and its beneficial effects on the commerce and agriculture of the country admitted of no dispute. But the principal ground [illegible]

which he felt anxious that the bill should pass, was the usefulness of the Canal, as facilitating the means of communication between the Southern States and the manufacturing establishments of the North. He combated the objection of Mr. FORSYTH, in relation to the assent of Virginia being required. This was a private incorporation, the same as any other corporate body, created for private purposes. Virginia had herself granted the act of incorporation, and was pledged in justice and honor to guaranty its protection. The Canal involving interests which were spread over the Union at large, Congress had a right to patronize it, whether Virginia assented or not. She had no control over vested rights, and neither Virginia nor North Carolina could prevent the United States from subscribing to the Company, were they so disposed, of which, however, he had not the least suspicion. As to their being offended at such an act, he trusted no such feeling would be excited, but whether it were or not, it was the duty of the House to look to the general interests committed to them. Mr. M. referred to the last war to illustrate the mischievous effect of having the communication between the North and South of the Union interrupted. Nothing could so soon or so effectually prostrate our great manufacturing establishments. He gave a brief sketch of the previous history of the Canal Company, and insisted on its right to be aided as much as any other private Company. He adverted to the act of last session, in aid of the Delaware and Chesapeake Canal, and dwelt on the mutual connexion between that Canal and this, as parts in the same great chain with the Delaware and Raritan Canal, and others which were commenced or commencing, and which, when complete, would form a grand line of internal communication from one end of the Union to the other.

Mr. HOFFMAN renewed the inquiries he had made yesterday, as to the chartered rights of the Company, and the manner in which Directors were to be chosen; also, in regard to the estimates of unfinished labor yet to be performed in completing the Canal.

Mr. NEWTON answered these inquiries from printed documents already before the House.

Mr. HAYNES having had doubts as to the capability of certain parts of the Sounds connected with this Canal to be navigated, said he had some time since introduced a resolution calling on the War Department for the surveys which had recently been made on that part of the coast. He had this morning learned, at the Department, that those surveys would be laid before the House in a few days; and, although it was true that he had great objections, on principle, to the passage of the bill, he could assure its friends it was with no view to embarrass or retard its passage that he should offer the motion he was about to make, but that time might be given to receive and examine these surveys. He then moved that the Committee rise.

The motion was carried—ayes 71, noes 52.

So the Committee rose, and, having reported progress, had leave to sit again.

MONDAY, MARCH 6, 1826.

AMENDMENT OF THE CONSTITUTION.

The House resolved itself into a Committee of the Whole on the state of the Union, Mr. McLANE, of Delaware, in the chair, on the resolutions of Mr. McDUFFIE; when

Mr. STEVENSON, of Virginia, concluded the speech he commenced on Thursday last, as follows:

I come now, sir, (he said) to the third proposition: which is, that the election of President of the United States was one of the most important rights intended to be secured to the States in their political and federal character, and to be exercised according to the interests and sovereign pleasure of each State.

And here, sir, I am met by the propositions of the honorable gentleman from South Carolina, that the election was to spring from an immediate act of the American People; that it was usurpation in the State Governments and Legislatures to appoint electors, and that voting by districts was the only mode intended by the Constitution, and ought, therefore, to be made uniform. I shall deny all these propositions, at least in the extent they have been laid down, and shall endeavor to show, 1st, That this right of appointing electors is a Federal right, and may be exercised by the State Governments, or any other body, whom the Legislature shall authorize to appoint; and that it was so intended by the framers of the Constitution, and understood by the People; and 2dly, That if I am wrong in this opinion, and the right to appoint is alone in the People, yet it is the People, as citizens of separate and distinct political societies; and that, in either case, the amendment of the honorable gentleman from South Carolina goes to impair, greatly, if not defeat, the right.

Let us first examine the question, upon the words of the Constitution, apart from all external evidence. The article in relation to the appointment of the President is in the following words: "*Each State* shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which such State may be entitled in Congress."

To enable us to understand this section, we must ascertain the meaning of the word State. The gentleman from South Carolina argued, that, in this section, it means *People*, from its grammatical import; and both he and the gentleman from New York, contended that it exclusively means People, wherever it is used in the Constitution. In this opinion, said Mr. S., they are certainly mistaken, and I shall be enabled, I think, to show, that, so far from its being used *but in one way*, and as conveying *one meaning*, that it is used in many parts of the Constitution evidently in different and various senses, according to the subject to which it is applied.

Now, the word State sometimes means portions of territory occupied by political Societies within it; sometimes the particular Governments established by those Societies; sometimes those Societies, as organized into those Governments; and lastly, the People composing those Societies, in their highest sovereign capacity.

Let me illustrate this, by various parts of the Constitution.

Take the 2d section of the 4th article: "*Any person charged with felony, &c. who shall flee from one* STATE *into another.*"

"No tax or duty shall be laid on articles exported from *any State.*"

"No preference shall be given to the ports of one *State* over those of another."

"No vessel, bound from one *State* to another, shall be charged," &c.

Here the word *State* is evidently used, in all these cases, as meaning Territory, and not People.

Another clause: "No State shall enter into any Treaty, grant letters of marque and reprisal, coin money, emit bills of credit, pass any bills of attainder, ex post facto law, or grant any title of nobility."

Here it means *Government.*

"Persons charged with treason against a State," &c. Now treason is a violation of the duties of allegiance to an established Government, holding and exercising sovereign power, and there can be no treason but against such authority."

Here, again, the word *State* was intended to mean *Government*, and not *People.*

There were numerous other provisions, scattered through the Constitution, Mr. S. said, in which *State* was used, as applicable either to Territory, Government, or People.

Now, sir, I demand to know, how gentlemen assume the fact, that, in the authority *to each State to appoint electors*, the word "*State*" necessarily means *People*. If the framers of the Constitution intended, as gentlemen suppose, to limit this power of appointment to the People, would they not have used the words which must naturally have suggested themselves, as peculiarly appropriate for such an object—would they not have been "*The People of each State shall appoint?*" &c.

Have I not a right to say, that these words would have been used, if such had been their intention, from the phraseology of the preceding section of the Constitution, in relation to the organization of the House of Representatives? This House, we all know, Mr. Chairman, was intended as the popular branch of this Government, and to spring *alone* from the *People*; consequently, we find it secured by the words I have just supposed. They are—"*The House of Representatives shall be composed of Members chosen by the People of the several States.*" Here the right of the People to elect, is expressly guarded, and not left to be inferred from the words, "*chosen by the several States.*"

Now, does it not seem strange, that if the Electors of President were intended alike to spring immediately from the People, and them alone, that, in the succeeding clause, the words "*The People*" should have been dropped, and the words "*each State*" only retained?

In such an instrument, Mr. Chairman, as this Constitution; so remarkable for its brevity, its comprehensiveness, and its perspicuity; and so felicitous in its language and composition, can we believe that, if its wise framers intended to limit the exercise of this power alone to the *People*, they would not have expressed it in direct and guarded terms? If, on the contrary, it was intended by them as a Federal, rather than a popular right, and to be left to the *States*, in their political characters, to be exercised according to their interests and pleasure, is not the language of the Constitution just what it ought to have been, and both clear and explicit?

As a further illustration, I beg the attention of the Committee to the peculiar phrascology of a part of the 8th section of the 1st article of the Constitution. "Congress shall have power to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to *the States, respectively, the appointment of the officers.*"

Now, sir, can there be a doubt, that the word *State* was here used as synonymous with Government? and has not every *State Government* in the Union so construed it, and appointed their militia officers? And if it is to be understood, in this part of the Constitution, in relation to the *appointing* power, why may it not be so in another part as to the same power—if as to one officer, why not as to another? Where, in point of fair and just construction, is the difference? I ask it to be shown. Sir, it does not exist. There is nothing to justify the assumption on the other side, and it is wholly gratuitous. That it was not intended, as gentlemen suppose, to be confined to the People, Mr. STEVENSON said he would now proceed to show, from authority which ought to be conclusive—it was the authority of the Convention itself—and it was really curious, as well as interesting, to mark the history of that clause in the Constitution, concerning the election of the President. With no part of the whole plan was there so much difficulty and trouble as with that.

The first proposition which was offered in the Convention was by Mr. Edmund Randolph, of Virginia. It was, "*That a National Executive be appointed by the National Legislature.*" This was on the first of June, '87.

Mr. Wilson then proposed to amend, by striking out "National Legislature," and inserting, "Districts the Union." This proposition the Convention refused to consider, and never did consider.

On the 9th of June, Mr. Gerry moved to amend, by substituting for "the National Legislature," the words "the Executives of several States." Lost; ten States against it; one divided.

On the 17th of June, the resolution was reported in the Committee of the Whole to the House.

It was then moved to strike out "National Legislature," and insert "the People of the United States." Lost nine to one.

Then, "by Electors chosen by the State Legislatures." Lost, eight to two.

The resolution for the appointment being made by Congress was then unanimously agreed to.

On the 19th of July the subject was reconsidered. It was then proposed to strike out "National Legislature," and insert, "*by Electors chosen by the State Legislatures*;" and carried—eight to two.

July 24—again reconsidered, and the "National Legislature" substituted for the "State Legislatures," by a vote of seven to four.

The whole subject was then referred to a Committee of Detail, (of five members) who reported that the President should be elected by the "Legislature"—Congress.

It was moved in Committee of the Whole, to strike out "Legislature," and insert "*People.*" Lost—nine to two. Then by "*Electors chosen by the People of the States*" Lost. Then by "*Electors.*" Lost.

On the 31st of August, the clause as to the election of President was referred to a Committee of eleven, one from each State, called the Committee of Compromise, and they reported the existing provision in the Constitution, that "each State should appoint as its Legislature might direct."

These, Mr. Chairman, were the proceedings of the Convention, upon that part of the Constitution which relates to the appointment of the President; and what from warranting the proposition assumed by the honorable gentleman from South Carolina, that the "People were only intended to appoint Electors, they prove, most clearly, that the right was intended to be given to the *States.*

Can any man, upon a view of these proceedings, hesitate to believe that the Convention considered the right as federal, and not popular? Sir, the indications are too clear to be resisted.

But it may be said that the reconsideration, and final rejection, of the proposition allowing the State Legislatures to appoint, is at least a negative argument that they were not intended to exercise the right.

Mr. S. thought not; and the reason was obvious. The Convention determined to vest the right of appointing Electors in the States; and having done so, then to have confined the exercise of the right alone to the State Legislatures, would not only have been a limitation and restriction of the right, but would have produced jealousy and dissatisfaction amongst the States. It was, therefore, deemed safest to vest the power in "*each State*, to be exercised according to its sovereign will." It was for this reason, clearly, that the words "*State Legislature*" were not retained, as was at first proposed.

It has been well remarked, that a cotemporaneous exposition of any instrument, and especially by those who had an agency in its formation, has always been deemed and was in fact amongst the best guides to ascertain the true meaning, and especially on those subjects where the real inquiry is, as to what the intention of the parties to the instrument was. Now, sir, said Mr. S., I will proceed to lay before the Committee the opinions and concessions of many of the most distinguished men, in relation to this part of the Constitution; men who could not have [illegible]

to deceive, and who it was not possible could be mistaken; and I shall not hazard too much when I say, that if the highest and most conclusive evidence of intention, is, or ought to weigh, then I will place the question beyond the reach of doubt.

Here Mr. S. read the following passages:

From 1st Federalist, p. 258.—"The Executive power will be derived from a very compound source. The immediate election of the President is to be made by the *States, in their political characters.* The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies; partly as unequal members of the same society."

1 *Fed. p.* 306. "Without the intervention of the State Legislatures the President cannot be elected! They must, in all cases, have a great share in his appointment, and will, perhaps, in *most* cases, *of themselves determine it.*"

From 2d vol. of J. Dickerson's work, p. 84—the celebrated letters of Fabius, published in '88, and occasioned by an alarming hesitation in some of the States to ratify the Constitution. "The President is not to be chosen by the People at large; but by electors chosen by each State, as the Legislature may appoint. As these electors are to be appointed as the Legislature of each State may direct, the fairest and freest opening is given for such State to choose such electors as shall be most signally qualified to fulfil the trust."

Speech of Mr. Wilson, in the Pennsylvania Convention.—"The President of the United States is to be chosen by electors appointed in the different States; and unless here be *Legislatures to appoint Electors*, the President cannot be chosen. The Convention were perplexed with no part of the plan so much as with the mode of choosing the President of the United States."

Speech of Mr. Hamilton, in the New York Convention.—"If the State Governments were to be abolished, the question would wear a very different aspect. They are absolutely necessary to the system. Their existence must form a leading principle in the most perfect Constitution we could form. *The Union is dependent on the will of the State Governments for its Chief Magistrate and its Senate.*"

Speech of Mr. Adams, in the Massachusetts Convention. "The *President and Senators* are to be chosen by the state Legislatures."

Speech of Mr. Gerry, in Congress of '89, on the bill for regulating the Executive Departments.—"It has been urged by some gentlemen that the President will be the man of the People, and their particular representative. Now, how can this warrant the strong terms in which it has been asserted, when the President may be elected by electors *appointed by the State Legislatures?*"

Speech of Mr. Jackson, on same subject.—"But the President may be elected by Electors appointed by the State Legislatures."

Speech of Mr Baldwin, on same subject.—"The President is to be appointed by Electors chosen by the People *appointed by the State Legislatures.*"

Now, sir, is it not conclusive, from these authorities, that the Convention intended to give the appointment of electors to the States, and that the Legislatures were considered as having the power to make the appointment? That they were giving to the States, through their Legislatures, a wise and salutary check upon the President, instead of making him responsible to the People as a consolidated nation?

How, then, is the gentleman from South Carolina justified in denouncing this as a bold usurpation by the Legislatures, wholly unwarranted by the Constitution, and never thought of by its framers, or the People? The right was exercised, said Mr. S. in many of the States, immediately after the adoption of the Constitution: and in no State in the Union so often, probably, as in South Carolina! Would the People of that patriotic State, and those who formed the Constitution, have looked on at so glaring an act of usurpation on the Part of the State Legislatures, if they had not known that the power was rightfully exercised, according to the principles of the Constitution, and the wishes of the People?

Sir, it is impossible!

But, if neither the Government nor the Legislatures of the States, have the rightful power to appoint Electors, and it is with the People, yet this amendment for districting ought not to prevail, as I shall now proceed to show.

However the honorable gentleman from South Carolina and myself may differ in other respects, we shall agree, I imagine, in this—that in some parts of the Constitution the People are regarded as citizens of the Union, and empowered to exercise their rights without control or check by the State Governments; in other parts they are recognized as citizens of distinct State sovereignties, and empowered to exercise their rights as members of the Union only, through State organs. Now, it will be admitted, I presume, that if this right of appointing Electors is with the People, yet it is with the People of the States, as distinct State societies, in their highest sovereign character. The idea of sovereignty imports necessarily, will, discretion, judgment; the essence of sovereign power is to act, or not; and to act when, and how, it pleases! If this be so, does not this amendment impair this right, and limit the exercise of the sovereign power vested in the People of the States? Does it enable it to act how and when it pleases? Does it not take away all discretion, as to the manner of exercising and performing an important right, and *force* and limit it to one mode?

But it is still more objectionable in another point of view. It may defeat the right which was intended to be secured! In giving the election to the States, as States, it was to enable each to act in her Electoral College, separately and definitively. Each State was to exert that influence which her interests, and the majority of her People, fairly expressed, might require. It was not particular districts, or portions of territory in a State, or masses of population, that was intended to be represented, but it was the sovereignty of the State—and if that sovereignty be in the People, (which I am willing to admit) then the wishes of a majority of the People of the State are to prevail. Now, sir, let me suppose that nineteen twentieths of a State are in favor of A for President, and one district, on the borders of the State, wishes to go with an adjoining State, for B, do you not, by this amendment, enable that district to defeat the wishes and interests of its own State, and to take one from the number of its electoral votes? Do you not break the force of State interest and will, and especially the large States, and enable local and partial interests to defeat the general interests of the State? Sir, I can tell the honorable gentleman from South Carolina, that, by his amendment, "Virginia, voting by districts, would not be Virginia still."

But we are told that there is a great want of uniformity in the manner of choosing Electors; that uniformity is desirable, and that there ought to be some fixed rule in the Constitution. Mr. Chairman, it is not a rule, but a right, which the Constitution meant to secure; and uniformity was never intended. Make it uniform, and you destroy the very object intended in leaving the State free as to the mode of exercising this right; you defeat the very object which I have already shown the Convention had in view, in not originally limiting the appointment to the State Legislatures. It may be important, in the opinion of a State, to change its mode, and to take away the power of doing so is to limit what ought to be free; what the honorable gentleman from South Carolina thinks an

evil, I consider an important benefit. Sir, what importance is it to Virginia, that South Carolinia appoints her Electors by the Legislature; or to South Carolina, that Virginia appoints by the general ticket? None! But it is said, that, if we do not adopt some uniform rule, we shall be forced into uniformity, and that the result will be the same. This is not so. It will not be the same thing. If all the States were to vote by general ticket, the relative weight of each in the Electoral College would, I admit, be preserved; but this would not be the case if you district the whole Union. A small State can be more easily united by districts than a large one; South Carolina and North Carolina would be enabled, probably, by districts, to unite and to give their full number of electoral votes to one man; whereas Virginia, and Pennsylvania, and New York, from their large territory and vast population, might be divided, and broken into fragments, and their weight and influence in the election greatly impaired. It would suit the interests of the small States admirably well to have this uniformity, but not those of the large ones. It would strip the large States of an important sovereign right. It would break into fragments their aggregated strength, and sink them into insignificance. Unless this be the object, there is no practical benefit, that I can see, which would be obtained by this mighty boon—uniformity!

But another evil has furnished a topic for declamation, and is the great desideratum with the advocates of this amendment; it is, that you will enable the will of the majority to prevail. Although I am very sensible, Mr. Chairman, that there is nothing more fallacious than to found political calculations on arithmetical principles, yet I will follow the honorable gentleman from South Carolina, in the comparative view of the general ticket and district systems, and will demonstrate, that, if either system ought to be adopted, the general ticket is decidedly preferable in ascertaining and expressing the will of the majority.

If you divide a State into districts, although the majorities should exceed the minorities by a few votes, there is no transfer of those minorities to other districts. By the general ticket system, all the majorities and minorities of the State are brought into one aggregate mass, and a single majority deduced. Let us illustrate by an example: A and B are competitors for the Presidency, and New York the State to vote. Her districts are thirty-six. It might happen that, in nineteen districts, A should get a majority of one hundred votes over B: In the seventeen other districts, B's majority in each district might be so large, as that, by adding together his majorities in the seventeen, and his minorities in the nineteen, he would get a large majority of the votes of the whole State, and yet A would be elected though he only got a minority. By the general ticket system, this cannot happen; because the majorities and minorities of every section of the State being brought together, there is but one majority, composed of all the votes of the State; and consequently no one can be elected without having the public voice in his favor.

But the honorable gentleman from South Carolina supposes the case of two States, by the general ticket system, to show the ascendency of minorities. He supposes that New York has 100,000 voters, and Pennsylvania 75,000—that 60,000 voters in the State of New York are in favor of A, and 40,000 in favor of B; and that the whole 75,000 voters in Pennsylvania should give their votes to B, who had received the New York minority. The result of this would be that A, who had received only 60,000 votes, would get thirty-six electoral votes, whilst B, who received 115,000, would only receive twenty-eight. And why, let me ask, should it not be so? The 60,000 votes in New York was a decided majority of the State, and ought not to give less the whole electoral vote, than if the State had been unanimous; and the 75,000 in Pennsylvania could not give a greater electoral vote than 37,600, which would have been a majority of the State. But district these two States, and then see whether the same result is not produced. Let us suppose, that in thirty-six districts of New York, A gets majorities of one hundred—this will give him 50,360 votes—B's minority in New York will be 49,610. Then B gets, in twenty-eight districts of Pennsylvania, the whole 75,000 votes. The consequence is, that A, with only 50,360 votes, gets thirty-six electoral votes; and B, with 124,610, gets only twenty-eight electoral votes.

But, district the whole United States, and I undertake to say, it is susceptible of demonstration, that a little more than a fourth of the votes of the United States can elect a President, against the will of nearly three-fourths, if there be but two candidates. For example:

Divide the Union into 261 districts, with 1,000 votes in each	261,000
Let A get all the votes in 130 districts	130,000
Let him lose the majority in 131, by 20 votes in each; he would then receive 490 votes in each	64,190
Total number of A's votes,	194,190
Now, let B's electors succeed in 131 districts, by a majority of 20 in each, and he would receive 510 votes in each	66,810

The consequence would be, that B would be President of the United States, with 66,810 votes, against A who had received 194,190.

In proportion as you increase the number of candidates, the evil of this system is augmented, since the plurality of the votes only is requisite to choose the elector. How strikingly exemplified was the defective nature of this system of districting in the late election for President in Maryland. In that State Mr. Adams got a majority of the whole number of voters. He had a majority in fifteen out of nineteen counties, and in six out of nine Congressional districts; yet he only obtained three electoral votes, General Jackson seven, and Mr. Crawford one. The general ticket system would have given Mr. Adams the entire vote of the State.

Here, then, Mr. Chairman, is practical proof, that this system of districting is not calculated to secure the expression of the popular will. But we are told that districting will prevent union and combination between the States and the Presidential electors. If such a result could be produced, that would be sufficient with me for rejecting it. What! take from the States their defensive armor! Deprive them not only of the power of resistance for their own saftety and protection, but of resistance, if necessary, invasions of the public liberty by the national authorities! Sir, I would much rather strengthen, than weaken the power of those vigilant sentinels over our national rulers—these guardians of the rights and liberties of the People: for such they are, and were intended to be, by our fathers. The gentleman from South Carolina, however, looks upon them in a very different light. He thinks they are not to be relied on as checks against ambition, or guardians of liberty—that the time may come when they will communicate a morbid action to the whole in this Government. Pardon me, Mr. Chairman, while I contrast the opinion of that gentleman with those of Mr. Madison and Mr. Hamilton upon this subject.

[Here Mr. S. read the following extracts from the Federalist.

1st vol. 169. "The State Legislatures will always not only vigilant, but suspicious and jealous guardians of the rights of the People against encroachments of the Federal Government, and will constantly have their attention awake to the conduct of the national rulers. They will be ready enough, if any thing improper appears

sound the alarm to the People, and not only become the *voice*, but, if necessary, *the arm of their discontent.*"

Page 180. "The General Government will, at all times, stand ready to check the usurpations of the State Governments, and the State Governments will have the same disposition towards the General Government. The People, by throwing themselves into either scale, will infallibly make it preponderate. If their rights are violated by either, they can make use of the other, as *the instrument of redress.* It may safely be received as an axiom in our political system, that the State Governments will, in all *possible contingencies, afford complete security* against invasions of the public liberty by the national authorities. Projects of usurpation cannot be masked under pretences so likely to escape the penetration of *select bodies* of men, as of the People at large. The Legislatures will have better means of information; they can discover the danger at a distance, and, possessing all the organs of civil power, and the confidence of the People, they can at once adopt a regular plan of opposition in which they can combine all the resources of the community."

From the Speech of Mr. Hamilton in the Convention of New York. "The People have an obvious and powerful protection in their own State Governments. Should any thing dangerous be attempted, these bodies of perpetual observation will be capable of forming and conducting plans of regular opposition."]

Now, sir, are these the bodies of men who are to lead the People into false security, and, whilst professing to defend, betray their liberties? Have we not a right, on the contrary, and ought we not to regard them as the safest and most efficient checks against power and ambition? Will you leave them the power to resist ordinary acts of legislation and usurpation, by our *national rulers*, and yet take from them the power of uniting to say who those *rulers* shall be? Are they to resist Cæsar upon the throne, but to be allowed no power to prevent his being placed there? No, sir; the People of this country will never consent to see their Legislatures stripped of the important right of union and combination. Their attachments to them are too strong, and they repose on them with too much confidence. Is it not natural (and we may fairly resort to the social principles of our nature, for the purpose of drawing conclusions as to the conduct both of individuals and communities,) that this should be the case? We love our families better than our neighbors; and our neighbors, than strangers—and why? Because human affections are like solar heat: they lose their intensity as they depart from the centre, and become languid in proportion to the expansion of the circle on which they act. It is on this principle that the People will forever feel more attachment towards their State Governments than this, so far removed from them. They operate immediately upon all those objects most dear to freemen, affecting life, liberty, and property; and it is upon them they will repose with most security and pleasure.

It is not to the State Governments that the People will look for schemes of dark and wild ambition; it is in this Government only the danger lies, and it is upon their State Legislatures they must rest for protection and safety. They will not consent, therefore, to touch one iota of their power.

But, we are told there is another evil which this amendment for districting is to cure! Congressional and State caucuses are to die! Those monsters that have devoured the rights of the People, and are to trample down their liberties!

And pray, Mr. Chairman, what are these things called *caucuses*, or *conventions*, as some gentlemen, more fastidious than I am, are pleased to call them? Do they really produce any evil in the country? Did any man ever hear of a State caucus controlling public opinion, or forcing upon the People a President who was obnoxious to them? Sir, State caucuses are resorted to as the means of aiding, not defeating, popular opinion. They follow, not precede! They enable the views and wishes of the People to be carried into effect; and not scattered and broken. These are the only State caucuses that I know any thing of. Such we have generally found them in the "Old Dominion"—useful rather than dangerous. We have, in that State, no disposition to quarrel with them so long as they answer the purposes for which they ought only to be used: when they cease to do so, the People will soon crush them, without an amendment of the Constitution.

As to the caucus of sixty-six, of which we hear so much, I have but one word to say. I was one of them, and, I believe, the second man who came upon the floor. I went into that caucus, Mr. Chairman, as you know, not to designate a Cæsar for the Republic, but to aid in the election of a virtuous and enlightened patriot. It has been denounced as a party measure, here and elsewhere. Sir, I am willing to admit it. I went with my party, and for the sake of party. Nor am I ashamed of the appellation, when it is rightly understood: *not party* for men, but measures; *principles*, and not men, I go for. Without such parties, what should we have been, or what shall we become? Without party, *cemented by union of sound principles* and sound men, evil men and evil principles can never be successfully resisted. To this extent, and no farther, I am, and shall ever be, a party-man. That caucus, Mr. Chairman, was not composed of men carried there by interest or ambition. Sir, if I had but one hour to live, and I was called upon to say which was the most disinterested body of men (in proportion to their numbers) I was ever in, I would say that it was this caucus; and I have now but one answer to give to those who have denounced it, which is, that I believe no man was kept out of that caucus by better or more patriotic motives than actuated those who went into it.

But, sir, after all that can be said against caucussing, if it be wrong upon principle, and evil in its tendency, this amendment will and can afford no security.

Nor will this scheme of *districting* and sending back the election a second time to the People, which the honorable gentleman from South Carolina has so much at heart, prevent that tumult, and violence, and popular excitement, which many fear, but which he seems to ridicule, as idle and visionary. And why, I ask, may it not be expected? Will districting strangle Executive influence, or State intrigue? Will it banish State pride and feeling, and State interests? Will districts be less under the control of these feelings and influences than States?

In proportion as you narrow the territory upon which intrigue, or influence, or wealth, is to act, do you not give force and facility to its operations? May not districts be counted, and then intriguers go to work? Are they not to be laid off by the States? May not the vilest character of party triumph as well in districts as out? And will not districts, insulated and unsupported, sooner become the victims of power and ambition than States?

Sir, if these things are to be expected, shall we not have tumult and violence in the first election, much less in the second? Can we expect that, after the first battle has been fought, and the parties again take the field, stimulated and excited, and fired by a previous contest, that the People will not be roused and excited, and that tumult and violence will not follow? Is there any thing, Mr. Chairman, in the past history of our country, to forbid it? Have we ever had a second election, under circumstances such as would now be likely to arise? If we had experienced even the attempt at a second election, yet do the past times afford any light for the future? What has been, or what is now, the power of the Executive of this country, (great as it is) to what it will become in the next half century? If now its power and patronage are so great as to make us tremble for the virtue and liberty

of our country, what may we not expect in a few more years? In proportion as the office shall become important and powerful, will not the efforts be correspondingly great to obtain it? And may it not be questioned, under such circumstances, whether a second election, sent back to the People, will not only produce violence and tumult, but the deepest party conflicts? Sir, I not only expect it, but I do not see how it is to be avoided; and well may the sentiment contained in a late message of the Governor of Virginia be responded!

The honorable gentleman from South Carolina has, however, mistaken the language of that message. It did not affirm that "turbulence and violence *would be* produced by throwing back the election;" but, if my recollection is right, it was, that it might *well be* questioned whether it would not. Sir, I can tell the honorable gentleman from South Carolina that he has mistaken as much the character of that individual, (whom I have long known, and am proud to call my friend,) as he has, I think, the correctness of the opinion which he expressed. It is true that he is a young man; but he is one whose character, intelligence, and virtues, justly give weight to his opinions. But it is unnecessary to speak of him to you, Mr. Chairman; you know him well: for he has stood by your side upon this floor, in stormy and difficult times; and you found him, in action and opinion, *no boy in his sophomore year.* He has been placed in the high station which he now holds, by the force and weight of his character; and when the gentleman from South Carolina shall know him as well as I do, he will be enabled to appreciate more justly his character and opinions. Nor does the honorable gentleman know much more of the character of Virginia, or her People, than of her Governor. Sir, he told us that he had recently been through the State; that the elements were all in motion; that she would soon be in revolution; and that those who now rule her destinies would be overthrown. Mr. Chairman, I am mortified that the honorable gentleman should know so little of Virginia. Let me tell him, that it is not by passing occasionally through such a State, or visiting her watering places for a few weeks, that a correct opinion can be formed of the character and sentiments of her People. If he will visit us for the purpose of really knowing who and what we are: if he will go into the bosom of our State, and into the families of the plain and honest and intelligent part of our society, mix with them, and hear their opinions and sentiments, he will entertain, for the body of her People, and her public men, more just and enlarged and liberal sentiments; then he will be enabled to appreciate us as we deserve, and discard the unfavorable impressions which he has formed. Virginia, in revolution, and ruled by political leaders! Why, sir, if there is any State in this Union, whose devotion to principles, and not men, has been pure and undefiled, it is Virginia. Who are these leaders of which the honorable gentleman speaks, that rule the destinies of that State, and who have been in the habit of making Presidents with as much ease as did the Pretorian Cohorts, the masters of the Roman world? Sir, they exist only in the mind; and I can assure the gentleman from South Carolina that Virginia is not only in peace and quiet, untouched by revolution, and likely to remain so, but that she wishes no change in the mode of exercising her rights, or in the charter of our Union; and, least of all, such change as this amendment would bring her.

Mr. Chairman, I have troubled you long, too long, and, though I have yet much to say, I must hasten to a conclusion. A few more words and I shall have done. The honorable gentleman from South Carolina has cautioned us against indulging feelings of idolatrous superstition, or mistaken veneration, for the great charter of our union and liberties. Whilst I acknowledge myself free from these feelings, I own that it is, in my eye, an instrument of a most sacred character. Ours, sir, is no ordinary Constitution or form of Government. It is no mere of theory or speculation. It was not the work of yesterday, which may be amended to-day, and to-morrow, and every day, as parties may arise or opinions fluctuate. It is a solemn compact, based upon the interests, principles, and prejudices, of distinct and independent societies of free men, and intended to secure and perpetuate our rights and liberties. It was the result of great perseverance, trial, and patriotism. It is composed of many wheels, its springs, and balances; of counteracting and co-operating powers; one part leans so much on another, the parts are so made for each other, that to unsettle is to destroy. It was the work, sir, of the most illustrious body of men that the world ever saw. It was formed in the midst of all the virtues, and in an age of wisdom. I would approach it with the same feelings of veneration and awe that I would the sepulchre of my fathers. Whenever any of its great principles are to be touched, I confess I feel distrust, and it is this feeling of distrust that I do not wish to see impaired. If it is to be amended, let it be in extreme cases; let the good be great which is to be obtained, or the evil to be remedied. Let every amendment bring with it the strongest credentials. Let it be good not only in the design, but safe by its agreement with what we already enjoy. Such amendments, and such only, will I ever consent to make. Is the one now before us of that character? Will it accomplish all the purposes and benefits which its friends suppose? I fear not. I look to it myself, as the foodful nurse of strife and disunion, rather than of peace and harmony, to our Union.

These, sir, are no times for great political experiments. Let us not shake the public confidence in the stability of our free institutions. Let us not especially attempt to swell the powers of this Government, already too great, at the expense of the States. Let us guard the lines which divide the two Governments, by a watchful and systematic jealousy, on the part of the rulers in both departments. For myself, I will not consent to touch one right which belongs to the States, for any purpose of reform. I will adhere to them, and their Governments, as the shield of this Union and the safeguard of our liberty. It was upon them that our fathers delighted to repose: they brought us through an age of revolution, and established to triumph gloriously in two wars. It was in these State Governments that the beacon-fires of freedom were first lighted up, and it is there they will be last extinguished, and I will say, in the language of an eloquent man, now no more, that, if ever the time shall arrive when the Executive of this Union, wielding his mighty power and patronage, shall advance to the subversion of the liberties of his country, then the wisdom of our fathers will receive the crown of experience: for then those State Governments will constitute a sovereign phalanx, under whose constitutional banner the People may rally, and crush the invader!

Pause! pause! I beseech you, Mr. Chairman, in the work of innovation, and do not "madly rush in where angels might fear to tread." I ask it for my country—its repose, and freedom.

Mr. INGERSOLL then addressed the Committee. He said, he rose with great reluctance, as he knew the patience of the Committee was already nearly, if not quite, exhausted, and he could not expect to hold their attention, after the bright and brilliant displays which they had so lately witnessed from the honorable gentleman from Virginia, Mr. STEVENSON) who had just resumed his seat. On the ordinary subjects of legislation, (continued Mr. I.) I am well satisfied to give a silent vote; but, on the present occasion, standing here, as I do, the Representative, in part, of one of the small States of this Union, I should feel that I was an unfaithful servant, did I not make an effort, however feeble it may be, in defence of those rights which were secured to the State sovereignties, small as well as great, by the Fathers of the Republic, but which are

effect of these resolutions, if adopted, will be to wrest, forever, from their hands.

It is proposed, by the resolutions—first, to take from the States the right to select, in their Federative capacity, a candidate for the Presidency, from the three highest returned by the People, where no one has a majority of the whole number of votes. This resolution, in its terms, is expressed somewhat equivocally: it proposes, merely, to amend the Constitution, so as to prevent the election, in any contingency, from devolving on Congress. The honorable gentleman from South Carolina (Mr. McDUFFIE) has, however, frankly informed us, that the plan is not only to do away the contingent agency of the House, on the second ballot, but to destroy the State vote, should a second ballot become necessary. The second resolution proposes to divide the whole Union into Electoral districts. I will examine both of these propositions, in the reversed order in which they have been presented. The proposition to district the Union, like the one which precedes it, is also rather equivocally expressed; as, indeed, all general propositions must be, where we are not furnished with details. It does not specify whether the Electoral Colleges are to be preserved, in the contemplated amendment, or whether the primary votes are to be given directly for the Presidential candidate. It may, therefore, become necessary, to meet the full force of the resolution—to examine the district system, as applicable to both plans; for there might be weighty reasons with many for adopting the district system, if the Colleges are to be preserved, which would lose their force should there be no intermediate agents in the election, between the People and the President. Let me here be distinctly understood to avow myself in favor of the district system, as applicable to elections of the legislative branches of our State Governments, and all local appointments. Nay, I would go further, if the Electoral Colleges should be preserved, and if the district system, when applied to the State sovereignties, particularly to the large States, did not interfere with the federative principles on which the Constitution is based; I should, in that case, prefer choosing the Colleges by uniform districts, to any other mode. My reasons are these: In the appointment of public servants, the agent, as a general rule, should be brought under the eye of the principal, that the constituent may know, and thoroughly understand, the character and qualifications of the individual to whom he entrusts his vote. But, in the view which I take of this subject, to enforce the district system upon the States, as applicable to the election of the Executive branch of this Government, would be departing essentially from the original compromise, which secured to each a sovereign character. Aside, however, from this objection, if the Electoral Colleges should be dispensed with, which, judging from what we have seen and heard, appears to be the prevailing opinion of many of the friends of the proposed amendments, the reason for district elections would cease with the abolition of the Electoral Colleges. If we are to vote directly for the President, the candidate is not brought nearer to the People, by gathering their ballots in districts.

There is, I apprehend, a fallacy at the root of the argument which was so ingeniously raised, on this subject, by the honorable gentleman from South Carolina, that has not been sufficiently adverted to. He seems to suppose that the true reason why district elections are preferable to any other mode, is, that the minority of a State is represented by such elections. But a moment's reflection will convince us that this is not so. If you vote in districts for the President, there will be a minority in each electoral district, approaching, in many instances, to within a few votes of the district majority. These minorities, though units in their respective districts, will, in the footing of the general result of a State Canvass, present a strong phalanx of votes; which, however, are entirely unfelt, and thrown out of the account in the winding up of a Presidential election. I cannot illustrate the subject better, than by taking the case which has been alluded to, as having happened in a neighboring State, during the late election. The candidate who polled the greatest number of votes, in the State alluded to, carried but three electoral districts, while another candidate, with a less number of votes, actually carried seven districts. Sufficient, I presume, has been said, to show that the great principle which renders district elections valuable, is, not that the majority and minority have always the State fairly divided between them, according to their relative numbers, but that such elections are valuable only where, from the nature of the case, the candidate will be better known to the constituent. This, however, cannot be the case where no Electors are to be appointed, and the Presidential candidate resides in one State, and the constituents are voting in another, or in the same State. A candidate residing, for instance, in Massachusetts or Tennessee, is not brought nearer to the voters of South Carolina—that is, they have no better opportunity to become acquainted with his qualifications, by being counted off into sections, than they would have if they gave their ballots for him in a general State vote. As applicable to such an election, the reason of the district rule ceases; and where the reason of the rule ceases, it is time to drop the rule itself. You might, with as much propriety, say, in the election of the Governor of a State, that the candidate should succeed, who obtains a majority of counties or districts, whether he has a majority of the People or not.

If, therefore, the Electoral Colleges are to be abolished, as useless in practice, the more equitable way would be, to let the People vote directly for the President, in their primary meetings, and give to the candidate who obtains a majority in the State the whole strength of the State vote, graduated to its number of Representatives and Senators in Congress. Or, what would be more compatible with the Federative principles on which the Union was formed, let each State determine for itself, in its sovereign capacity, as is now the case, whether its vote should be brought out with an unbroken front, or in the diversified forms of district elections. This, Sir, would be preserving the old land-marks, the primitive principles of the Constitution, unimpaired, and only varying the forms in which these principles should be brought into action. One other remark on this branch of the subject: Why are we called upon to abolish the Electoral Colleges? Have they ever gone counter to the will of the power that created them? The answer is—No. But, since the Electors faithfully comply with the instructions of the People, for whom they act, therefore they are unnecessary—they do nothing, more or less, than the principals could do for themselves. Granted: but what then do you gain by dropping them? If this electoral machinery, instead of resisting or diverting the popular voice, only conveys it to its destined point, is it worth while to alter the venerable charter of our rights for the sake of forms, when you already have the substance for which you seek? But I have already devoted more time to this part of the plan, than I at first proposed, and will, therefore, hasten to the examination of the other proposition, which is, by far, the most important of the two.

The amendment which took place in the early part of Mr. Jefferson's administration, in relation to the election of President and Vice President, did not materially change the federative features of the original article. The Republican wisdom of 1804 left those features firm and prominent as they were introduced by the wise men of '87. But, sir, the amendment now proposed is aimed at the root of the federative principle; and if it prevails, the small States, if they are not eventually crushed, will be reduced to mere dots, upon the political map of our country. Sir, when I am called upon to revise the grave work

of the Fathers of this Republic, and am reminded that my native State was represented in the Convention by the stern republican virtues of old Roger Sherman, aided by the powerful eloquence of William Samuel Johnson, I feel oppressed by the magnitude of the subject on which I am to act; and cannot but regret, that, on this occasion, my constituents have not an abler representative in the person of the humble individual who now addresses you. But, sir, I shall not shrink from my duty: for, I believe, if I could ask the People whom I have the honor to represent, what course I should here pursue, they would answer—whatever you may do, remember, "Don't give up the ship."

Mr. Chairman, this nation has just emerged from a Presidential election—an event which, when it occurs, in its mildest forms, is apt to create some excitement. Prejudice will, on such occasions, steal within our bosoms, and imperceptibly wind around the purest heart. How different was the situation of the venerable men who framed the institution that we are now asked to change in its most vital point! The framers of this Constitution entered not upon their holy work when they were either mortified by disappointments, or elated with victory. They came together with cool heads and incorruptible hearts; they regarded not the present day alone—they looked to posterity—their motto was, God and our Country. It was in a spirit of compromise and mutual forbearance that they were enabled to reconcile, and carefully balance, the complicated and conflicting interests of the thirteen States, so as to unite them under one common Government. The circular addressed by the Convention, to the States, after they had finished their labors, and signed by Washington, speaking of the peculiar difficulty of the compromise, thus observes: "This difficulty was increased by a difference among the several States, as to their situation, *extent*, habits, and *particular interests*." Again: "The Constitution which we now present, is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable." Sir, in no part of the instrument was the spirit of mutual deference and concession more strikingly displayed than in the article which regulated the election of Chief Magistrate. The Convention were embarrassed here, as well as elsewhere, by the "extent" of some States, and the "particular interests" of others. Some of the States were, comparatively, extensive in population; the territorial "extent" of others was wide, and they were rapidly increasing in strength—others were dense in population, but from the restricted extent of their limits, were destined to soon rank in the smallest grade of States; they were consequently apprehensive of being swallowed up by a general consolidation; while a third class of States were delicately situated in regard to their "particular interests." These last possessed a peculiar population, which had been entailed upon them, when in a colonial condition, by the mother country; but were considered by the Convention as being, in some respects, property, in other respects, persons. To reconcile these apparently jarring interests, and as far as possible, to leave them all undisturbed, was the most arduous and delicate task that ever devolved upon man. Hence, in regulating the election of Chief Magistrate, the Convention felt it necessary to provide that each State should be allowed to give either a general, or a district vote, as it should decide for itself, in its sovereign capacity, which secures a commanding influence to the large States when they choose to exert it; but this again was held in check by a further provision, which enabled the small States to stand on an equal footing with their larger neighbors, in selecting a candidate, should there be no choice effected by the People, in the consolidated votes of the electoral colleges; while, again, three-fifths of the slave population were allowed in the representation of those States whose particular interests seemed to require that security. Now, sir, let me ask the attention of the Committee to a closer view of the proposed amendments. By these resolutions, the large States are required to give up the right to an unbroken electoral vote; the small States are disarmed of their federative strength in the contingent election, when the People fail to make a choice; and the only interest which remains untouched, is the three-fifths representation of the peculiar population to which I have alluded. Can it be expected that we should yield our part of the constitutional compromise, when the correlative powers of any of the other States are retained? The interest so carefully protected by the Convention, and so closely watched by the State which the gentleman from South Carolina ably represents, is not more valuable to his constituents, than the federative principle, which his resolutions will destroy, is to my constituents. Let me assure the gentleman, that our fathers have so arranged this subject, that we have both a common interest to defend. The two principles were engrafted into the Constitution originally together—they must grow together, or they must be plucked out together. Sir, I generally listen to that gentleman with pleasure, and with profit, even when he differs with me in opinion; but when I saw him the other day calling upon the small States to take this amendment, or encounter the wrathful displeasure of a General Convention, I watched him with intense anxiety: for I felt as if he was treading over the hidden flames of a volcano, upon a crust that was hardly strong enough to bear him. The interests of the North and the South are intimately blended in our Federative Union; I beseech the gentleman not to separate them. Lay not rash hands on this original compromise of our mutual claims—it is the key-stone of the constitutional arch.

In all the discussions on this subject, either here or elsewhere, it has always appeared to me, that the important fact has been too often overlooked, that this Government is of a mixed character. We regard our Constitution as containing a sacred system—it is true, much as we venerate our Bible; but one, like the other, is too often laid upon the shelf, and not opened half as often as it ought to be. Examine critically this instrument, and you will find that the tendency to consolidation is, in every branch of it, checked by the federative barriers of State sovereignty. You can hardly fix your eye upon any spot in the Constitution where these mutual checks and balances are not to be found. You cannot pass a law, without its being submitted to, and approved by, the States in their federative character, as represented in the other branch of Congress. Our treaties with Foreign Powers, all our important appointments, must pass through the same ordeal. The federative principle, which extends through the elective powers of the Constitution, does but preserve the symmetry of the entire work. It is indeed, here, perhaps less distinct, because it can be only fully drawn out by a contingent vote, after the consolidated strength of the States has failed to make a selection. As we have been already reminded, the arrangement of the elective power was opposed, when submitted to the States, less than any other part of the instrument; and if gentlemen will examine the pamphlets and newspapers which followed the session of the Convention, some of which were as highly spiced as any of our modern publications, it will be found, that the writers who opposed the Constitution, very generally admitted that the article regulating the election of President was admirably arranged to subserve the interests of the Union. And yet, strange as it may seem, this very article is the first that has been selected, I will not say for amendment, but for a radical change.

But, we are told that experience on this subject has made us wiser than our fathers; that a combination

mall States may be formed, as represented on this floor, y forty-five members, to take the Government into their wn hands; that the immense strength of the large States rill sleep so sound as to be fastened by Lilliputian ties. When the period arrives that there will be danger of such n unholy alliance of the small against the great—it will e time to apply the remedy. How could such an unnatural union be effected? What motives could produce uch an alliance? To concentrate the federative strength f these small States, you would have to bring together embers of the system, opposite in interests as they are istant in location. The extreme East, the extreme South, ne Northwest, and the Middle, must, by a simultaneous ovement, be brought into a concentrated action. And hat would this strange combination amount to? A conpiracy of the fingers and remote fibres against the heart. ut further: all the present small States, with the exception of New Hampshire, Vermont, Rhode Island, Connecticut, New Jersey, and Delaware, have large territorial mits, and by the time the advocates of these resolutions et their amendment through, the increasing population f the country will have swelled some of those States into ne size of the second grade of States. The danger which ne proposed amendment is intended to remedy, will have ured itself, by the constant increase of our population the West and South.

If, therefore, the federative powers of the small States e now to be feared, our larger neighbors have at least ne consolation to know, that our relative powers are fast iminishing, without any constitutional amendment. Eve- returning census turns some of our Representatives om the old States away from this Hall, and lessens our lative weight in the Union. Are not gentlemen satisfied ith this? The federative power is about all that we ave left to remind us of what we once were. Take this om us, as now proposed, and it requires not the spirit prophecy to foresee, that the precedent will be followl by other encroachments, till we are stripped of every estige of sovereignty.

Enough has been said to show, that the idea of the nall States uniting in the manner suggested, is but an le phantom of the brain. Cast your eyes over the map these United States, and you will see that, if ever we e to have coalitions among one class of States, for a comon benefit, they are to be expected, not from the small, it from the large States. New York, Ohio, and Pennlvania, should they coalesce, aided by the smaller parties which such a central power would naturally attract ound it, might nearly control the destinies of this nation, less held in check by the salutary influence of those adels of our liberties, the State sovereignties, preserved their original federative strength.

The force of this nation, either in peace or war, dends principally upon preserving, in vigorous action, the vereignty of the several States. Why is it that we are often told, that London is England, and Paris is France? is owing to the consolidated character of the Governents of those respective countries, that an enemy who ins the Capital, can stop, at a blow, the whole machine- and snap the sinews which reach to every part of the mpire. But, sir, an enemy entering this Capital, has vanced but little further towards the conquest of the untry, than if he had entered one of the frontier villages the Republic. The reason is, because we have twenty-ir State Governments, vigorous and active, protecting , liberty, and property, and able to call out, in embod forms, the physical strength of the nation. These the strongholds to which liberty must resort, if ever ven from this Capital, either by fraud or force. If they ght not to be made stronger, they should at least be left mpaired. I will not leave this part of the subject with- noticing what was said by the honorable gentleman m North Carolina, (Mr. SAUNDERS.) He tells us that the Constitution has not answered the expectation of its framers in this; that they only regarded the event of the election of President and Vice President being decided by the States in their federal capacity, as a remote contingency; whereas, in practice, it is often to occur. Sir, this Constitution has now been in force nearly forty years; there have been ten elections under it; and yet the People have never failed, but in one instance, to bestow a majority of their ballots on the candidates for the Presidency; and never, even in one instance, have they failed to give a majority to the Vice President. The equality of votes between Mr. Jefferson and Col. Burr does not impugn the accuracy of this statement. A majority of the electoral votes were intended for Mr. Jefferson, as President, and Colonel Burr, as Vice President. By a singular coincidence, the ballots for both were even; and, as they could not express which were for President, and which for Vice President, though every school boy in the country knew what was the intention of the electors, it became necessary for the House of Representatives to decide between them. But that is an occurrence which, under the article, as now amended, can never again happen. So far, then, as we can gather light on this subject from the history of the country, the People, in nine instances out of ten, will give a majority for a Presidential candidate in the primary votes.

I repeat, therefore, that, during nearly forty years, and in ten elections, the so much dreaded contingency has happened but once, in regard to the Presidency, and never as it respects the office of Vice President. I put it to my honorable friend to say, whether there was a man in the Convention, when this article was formed, who could have believed that the contingency would have been more remote than it has proved to be in practice. And yet, at the first happening of the event, which the Convention supposed would, of course, sometimes occur, or they would not have provided for it, we are called upon to re-model this article, on the ground that it will not answer the purposes for which it was designed. It is said, however, that hereafter, the contingency is very frequently to happen. But this again is begging the question; it is taking for granted the very point which the past history of the country would lead us not to expect. If, in the future operations of this Government, it should appear that this or any other part of the Constitution fails to answer the wise purposes for which it was designed, it will then be in time to attempt to remedy the defect. All I ask is, that the instrument, as it now stands, should have a fair trial. It has thus far baffled the predictions of those who thought, and honestly thought, too, that it was fraught with mischief; and I have no doubt that hereafter, if left undisturbed, it will show to those who are at present alarmed for the future, that their fears, like those which many good men felt at the formation of the instrument, are more imaginary than real. The mere stirring of this subject, shows the great difficulty of arranging this compromise anew. We have already before us more than a dozen different plans, and the Lord only knows where they are to end. Every morning brings a fresh batch upon the table.

It was urged by the honorable mover of these resolutions, that the contingent federative vote, as now given, should be destroyed, because Executive influence could be brought to bear upon it. This influence, it is said, insinuates itself within these walls, as the serpent of old once came among the bowers of Paradise. Its track, we are told, is marked with corruption, and the poison of its breath withers whatever it touches. Mr. Chairman, is this so? Has this Republic, indeed, become rotten before it is scarcely ripe? Are we the degenerate sons of a race gone by? Were the Franklins, the Madisons, the Hamiltons, the Shermans, and the Pinckneys, mistaken, as to the honesty of those who were to follow them, when they deposited this contingent power in the federative strength

of the States, acting through the members of the House of Representatives? Sir, I cannot believe it. Gentlemen may hint and conjecture on the subject, but I must have proof, strong proof, before, as a member of this Congress, I can consent to stamp upon your journals an accusation, which, if true, would be so degrading, so damning, to your national character.

The exercise of a contingent selection, from the highest candidates, by a legislative body, is not anomalous in the General Government. It is familiar to the People: for it exists in the State Governments, except where a plurality of primary votes decides the election of their Chief Magistrates. I do not recollect an instance in any State, where the election of a Governor is sent back to the People, after they have made one trial, and failed in a choice. Either one or both branches of the Legislature, in such cases, make the selection. Indeed it is remarkable, that, in the three States of South Carolina, Virginia, and North Carolina, from which we have heard through their Representatives, in the course of this debate, the Legislature elect the State Executives in the first instance, and the People, in their primary meetings, have no direct voice in the election. But I believe the People of those States do not complain of the arrangement. Maryland has recently passed resolutions on this subject, and yet the Legislature of that State have hitherto retained in their own hands the exclusive power to appoint the Governor. In fact, we have recently seen this same Legislature quietly exercising the power of electing an Executive themselves directly, while they were requesting their delegation in Congress to withdraw from this House even a contingent agency in the selection of an Executive for the Union, after the People have presented the candidates, but failed to give either a majority of votes. It is only within a few days that the Legislature of Maryland have resolved to put the election of their Executive hereafter to the People, and this was carried, as I am told, by a close vote, and it must pass through another Legislature before it becomes permanent. But I infer an argument from these facts which should not be entirely overlooked in our present discussion; and that is, if the People were prepared for the proposed amendments—if they felt that it was unsafe to trust a contingent elective power to a legislative body, they would long since have risen in their strength, and taken from their own State Legislatures, not only similar powers, but powers, in some instances, ten times further removed from popular elections.

We have been told that the President has immense patronage, by which, if he is corrupt, he can purchase up votes of this House. The honorable gentleman from South Carolina has told us, that the President's patronage was nearly equal to that of the King of England. Indeed, if I understood him correctly, he said the President had all the kingly power of the British Monarch, except that of declaring war, and even that he considered more nominal than real. I must confess I have not so understood this subject. I have been taught to believe that this Government is a Government of laws, and that not even the President himself is placed beyond the reach of impeachment, trial, and punishment. But in England, the baubles of the crown consecrate the head of him who wears them. The maxim there is, that "the King can do no wrong." The President, it is true, can return us a bill for reconsideration, but two-thirds of Congress can force it through against the Executive will. In Great Britain the Sovereign has an absolute negative on all laws. Nay, sir, he can even dissolve Parliament itself, and send its members home, whenever it suits his royal will. How is it here? The President cannot even prorogue the Congress; he can only adjourn the Congress, as a sort of arbitrator between the two Houses, when they cannot, or will not, agree as to the time of adjournment. Again, the President can nominate to the Senate, for their approbation, Ambassadors, and other important officers; but, in such appointments, the King of England is absolute; he is considered the fountain of honor and office. The King cannot only declare war, but make peace. The President can do neither. Such are some of the striking distinctions that now occur to me, between the patronage and powers of the British Sovereign and the Executive of this plain constitutional Government of ours.

One argument has been addressed to the small States, which I have thus far omnitted to notice, and which I will now proceed to examine. We have been told that the small States will be compensated for giving up their federative vote, because the controlling power of the large States is to be broken up by the district system. If there is any thing in this argument, it proves too much—it cuts both ways. The district system is not to be confined to the large States, but it is to cut up the small States also. If the large States would be divided by the proposed system, so would the small States. But in practice, I apprehend the district system, when applied to the election of President, would operate more severely upon the small than the large States. The patronage of this Government will always be more plentifully distributed in the great States than elsewhere. Those States will, of course, present candidates for the Presidency and Heads of Departments. State pride, the esprit du corps, will keep a large State together in its influence and its votes. Here and there you may see a straggling district, but the main body, although counted off into sections, will enter the Presidential campaign in solid column, and with an undivided front. The present generation, in some of the large States, in New York, for instance, might not, for one election, be all united in favor of a single candidate. But wait till the different materials of its population, which have been lately gathered from different and distant quarters, have become thoroughly amalgamated; wait till the gristle of youth has hardened into the bone of manhood; and when N. York has acquired the old and fixed character of Massachusetts or Virginia, does any man in his senses believe that when that day arrives, (and come it will) New York will ever fritter away its votes, whether drawn out in districts, or in any other way? How different would be the condition of a small State, when it had once parted with its federative powers. It would have nothing left to rally under, but would be divided in action and interest. It would become the mere follower of the camp, to the immense columns moving in its vicinity.

Such are my reasons for believing that the proposed amendments would be not only destructive to the small States, but, in their consequences, destructive of the great principles on which our Constitution rests. But we are told that we must submit to these terms, hard as they are, or we may be crushed by a General Convention. The honorable gentleman from South Carolina pledges himself to appeal to the large States on this subject, and he warns us to beware, lest a Convention should be formed to destroy the remnant of power that is still left to the weaker members of this Union. I have too much confidence in the generous patriotism of the large States to believe that they would convene for such a purpose. If, however, the large States are to be addressed, I would meet the question even there. I would appeal to New York, great in resources, and generous, I had almost said even to a fault. Will you, whose Western country has been peopled by the sons of the Pilgrims, unite in a crusade to destroy the interests of your fathers' inheritance? I appeal to Ohio, whose forests have swarmed with emigrants from the Northern hive. When you left us we were strong, and you were dependent. We watched your growth with a parent's fondness and a parent's care. We rejoiced to see you assume the form and the strength of vigorous manhood. Our situation is now changed—you have become powerful, and we comparatively weak

Can you see, with indifference, the old family mansion which sheltered you in infancy, destroyed—when you know that every census increases your strength, and relatively diminishes ours? I appeal to Pennsylvania—unambitious Pennsylvania, as she has been appropriately called. Are you ready to assist at the sacrifice of your faithful and friendly neighbor? Will the peaceful descendants of the virtuous Penn, make war upon the sons of the Reads, the Rodneys, and the Bayards of Delaware? But, Mr. Chairman, I need say nothing of the rights of your State, so ably represented as she is on this floor. I know that you will watch her interests, and guard her rights. I believe, before these resolutions are through the House, that you will put forth your commanding talents, and unite with us in our present struggle. I appeal to Virginia, the steady and steadfast advocate of State rights. Prove by your acts, on this occasion, that you will not only resist the first encroachment on federative principles, when it interferes with your own immediate interests, but even when it affects the smallest members of the Union. I appeal to the South: for, if occasional jealousies have sometimes intervened between the North and the South, yet strong attachments are not unfrequently attended by the keenest jealousy: I appeal, therefore, to the patriotism of the South. Let it not be said, hereafter, when other amendments may be urged upon you, which aim at other interests, that you were the first to disturb the original compromise. But I rely not on any one section of this Union more than another. I appeal to the collected wisdom of my country, as represented at this Congress. I stand not here to ask for favors—my State expects none; she wishes for none; but she expects justice, and feels that she has a right to demand it at your hands. Manifest, then, on this occasion, the discretion, the magnanimity, that distinguished the Convention of '87, and we shall be satisfied. If, however, we appeal in vain—if the time has come, that the small States are to be sunk under the surface of this Union, we shall, at least, have the consolation of going down with our colors flying.

On motion of Mr. CAMBRELENG, the committee rose, and having obtained leave to sit again,

The House adjourned.

TUESDAY, MARCH 7, 1826.

Mr. KELLOGG offered the following:

Resolved, That the choice of President and Vice President ought, in no instance, to devolve on the House of Representatives; and that the Constitution should be so amended as to prevent a recurrence of the kind hereafter.

Resolved, That all persons, in each State, entitled to vote for the most numerous branch of the Legislature thereof, ought to vote direct for President and Vice President of the United States; and that the Constitution ought to be so amended, that each person shall have the right to vote for two candidates: one of which votes shall be given for a person who is not an inhabitant of the State in which said vote is given; and that the person having the greatest number of votes shall be President, and the person having the next greatest number of votes to be Vice President: Provided, said votes are a majority of all the votes so given.

These resolutions were referred to a Committee of the Whole.

CASE OF COMMODORE STEWART.

Mr. INGHAM observed, that he had some time since offered a resolution calling on the Secretary of the Navy for a report of the proceedings of the Court Martial in the cases of Commodore Stewart, and Lieutenants Sands and Hunter. The answer to this call had been received at a time when he was not in his seat; he now moved that the report and documents be printed for the use of the members.

Mr. CLAIBORNE expressed a desire to hear the reasons which induced the gentleman from Pennsylvania to make this motion.

Mr. INGHAM replied, that he had a general reason, which was to be found in the fact that, this being the trial of a very distinguished officer, great interest was felt in it in various parts of the country; and there were some, perhaps, who supposed that the acquittal of the accused was not such as was calculated to sustain an officer in the public confidence, and fully to protect his honor. Part, too, of the correspondence was important, as regards the relation of this country with the Southern Republics. The officer in question was not only a Naval commander, but a sort of diplomatic agent, and this gave to his correspondence peculiar interest. Mr. I. said he had offered, at the last session, a resolution, calling for this correspondence; but the papers had not been furnished by the Department; and the reason assigned was, that a trial was then pending which might be affected by the publication of these letters. That objection was now removed; the trial was over; the accused was acquitted with honor; and it was his own wish that the whole proceedings in his case should be made as public as possible.

Mr. WRIGHT observed, that the gentleman who moved this call had not expressed an intention of founding any legislative act on these documents, after they should be obtained. He believed it was well known by the country at large that Commodore Stewart had received the most honorable acquittal; and, such being the fact, he could perceive no reason why the House should incur the expense of printing a voluminous mass of documents not required for any valuable public purpose; and he hoped the resolution would not be adopted.

Mr. BARTLETT said, that he presumed that it was not in the knowledge of any gentleman so well as in that of the honorable mover of the resolution, what importance might be attached to these papers or to their publication. He did not, however, understand it to be the practice of this House that all papers were to be printed which might be called for by this House; nor were papers of a public nature to be printed merely for the gratification of a private individual. If any public end was to be answered by it, the printing would be proper. He, therefore, would take the liberty of suggesting to the honorable mover of the resolution the propriety of submitting his motion to some committee of the House, which might examine the papers, and report on the propriety of ordering them to be printed,

Mr. INGHAM replied, that he was not very solicitous on the subject; and would be satisfied to take the course proposed by the gentleman from New Hampshire. While he was up, however, he would embrace the occasion to protest against the doctrine advanced by the gentleman from Ohio. The practice of the Government did not require that, when a member moved the printing of a paper, he was bound to specify some object he had in view in doing so. The daily experience of the House must be sufficient to contradict such an opinion. Did not resolutions, calling for information, pass every day—from day to day, without any such declaration? Nay, it was almost viewed as an intrusion on the House to offer one word in explanation of the object of such calls. Almost all the legislation of this House is founded on calls made upon the Departments, and he hoped the liberty of printing the documents, received in reply, would ever be indulged to members asking it; unless it could be shewn that there was something in those documents improper for publication. The documents now proposed to be printed were much more important than some that had been ordered to be printed during the present session. Much of them related to the regulations of the Navy, and embraced impor-

tant correspondence of a diplomatic nature. He should not object, however, to the reference of these documents to a committee, with a view to an inquiry into the expediency of printing them.

Mr. BARTLETT, pursuing his previous suggestion, moved that these documents be referred to the Committee on Naval Affairs, with instructions to inquire into the expediency of ordering them to be printed.

Mr. WRIGHT said, the gentleman from Pennsylvania might have spared himself the trouble of refuting a doctrine which he had not advanced: for, Mr. W. said, he had not questioned the propriety of calling for papers which gentlemen wished to have before the House. What he objected to was the printing of papers, without knowing whether there was any sufficient reason, on public grounds, for incurring that expense.

Mr. CLAIBORNE objected to the printing of these papers. The officer to whom they principally related, had been tried, and honorably acquitted. The public mind was satisfied with this decision, and there was no occasion to revive it here. Another objection which he had to printing these papers, was, that to do so, would establish a bad precedent. In all future cases of Court Martial, the same course might be expected or insisted on; which could have no other effect than to disquiet the public mind in regard to matters respecting which it would otherwise be satisfied, by the decisions of the proper tribunals. He hoped, therefore, the motion for reference, with the object avowed, would not prevail.

Mr. WEEMS said, he respected the character of the officers of the Navy—for we owe them much. He hoped the motion for reference, and finally for printing, would prevail. The trial of Commodore Porter had been presented, in printed form, to the House. What sort of appearance would it have to the nation, if the trial of one of these officers was printed, and not that of the other? He had a great respect for Commodore Stewart; and, for his part, did not wish that room should be left for supposing that there was any thing disclosed, in the course of his trial, that would not bear the light.

Mr. CONDICT here moved to lay the whole subject on the table; and

The motion was agreed to.

AMENDMENT OF THE CONSTITUTION.

On motion of Mr. McDUFFIE, the House then resolved itself into a Committee of the Whole on the State of the Union, to consider the resolutions offered by him for amending the Constitution.

Mr. CAMBRELENG said, the character of his State had made so prominent a figure in the debate, that it could not be necessary for him to make any apology for addressing the Committee. He had supposed the peculiar circumstances of the times would have admonished gentlemen of the propriety, nay, necessity, of exercising mutual indulgence and forbearance. He regretted, however, to perceive, from the course of this debate, that while we were generously disposed to overlook the errors of the public men in power, and the conduct of all other politicians, during the late election, we were never to terminate our animadversions on that class of politicians who, alone, could be proudly denominated "no man's men." The State of New York had accordingly been selected as the theatre of the war; and that portion which had been left unravaged by the gentleman from South Carolina, (Mr. McDUFFIE) had been laid desolate by his colleague, (Mr. STORRS.) He was little disposed to engage in a debate of this character; but, in such a cause, he should be unworthy of his station, were he not ready to break a lance with either or both the gentlemen. The remarks he should submit, would be applicable to the crisis and the question; for both had grown out of the late election by the House. In submitting them, he should not affect a delicacy he did not feel, nor preach a political morality he did not practise. He should treat it as every question should be treated, involving public men and public measures. And, while he should exercise due decorum, he should not forget that the question was one of the most important ever submitted to the attention of Congress. His impressions on the subject were strong—perhaps stronger from the circumstance of his having been a member, he might almost say a spectator, during the recent election by the House. He might be mistaken—he trusted he was—but he approached the question under a sincere conviction that, unless the electoral office be taken hence, the time was not remote when frequent elections here would produce a revolution in the practical operation of this Government, destructive of every thing like political principle and constitutional law, and, in the end, fatal to that sound public opinion upon which the Government was founded.

Before he paid his respects to his colleague, (whom he was happy now to have in his eye) he would, as first in order, turn his attention to the gentleman from South Carolina, (Mr. McDUFFIE.) It was probable that that gentleman and himself had before them a long journey to perform together; but he was apprehensive they would make very unpleasant companions. We shall, most undoubtedly, said Mr. C., unless he learns to treat my old friends with more respect: for, unlike some others, I never desert an old friend. At the very outset, the gentleman had made an attack upon a venerated and respected friend—he was about to say, now no more—King Caucus. Now that the election was over, we could take a more sober view of the past. This was a spectre raised during that election, by certain men, for certain purposes. A union was formed: each of the parties to it had his distinct object, ultimately, in view: they were united in but one, the overthrow of King Caucus. We know the result—a result little to the satisfaction of most of the parties to the compact. He had expected from the gentleman from South Carolina a sympathy for King Caucus—a sympathy arising out of similarity of condition. He never reflected on the fate of poor King Caucus, without being reminded of the brief and splendid career of an illustrious exile. He, too, was born a republican, among the wild mountains of Corsica: he, too, played an unceremonious game with Kings and Emperors. He was, unhappily, made a monarch: he became too powerful—excited the jealousy of his neighbors, and alarmed some of his friends. An alliance was formed to overthrow him: each of the parties had his own ulterior scheme: he was conquered: an ancient family was restored—very little to the satisfaction of any, but one, of the members of the alliance. Soon after the restoration here, another great man appeared, bearing a strong family likeness to our late monarch; but the name of Caucus having become somewhat unpopular, his sponsor gave him another name—they called him "Convention"—which, to drop our diadem, means a congregation of deputies, who meet, intrigue a little, quarrel a little, and, at last, agree upon a candidate not much to the satisfaction of some. And yet, in the view of the gentleman from South Carolina, there is a wide distinction: a Caucus is something corrupt, something loathsome—an incubus; while a Convention is a harmless popular favorite! He would not argue this question with the gentleman from South Carolina: he would leave the distinction to his acute and discriminating powers, referring him to the laconic and facetious remark of the celebrated "Doctor Ollapod, of the gilt Galen's Head, Cornet of Horse," to Miss Lucretia Mac Tab—"Rhubarb is rhubarb, Madam, call it what you will."

If the gentleman from South Carolina, or his honorable colleague—who also seemed to think Convention "less offensive"—believed that the understandings of the American People were to be duped by such distinctions

—where no difference substantially existed—they underrated their intelligence. These were the mere forms of party, which must exist in some shape or other, wherever parties exist—wherever the People enjoy the privileges of an election.

But the gentleman from South Carolina deprecates party. And does that gentleman expect to defeat the unwise measures of an Administration, sustained by the patronage of all the Departments and the Executive—backed, too, by an overflowing Treasury—without the agency of party? If such be his plan—if the Opposition is to be regulated by the rules of the gentleman from South Carolina, he was not ready to engage in it. He was not prepared to embark in a cause, merely from the patriotic motive, in the language of Mr. Burke, of falling, "one by one, an unpitied sacrifice in a contemptible struggle." No party! What language is this? Are we not in the midst of party? What mean these movements which we have witnessed in our House, since the commencement of the present Session? Is there not an Executive party here? The weird sisters appear not more promptly, at the waving of the magic wand, than a phalanx rises here at the call of the Executive. Nay, we have seen them rise, even when a measure was only *supposed* to be of an Executive character. No party! This is no new language—it has often been held: but no one familiar with the political history of free countries, and practically acquainted with the politics of this country, ever could suffer his judgment to be deceived by it. Party is indispensable to every Administration—it is essential to the existence of our institutions; and if it be an evil, it is one we must endure, for the preservation of our civil liberty. It never yet injured any free country—the power of party was never abused here but once: the evil was instantly corrected, by the People—the political revolution of 1800 was the consequence. Our public affairs were never better administered than during the Administration that followed—when measures were proposed and advocated by the majority, under the vigilance and correction of a minority. It is idle to talk of the violence of party spirit: the conflict of parties is a noble conflict—of mind to mind, genius to genius. It is to such periods of high excitement—to these wars of intellect, that we are indebted for almost all that is great and valuable in political science. In vindicating party, it was hardly necessary for him to say, that he entertained no cold, narrow, or vindictive feelings: on the other hand, some of his warmest and best friends, socially and politically, were of the old Federal school; but there was not a man among them who had ever deserted his party—not one of those who came like spies into our camp, only to betray us. No: every man of them has been faithful to his cause. There is a sympathy among men of principle—between those who appreciate fidelity—that principle of fidelity, without which all free political communities would be dissolved.

While opposing the present Administration, it should have his support of every measure, which, in his judgment, would advance the public interest: for the rest, the gentlemen on the other side, should have an open, an honorable war. He would be candid with gentlemen: he could not judge every Administration by its measures. In the language of the great man whom he had just quoted, and who, of all other men, was, from experience, most able to instruct us, he would say, "he never knew men reformed by power," neither would he make the experiment to discover whether "their measures would prove better than their morals." He could not, if he wished, extend his confidence to the gentlemen in power—it was something not to be controlled. He would say to them, with Lord Chatham, "Confidence is a plant of slow growth"—and, moreover, differing from most plants of slow growth, it is of a delicate nature—once blighted, it seldom revives. Penitence may restore men to the bosom of private friendship; but, in public affairs, it seldom happens. The pulsations of a nation are slow: the career of ambition brief. An Administration enjoying his support, must have the light of a Nation's confidence, shining clearly and brightly around it: its foundation must rest upon something more solid than a compromise of opinions—something less volcanic than an adjustment of ancient but unextinguished animosities.

The gentleman from South Carolina had referred to a Boston mob, and a New York rabble. The gentleman must pardon him for saying that he was as unhappy in this illustration, as he was unsound in the principle of political philosophy he meant to establish. A Boston mob, he thought, had figured somewhat too gloriously in our Revolutionary history—it had shared too illustriously in those struggles which terminated in our independence, to be selected as the victim of a sarcasm even by comparison, or to illustrate a principle of philosophy. He would say something of its history in another war: but here he must touch lightly—he was treading on delicate ground: he must, however, in justice, be permitted to express a sincere regret, that public affairs, in our late war, had not been, in that region of country, less under the direction of some who were there in power, and more under the guidance of a patriotic Boston mob. What had been performed by a New York rabble, he should refer to in replying to his colleague. Were he disposed to retaliate on the gentleman from South Carolina, he had an admirable weapon at hand—he might sketch a scene at Edgefield Court-house—a portrait of a riot at *Old Edgefield*. If the gentleman wished to see the portrait which might be drawn of Old Edgefield, he would refer him to a pamphlet by a celebrated itinerant, the late vicar of the parish of Mount Vernon. He should not judge that gentleman's constituents by any such standard. He would never condemn the respectable yeomanry of South Carolina, for the licentiousness of a few, nor the occasional aberration of the many: nor would he ever anticipate a revolution in this country, from a riot at Edgefield, or New York, or Boston. The gentleman from South Carolina need not seek, amidst the riots and revolutions of Rome, for the causes of our dissolution. He should look to the history of modern times, and to the character of Nations as they are now. Were he in the Turkish empire, he might then seek for instruction in Roman story. What Rome was, Constantinople is. The citizen-soldier of the Roman Empire, is the Turkish janissary of our times; and, although under a different form of government, the revolutions in the two cities are essentially the same. If the gentleman from S. Carolina would seek for the causes of a dissolution of our Confederacy, he need not travel far: they are at hand: they are within these walls; this is destined to become the scene of violence—the theatre of all our revolutions. When this House becomes corrupt, our Union is dissolved—the heart must perish, ere the limbs fall off.

Mr. C. said, he must now turn, and with reluctance, to his colleague, (Mr. STORRS.) It had never before been his unpleasant duty to come in collision with any one of his colleagues: but this was not an encounter of his seeking. That gentleman should recollect that this is the second time he has deemed it a becoming office to attack me, and he will no doubt well remember, that he was then engaged in the same *service*. He congratulated his colleague upon having at last found a cause worthy of his fidelity. In replying, he found himself embarrassed with difficulties. His colleague had deprived him of the evidence usually furnished in the pages of the National Journal, of what had been said by him here; and in the remarks which had been reported for the public journals, he had not found much of that which he had heard here, and to which he should reply, as well as to that which had been published. He was happy to discover in his col-

league a feeling of decorum, which had induced him to moderate the asperity of some of his remarks, on the political character of our State, and to omit one material and harsh expression, touching the rabble of New York. It was not the first time he had omitted to transfer to the pages of a public journal what he had, perhaps indiscreetly, said here, touching the politics of our State. He felt another difficulty: he was about to encounter a political veteran—one, who, if the chronicles of the times were to be relied upon, had belonged to every party that had existed in the State, no matter by what denomination known—one, no doubt, perfectly familiar with all their sinuosities, histories, and mysteries. while, on the other hand, it had been his humble fortune, if humble it could be called, to have never belonged to but one—known to the Nation as the republican party: he had remained true to it through all the changes of its fortune: it had never been his lot to perform the office of the Vicar of Bray.

He had yet another difficulty: it was occasioned by the singular eccentricity of his colleague's course. In this age of quick revolutions of opinion, it is, perhaps, unreasonable to expect any gentleman to be consistent, from Session to Session; but he had thought that we might still be depended upon from week to week: in this, however, he was mistaken. His colleague had offered a resolution to amend the Constitution—one of a very questionable policy too—and in one week after, pronounces a eulogy upon the Constitution, as the perfect work of perfect men—a manly veneration, truly, for one of seven days' growth! Which are we to consider as ironical—the resolution or the eulogy? But this was a week. What shall we think when we find he cannot be depended upon even in the same speech. The caucus party is overthrown—a mere remnant left: in the next breath, we find it as "efficient as ever:" a very sudden resurrection, indeed! but one of which we heard not a word on this floor. Had his colleague, after the delivery, and previous to the publication of his speech, received any herald from the North?

He thanked his colleague for having relieved him from the necessity of replying to his argument on the constitutional amendment, by answering it himself. At the commencement of his speech he tells us, that the district system is a suicidal policy for New York, (being a large State) and towards the close, he gravely declares, that, by adopting the resolutions under consideration, we shall deprive the small States of the last "remnant of their power." Which of the declarations or arguments did his colleague expect him to reply to? Which would he now adopt as his own?

His political charity, too, was of a very singular kind. Whenever his contemplations were fixed here, every thing was pure and incorruptible. We must not suspect it possible to corrupt the members of this House. We must not sully the ermine of men in power: "What, (says the gentleman) would the British reviewers think of us?" But when he turns his eye towards home, he casts his mantle of charity behind him: he can see nothing but "usurpers," "hungry expectants," "corrupt and lawless authority," "seeking office, and seeking bread," "tainting and corrupting" the State: indeed, no language can express his abhorrence of our New York politicians. Here, all is purity: at home, all is corruption. The pleasures of hope are more refreshing than the pleasures of memory. Let me admonish my colleague to be prompt: he may, after all, share only the unsubstantial enjoyment of the pleasures of the imagination.

His colleague had charged the caucus party of New York with a perfidious design to destroy the power of the State, by adopting the district system. Did he mean my constituents? Certainly not: they voted for the General Ticket. Did he mean his own constituents? Had they a perfidious design to destroy the power of the State? They voted almost unanimously for the district system. Did my colleague vote with the majority? [No answer.] I'll answer for him. He never voted in the majority. Some politicians are guided by intuition in such cases. Am I correct? Upon what principle, then, does my colleague feel at liberty to resist a measure which he himself supported at home—to reprobate a system, at the expense of those who sent him here?

His colleague had been pleased to describe his present opponents, once his patrons and friends, as a party "seeking office, and seeking bread." Perhaps, said Mr C. it was intended to discriminate between him and his party. But he rejected any such discrimination. "Seeking office, and seeking bread!" These words produce some singular political associations. They are announced here at a peculiar crisis—at the commencement of the reign of an Administration proclaiming to the Nation—to men of all parties—that they are the patrons of all office-seekers. It is somewhat remarkable, too, that his colleague should be the organ of the communication. It may be novel here; but it is not original: it is a new version of an expression, used some years since, in a pamphlet entitled "Coalition," attributed to the supposed author of the celebrated Sewburgh Letters. He was describing an extraordinary association of politicians—of every hue—of hungry expectants—"of men of desperate fortunes—a brotherhood of hope, wanting principle, and wanting bread." A brotherhood of hope, wanting *principle*, and wanting bread. Perhaps my colleague may know something of this Brotherhood of Hope. Perhaps he may recollect when a similar coalition was lately formed: when some of the association were again thrown into power. Perhaps he may remember who obtained, and "doubtless solicited," a commission—in virtue of which, I have now the honor to congratulate my honorable colleague, when at home, as Mr. Justice of the Quorum. "New York (as my colleague said) breathes more freely now."

His colleague had done him the honor to designate him as the spared monument of a caucus, to use his own language, "sent here by the rabble of one of our cities," the only unpurified portion of the State. Thus pocketing the sarcasm of the gentleman from South Carolina. It is possible his colleague intended it as a compliment. He must be permitted to decline any compliment paid him at the expense of his constituents. "The rabble of New York"—Yes, the same rabble of New York, who, in 1800, shared the honor of effecting that political revolution which overthrew an Administration, claiming, and exercising, as this now does, unlimited powers; that revolution which gave life and vigor to the Constitution. The same rabble of New York, who, in 1814, together with every American, no matter by what party denomination he may have been known, united under the banner of a distinguished patriot—now no more—united in an hour of general calamity and alarm—consolidating the power of that great State, which stood doubly armed for the Canadian and Atlantic frontiers, to defend our country from an enemy abroad, while she extended her shield towards the East, to save the Confederacy. The same rabble of New York, who, when the vessel of state was in danger, when she was surrounded by breakers, stood fearlessly at the helm, and defied the storm; while some lined the beach with folded arms, or, perhaps, murmured her with the cold and heartless eye of the insurance wrecker, watching, anxiously watching, the moment when she might strike upon the rocks. But the times are changed. In the late political revolution, perhaps some of those who lined the beach with folded arms may now be in power. If there are any such, he trusted the power would perform a miracle, and reform them.

In taking leave of his colleague, he would again express his regret, that, by attacking his constituents, his State and the political character of his State, he had unpro-

upon him the unpleasant office he had just performed. It would have been to him a source of regret at any time, but he thought it was particularly unfortunate that he should have renewed his attack at this political crisis: for there was one sentiment in which he cordially united with his colleague: he responded the hope that the power of that great State would be unbroken; that hereafter she might present an undivided front to the nation. There were evident indications of a union (and he was happy to perceive them) among the People of that State—a union founded upon political and constitutional principles—a union to take from this House the privilege of electing a Chief Magistrate—to restore that right entire to the People; and to rescue the Constitution from an Administration, which, if the Executive message be an index of its policy, seems to have substituted the preamble for the sacred instrument itself. On which side of these great questions his colleague would be found, it would, perhaps, not become him to say; in a case of such *extreme uncertainty*, it would be folly to become a prophet.

If the union between the Executive and Legislative branches of the Government, produced by elections here, be not dissolved, this House must inevitably become our electoral college. Frequent elections here will ultimately destroy the character of the House. He had never adopted the maxim that every man had his price—he trusted he never should; but, on the other hand, it was an affectation of delicacy to suppose that we were unlike other men. A delicacy, which, like every thing else under the new order of things, wore an artificial character; not only our politics, but even our virtues, have become artificial. No one could have a higher opinion of the Members of this House than he had: he looked around him in vain for the man who would be base enough to yield to the meaner influences of avarice; but where, he would ask, is that member who could assure himself that he would never surrender to the nobler impulses of ambition? To that enemy of civil liberty, who numbers among his victims some of the most illustrious, and—but for one false step—the most incorruptible and the best of men. If distinguished men must fall, it is some consolation to their country, that they fall in a noble cause.

In judging of public men, it is wise to be governed by experience; by history, not ancient, but modern. He would not follow the gentleman from South Carolina to the forum, nor would he travel with his colleague to the wilderness, to seek a standard of political morality, among the traditions of the "Shawnese and Choctaws." Lest he should shock his delicacy by supposing that any one in this vicinity might be tempted, or alarm his apprehensions as to what the "British Reviewers" might say, he would borrow a page or two from the family chronicle of Great Britain. We shall learn from the history of British statesmen, how illustrious men have fallen, and how little they understand in that country our modern rules of delicacy. The biographer of Sheridan gives an interesting account of a coalition which was formed in England. He has presented us with a sketch worthy the profound attention of the American statesman. He thus announces it: "At the commencement of the following session, that extraordinary coalition was declared, which had the ill luck, attributed to the conjunction of certain planets, and has shed an unfavorable influence over the political world ever since. Little is, I believe, known of the private negotiations that led to this ill assorted union of parties; but from whichever side the first advances may have come, the affair seems to have been despatched with the rapidity of a Siamese courtship; and while to Mr. Eden (afterwards Lord Auckland) is attributed the credit of having gained Lord North's consent to the Union, Mr. Burke is generally supposed to have been the person who sung the 'Hymen, oh Hymenæ,' in the ears of Mr. Fox." Mr. Burke is supposed to have been the person who approached the ear of Mr. Fox. Such is the language of a British biographer, touching the conduct of these illustrious men; not the language of a partizan in the mad excitement of the day; for it is near half a century back; but the sober pencil of the historian, recording with truth the mysteries which time had unfolded.

Sheridan, who "foresaw all the consequences of such a defiance of public opinion," endeavored to dissuade Mr. Fox, but after a long consultation he was heard to declare, that his "resolution was as fixed as the Hanoverian succession."

There are periods in the history of every country, when coalitions are not only sanctioned by public opinion, but demanded by the People; such as in times of public danger. Such a period existed when a partial union was formed between the parties, during the late war, and such a period now exists, when it has become necessary to unite, to take from this House the electoral power which the existing Administration seem determined to keep here; and to re-establish the sound principles of the Constitution. But there was no such crisis existing when this coalition took place between Lord North and Mr. Fox; it was not demanded by the nation. On the contrary, the biographer tells us: "the People at large, so far from calling for this *ill-omened alliance*, would have *forbid the bans.*" THE PEOPLE WOULD HAVE FORBID THE BANS. The author, in referring to the influence of such unnatural coalitions on the partizans of the different leaders, says: "What a portent it must appear to distant and unprepared observers, when the stars to which they trusted for guidance, are seen *to shoot madly from their spheres.*" He adds, that the People would believe that their political leaders had "patched up a suspicious alliance with each other, the only open and visible motive to which was the spoil that it enabled them to partition between them."

Such is a brief account of a British coalition, in which two of the most illustrious men who ever lived were concerned—Burke and Fox. Such the historical account of the coalition between Lord North and Mr. Fox. The author does not inform us whether there had been any private and political animosities between the parties; he does not say whether these had been declared by proclamation. He does not tell us whether Mr. Fox had thrown the gauntlet, or whether Lord North had accepted the challenge; or whether any ancient and unadjusted quarrel existed concerning the Greenland Fishery, or the navigation of the Ganges. He simply informs us that they were political enemies. And yet, such was the proud spirit of the British People, indignant at this bold defiance of public opinion, that the reign of this coalition was short. We are told its destruction was complete, its fate melancholy: to this day, the partizans of that great "popular leader" are known by the warning appellation of "FOX'S MARTYRS."

This, however, is not the only coalition of which we have an account. In referring to another, we have the declaration of Lord Moira; and, however unfashionable and refined the honorable and elevated sentiments of Lord Moira may sound within this narrow circle, where we breathe the atmosphere of patronage, they are, nevertheless, worthy the profoundest respect and attention of every rising American statesman—every candidate for the confidence of the American People. This is the language he held: "I cannot ever sit in a Cabinet with the Duke of Portland. He appears to me to have done more injury to the Constitution and to the estimation of the higher ranks in this country, than any man on the political stage. By his union with Mr. Pitt, he has given it to be understood by the People, that either all the constitutional charges which he and his friends, for so many years, urged against Mr. Pitt, were groundless, or that, being solid, there was no difficulty in waiving them, when a convenient partition of powers and emoluments was pro-

posed. In either case, the People must infer, that the constitutional principle which can be so played with is unimportant, and that Parliamentary professions are no security."

We have yet to learn what effect will be produced in our own country, by a case something like that of Lord North and Mr. Fox. We have now to discover, whether the American People have as high a sense of their dignity as the British had nearly half a century since. Whether they as vigilantly watch the conduct of their distinguished men. It is yet to be ascertained, whether a President of the United States can ever, with impunity, appoint to the first station in his cabinet, the presiding officer of that very electoral college to which and to whom he may have been indebted for his election. Let not those in power rely upon their patronage; let them not confide in an apparent apathy; the deepest impressions are least perceptible; when a nation speaks, its voice will be heard. Let those who have been left in the ebb of party, on this "alluvion of power," beware of the flood.

Should a coalition of this character ever be sanctioned in our country, and should we still retain the power here, the time is not remote, when this Hall will become the theatre of all our elections. An election by the People will become a mere pageant, a mere preliminary step to the election here.

Whenever this House becomes periodically an electoral college, we shall very soon be unworthy the conquest of ambition. The time will soon arrive when a seat here will be sought for, only as a medium to office and emolument. An election in this House will present an extraordinary spectacle. Our lobbies will be crowded; our galleries will be closed; in this Hall there will be the silence of the grave; the gaunt and terrible form of corruption will preside where liberty now stands; wealth and patronage, not liberty, will then be power; the transition from the Speaker's chair to the Department of State, and from thence to the Presidency, will be as fixed—aye, "as fixed as the Hanoverian succession."

Let us dissolve this tie. If this unnatual union, between the Legislator and his patron, the Executive, be not dissolved, every thing like political fidelity and morality, and all our reverence for Constitutional principles, must be destroyed; every honorable principle that renders public life desirable—that gives it splendor, and makes it worthy of our ambition, must decay. Coalitions formed after the election shall have reached this House, must be attended on one side or on the other, or on both, with a sacrifice of Constitutional principles, among some of the parties to the compromise. Elections and coalitions here must not only teach us to think lightly of the principles of the Constitution, but also of our political attachments. We must be taught to abandon, with indifference, our ancient friends and associates, and to form new and ill-organized friendships; to part from those with whom we had been accustomed to act harmoniously for years; in short, to unite with our enemies—to combat our friends. Coalitions here must teach the legislator to adopt and to change his opinions with facility, according to the terms of the compact. He must be taught indiscriminately to support any and every Administration, without regard to men or measures. Should a political morality like this be once firmly established here, and from this school of political instruction, should it diffuse itself through the Union; should such ever become the political morality of the American People; should they be taught indiscriminately to support every Administration, without regard to men or measures—our Government might be free in form, but its foundation would be gone. This Government rests upon public opinion; destroy that, or render it unsound; let the People look with indifference on public men and public measures, no matter what your forms or your Constitutions may be, the spirit of civil liberty will have departed from our land. If we deprive this House of its electoral character, and send the election, not to State Legislatures, but to the People, the combinations formed must be by the People, and with reference to principles and men; the political war will be conducted with a view to principles and men, and not upon narrow sectional grounds; a sound morality will be preserved here, and throughout the nation. Let us then surrender this power to the People.

Believing that our Government depends upon public opinion, and not upon forms, he should be content with any amendment that would preserve a sound morality, by removing the election from the House, to the People. In his view, it was not very important in what shape it might be presented to them. He waived all logical calculations about minorities and majorities arising under this or that system—depending, as they ever must, upon a thousand contingencies, one might take either side and argue ad *infinitum*. He waived all arguments and conventional learning to prove that this was a Confederacy of State sovereignties—this was not to be questioned. The question is, whether we shall recommend to the States, in their sovereign character, to take from this House the power of electing a Chief Magistrate. Let the question be sent hence, and let the States themselves, in their sovereign character, determine it in their own "citadels of State Rights," the State Legislatures. There were, in his view, reasons for preferring the resolutions of the gentleman from South Carolina. He believed the District system would be most acceptable to a Constitutional majority of the States, and that it was the only mode of attaining, if we ever did attain it, the grand object of securing an election by the People. The resolutions are to be preferred for another reason: they are in the spirit of the original compact; the Constitution was a compromise; a compact of mutual concessions. The resolutions propose to the small States to surrender that power which they have here in this electoral college: to the large States to concede, on their part, the District system. The form, not the spirit of the Constitution, would be changed. He had hoped the resolutions would be adopted: but when he saw the power and influence of the Administration arrayed against them, and varying amendments multiplying from day to day, he despaired of their success. He dreaded the operation of this feature in the Constitution, and he trusted that, sooner or later, it would be amended. His veneration for the Constitution could not be exceeded. He would preserve it as a sacred inheritance; as the imperishable work of our ancestors; a race whose patriotism had been tested in a long, severe, and doubtful struggle; whose powerful minds sprang out of the confusion of orders, and the convulsions of civil society. A mightier hand gave it form and shape, in presenting it to our fathers, as the symbol of his own eternal work, as the great charter of mankind. He would touch it only to save it. We must change the form, not the spirit of the Constitution, or the Constitution will change us; change our Government; change the character of the nation. We must separate the Legislative and Executive, by surrendering this electoral office to the People, or our [illegible] light will not long continue to guide emancipated nations.

Mr. STORRS said, that he was dissuaded from following the indecorous example of his colleague, by a sense of what was due to the character of the House: and he well knew that it would hardly be expected of him that he should so far forfeit his own self-respect as to make a reply to the topics of personality in which the [illegible] had carelessly indulged himself.

A word of explanation, however, said Mr. S., is due to others; and I shall only say, that, as no mistake exists here in relation to any allusion of mine to the Cities in the Union, so no misrepresentation, here or elsewhere, will succeed in fixing on me the imputation of having spoken

of them in any disrespectful sense. To the member himself, I have no explanations to make. He forfeits the character in which he has a right to ask one any where. Among other imaginations, he has thought proper to appropriate to himself some very general remarks of mine, when I spoke of the possibility that, at some future time, the Government might find itself beset with *hungry expectants;* and he insists that this was an attack on *him.* Really, sir, I believe that no one else supposed that I alluded to him; and he may be assured that he is not so often in my thoughts as he imagines himself to be. But, since he appears to be so conscious of the peculiar fitness of his own application of that remark, I shall not disclaim the justice of the estimate which he thus makes of himself. From the "*important notice*" which he gave the House some days ago, that *he* intended to speak in this debate, it may have been expected by some that we should have heard from him some Constitutional discussion. He has refrained from even an attempt to grasp that subject. It seems that the object of his *important* notice was the illustration of his private griefs. He should have taken a different course, and desired the House to set them down among the orders of the day for Fridays. He might then have called them up and debated them over on days particularly assigned for private grievances. When that *very important* notice was given, he expressed a hope that, when he should address the House, I would not, like a Scythian, fly before him. As a mere *simile non similibus*, there may have been more pertinency in that remark than he was aware of. There was quite as much justice in denominating me a Scythian, as in imagining himself to be an Alexander.

[The floor was then taken by Mr. DRAYTON, who concluded the first division of his argument, when the Committee rose.]

WEDNESDAY, MARCH 8, 1826.

On motion of Mr. MOORE, of Alabama, the following resolution, yesterday moved by him, was taken up.

"*Resolved*, That the Secretary of the Treasury be directed to report to this House any information in the possession of the Department, evincing the propriety of legislative enactment to guard the public interest against the fraudulent practices of combinations of individuals in the sale of relinquished lands. And whether, in the opinion of that officer, the interest of the purchasers of public land, and the interest of the Government, will not be greatly promoted by enacting some provision which will extend to the person or his legal representative the right of re-purchase in the land he may have relinquished, at a certain proportion of the price for which it was originally sold."

And the question being taken, without debate, 85 rose in the affirmative, 15 in the negative. A quorum not having voted, a second vote was about to be taken, when

Mr. MOORE rose, and said, that not expecting *any* opposition to this motion, he had not embraced the opportunity to say any thing of its object: nor would he detain the House now for more than a minute, in giving his reasons why the resolution ought to pass. It was well understood, he said, by many members of the House, and by all of those who represented the new States, that, in the sales of the public lands, much fraud had been practised, by combinations, to the injury of the Government, as well as of many individuals. The subject was considered sufficiently important to have been brought to the notice of the House by the message of the President of the United States at the opening of the session. In that document, so much eulogised, said Mr. M. our attention has been called to the subject, and it is asked that something should be done in relation to it. I know that something ought to be done on the subject, with reference to the interests of my constituents, and with reference also to the public interest: and I have reason to believe there is in the Department to which the resolution is addressed, some information which would throw considerable light on the subject. I have, therefore proposed this resolution, and I hope there is no member of the House who is afraid of any information which may be elicited by it.

The question was then again taken on the resolution, and decided in the affirmative.

AMENDMENT OF THE CONSTITUTION.

Mr. HERRICK submitted for consideration the following resolution:

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, That the following amendment to the Constitution of the United States be proposed to the several States, and, when ratified by three fourths thereof, shall be a part of said Constitution:

"The Congress, if two thirds of both Houses shall deem it necessary, shall, in the year 1830, and in every tenth year thereafter, and no oftener, propose amendments to the Constitution, in the manner prescribed in the fifth article of the original Constitution."

On presenting this resolution, Mr. HERRICK asked the indulgence of the House, whilst, in a few words, he should explain his views in presenting the resolution. When, he said, he first heard the corruption and corruptibility of this House discoursed upon, he had been inclined to consider it as idle talk; and when the gentleman from North Carolina, the other day, undertook to explain both how corruption did, and how it did not, creep into this House: when, if Mr. H. rightly understood him, he said *in* substance, that when a candidate for the Presidency wishes to corrupt a member of this House so as to obtain his support, he does not come directly to the member, and say, if you will aid my views you shall have a part of my twenty-five thousand dollars; but a friend is commissioned to whisper in the ear of the member, if you will aid Mr. Such a-one in obtaining the Presidency, you shall be rewarded with a good fat office. I am aware, said Mr. H. that I do not quote the gentleman's language: for I do not recollect its precise terms, and I hope the gentleman will correct me, if I misinterpret his meaning: for I have no intention to do so. I then thought, Sir, that the gentleman had inadvertently and unconsciously wandered from the regions of facts into the mazes of fancy. For I knew that no such approaches had been made to me, and I was sure that no man in the least acquainted with that gentleman's purity, integrity, and patriotism, would venture so to approach him; and I confess, Sir, that the impression then made is not yet entirely obliterated.

But, Sir, observation and reflection have led me to the apprehension that *something* may creep into this House which, though it may not properly be called corruption, will be scarcely less delcterious in effect. I begin to fear, Sir, that it will become so much a matter of course for every learned member, either to propose an amendment to the Constitution, or to make a speech too long to be delivered in one day, or to be published in one newspaper, even a newspaper of very extraordinary size, or both—that, even at a time when the People are perfectly tranquil, and, apparently, perfectly satisfied with the Constitution as it is—when no memorial addressed to Congress, no voice of any popular assembly, shall afford the slightest evidence of popular discontent—that even then, some twenty or thirty propositions to amend the Constitution will be made in a session, and so much of the time of the House must be engrossed in listening to the long and learned speeches alluded to, and in discussing the all important question of the time when the session shall be brought to a close: for it will be recollected that, in

these modern times, a very considerable portion of the first session of every Congress is consumed in settling this question, notwithstanding that terrific weapon, "the yeas and nays," is occasionally brandished over our heads—I say, Sir, that I fear it will come to pass, that so much time will be consumed by Congress in this way, which can answer no other purpose than to demonstrate that some of the members are learned and others economical, that the claims of the war-worn suffering soldier, the brave, generous, patriotic, but unfortunate sailor, the bereaved widow, and hapless orphan, and others who may have a right to look to Congress for redress of grievances, will be entirely neglected. Bills of relief may, indeed, be reported by the standing committees, have a first reading, be referred to a Committee of the Whole House, made the order of the day for to-morrow, and be printed. Congress after Congress will make just so much progress in these cases, till at length death puts an end to the sufferings of the original applicants, and after a while, perhaps, you may do some measure of justice to their legal heirs and representatives.

These are the considerations, Sir, which have led me to the conclusion, that Congress ought to be deprived of the power of squandering away a session in discussing amendments to the Constitution, uncalled for by the People, oftener than once in ten years.

I think, by the rules of the House, the resolution lies on the table of course. I shall probably not ask the House, very soon, to take it into its consideration, perhaps not during the present session, unless I should find time, and be blessed with ability, to prepare a speech, of two day's length, in its support.

The resolve was ordered to lie on the table.

The House then resumed the consideration of Mr. McDUFFIE'S proposition to amend the Constitution of the United States.

[Mr. DRAYTON concluded the observations which he commenced yesterday. A full report of the speech follows:]

Mr. D. observed, that, after so much had been said upon the resolutions submitted by his colleague, and after the proof which he had witnessed of impatience in a part of the Committee, to listen to any further discussion, he regretted that he should feel it to be his duty to address the Committee: but as I know, Sir, (said Mr. D.) that many of my constituents feel a deep interest in the first resolution, and as I consider all of the resolutions to be of great and extensive national importance, I am urged by both motives to offer my opinions, the result of my reflections, to the Committee.

I concur, Sir, with the honorable member from New York, in the eulogies which he bestowed upon the framers of our Constitution. In the composition of that instrument they have raised a lasting monument to their fame. They have received the most enviable of rewards—a nation's gratitude. I would not willingly shake a pillar of the fabric which they have erected. I think their edifice was as perfect as it could have been framed by humanity; but it was the work of humanity, and therefore it cannot be perfect. I would hold our ancestors in reverence for their wisdom and their patriotism—I would not worship them as idols. Were I to do so, could they burst the cearments of their tombs, they would frown upon such slavish homage. They knew that their work was not perfect; they knew that time, and its inevitable consequences, would create the necessity of amending it: under this conviction, in one of the wisest provisions of the Constitution, they prescribed the mode in which amendments to it should be made.

Frequent changes in the Constitution have a tendency to impair our veneration for it. Unless to remedy some evil, actually felt, or clearly seen to be about to result from its letter or its practical operation, or to correct an erroneous construction of its meaning, it should remain unaltered. No objections founded upon theory, or mere probability, ought to have any weight. If we allow ourselves to be influenced by such motives, we jeopardize the interests which the Constitution was intended to preserve; destroy all respect for it, both among ourselves and among foreign nations; and render valueless the benefits of a written compact, which are so justly our peculiar boast. Entertaining these sentiments, I should rarely enter into the discussion of any amendment to the Constitution, without the utmost diffidence, even after I had well considered the alteration suggested, and, in my own judgment, regarded it to be expedient. An amendment, by which the right to elect the Executive shall be taken away from the House of Representatives, is now proposed: but it is of such a nature as not to occasion in its discussion, this diffidence; because its operation is to abolish a practice not contemplated by the framers of the Constitution; because the alteration proposed affects its letter, not its spirit; and is such a one as those who made the Constitution, were they living at this time, would have acquiesced in as congenial with its spirit, and requisite for the support of the principles it was intended to protect.

If I can establish this position by the Constitution itself, and by the contemporaneous opinions and expositions of some of its most distinguished advocates, who promoted its adoption, and largely contributed towards its formation, I trust that I shall have satisfactorily established it. If I shall also shew, that the existing practice of electing the Executive by this House, tends to corrupt the Legislature and the Executive, and to produce an irresponsible power, subversive of the Constitution, I feel persuaded that the proposed amendment will be carried. Although, it appears to me, that the establishment of either of these positions would be sufficient to insure a concurrence in the amendment, yet, as one of them is founded upon the text of the Constitution, and the contemporaneous opinions and expositions of some of those who framed it, and the other upon inferences and deductions, the nature of the propositions being different, though mutually supporting each other—I deem it incumbent upon me, in an inquiry of so much importance, to endeavor to demonstrate them both.

By the Constitution, the powers granted to the Legislature and to the Executive, are great and extensive. To prevent their abuses, therefore, certain checks and restraints are imposed upon each of them, which it would be tedious and useless to enumerate, as they are well known to all of us. Notwithstanding these checks and restraints, each of these Departments must have those powers which are necessary to enable it to perform its peculiar functions: if it had not, it could not execute its legitimate will. But the Legislature, which, in various respects, seems to be so much fettered by the Constitution, is, nevertheless, in fact, the most powerful Department, arising from the nature of our Government, and the nature of the powers with which it is entrusted.

In this opinion I have the misfortune to differ from my colleague. Though all that he said may not be in unison with my sentiments, I nevertheless listened with profound attention, and with intense delight, to the display of original and powerful intellect which he exhibited throughout the whole of his arguments. He contended that the power most to be dreaded under our Government was that of the Executive, which he considered to be as great as that of the King of Great Britain. In this opinion I differ from him egregiously. I shall not enter into any comparison of the relative power and patronage of the President and of the King of England, which has already been done by the authors of the Federalist, in the 69th number, and which, it seems to me, would be foreign to this discussion: but whilst I regard the power and the patronage of the King of England to be much greater than

those of the President, I still admit, and am decidedly of opinion, that the power and the patronage of the latter are considerable, and that they must have great weight and influence.

The House of Representatives, consisting of members chosen directly by the People, intimately connected with the People, and by their election manifesting that they have the confidence of the People; sufficiently numerous to be affected by the passions of the People, and yet not so numerous as to be incapable of combination: possessing, necessarily, great powers, all of which cannot be precisely defined, and having the exclusive privilege of originating bills for the raising of revenue, must have a force and authority infinitely greater than any other department. We should also take into view, that the effects resulting from the habit of the People in regarding the acts of the House of Representatives more peculiarly as their own, as more immediately reflecting their own image, give to it a moral force and influence, perhaps greater than the express and necessary powers which, as a Legislature, it possesses. Indeed, these have always appeared to me, to be political axioms: that, under a Monarchy, the chief power is in the King; under an Aristocracy, in the Nobles; and in a Republic, in the Popular Branch of the Legislature.

When the Constitution was undergoing discussion, the prominent abuses of authority which modern history then furnished, were those of monarchs, over their subjects. America herself had deeply suffered from her former Sovereign. In the eighteenth century, Denmark and Sweden afforded instances of the victories of their sovereigns over free institutions: and France of the extinction, by Louis XV. of the Parliaments of his Kingdom, the only bodies within it which exercised the smallest control over the crown; but since the era of the long Parliament in Great Britain, no example existed of any popular triumph over an established monarchy or aristocracy. The members of our Convention had not then seen the full development of the French Revolution; they had not then seen the effects of a usurpation of power by the popular branch of the Legislature, which paved the way for a despotism, in the name of liberty, centering in itself all power, and exercising a wider empire of proscription, devastation, and blood, than had ever been exhibited in modern times.

From these causes, and from the natural partiality in favor of a body directly representing the People, notwithstanding the jealous love of liberty in our ancestors, they did not reflect, with the same intenseness, upon the abuses which might spring from the popular branch of the Legislature, as, under different circumstances, they would have done. From these causes, it is probable that the consequences did not occur to them, which were likely to arise from conferring upon the House of Representatives the election of the Chief Magistrate of the Union. Had they turned their unbiased minds to the consideration of this subject, it is not to be imagined that these consequences would have been disregarded by them. Whilst, by express provisions, no member of the Legislature, during the time of his election, could be appointed to any civil office under the United States, which had been created, or the emoluments of which had been increased during such time: whilst no Senator or Representative, or person holding an office of trust or profit under the United States could be a Presidential elector: whilst partial restraints were thus raised against cupidity and Executive influence, a power was given, by which the Executive is rendered dependent upon the House of Representatives for his election; by which allurements are held out to bribery and corruption; by which members of Congress are enabled to bargain for their votes; by which they are distracted from their proper duties, and tempted to become hucksters and brokers for office; by which a President may be forced upon the nation whom the nation never elected; and if a majority of the nation be opposed to his election, the greater will be his inducements to corrupt, because the greater will be his necessity to corrupt, that he may maintain himself in the possession of that power which the People never gave, and which, contrary to the genius of our Government, the People, at a new election, cannot take away.

Compared with these results, the obstacles which the Constitution has interposed against cupidity and avarice are as dust in the balance—indirect influence is guarded against, whilst direct power is given. The by-paths to the camp are strictly guarded, but the main avenue to it is open and unprotected. The outworks are vigilantly defended, whilst the citadel is ungarrisoned, and invites attack by the facility with which it may be carried. A British House of Commons, in the seventeenth century, triumphed over the crown, the aristocracy, and the People, and erected a despotism on their ruins.

In more modern times, at the period when the late Mr. Pitt first presided at the British helm, the House of Commons made the Monarch tremble upon his throne and meditate its abandonment, from the apprehension of an intended encroachment upon his prerogative by that body, which, but for the People, would have been carried into execution; and which, if carried into execution, would have prostrated the Government and transferred the sovereignty to the leaders of the House of Commons. If one branch of the Legislature, under an ancient monarchy, assumed such a power, what may not be effected by the popular branch of a popular Government, with the Executive depending upon its choice? Sir, though the King of England holds his crown for life; though he is irresponsible for his acts; though he is supported by an hereditary peerage, (whose numbers he can increase at his pleasure) constituting a co-equal branch of the Legislature; though he has a patronage extending to Europe, Asia, Africa, and America; yet, were he to be elected by the House of Commons, the House of Commons would possess and exercise a supreme, an uncontrolled, and an uncontrollable dominion. A profound philosopher, who had deeply explored the causes of the rise and fall of empires, when adverting to England, remarked, that its liberties would perish whenever its Legislature became more corrupt than its Executive. By vesting the election of the President in the House of Representatives, we multiply corruption—we tempt a President to be corrupting and a Legislature to be corrupt.

I believe that the Constitution would have provided against the election of the President devolving upon the House of Representatives, had it been deemed probable that such a case would have occurred; but it was not deemed probable. It was contemplated that the Executive would be elected by electors chosen by the People. This is apparent from the text of the Constitution: for, in art. 2, sec. 1, it is declared "that no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector." Does not this language clearly point out that it was not supposed, or that it was supposed to be extremely improbable, that a Representative would ever be an Elector? It expressly disqualifies him from being so; and surely, in fact, in principle, and in result, it is more important to prevent a Representative from being an Elector when he votes upon the floor of Congress at Washington, than when he votes in his own State. In the former case, the possession of such a power would be infinitely more dangerous, because, in addition to the objections already urged, the Representative is placed in a situation to come into immediate contact with the Presidential candidates. Can there be a doubt, then, that a Representative should not be an Elector, under any circumstances, whether we advert to the plainest analogy, or to the spirit or even the

letter of the Constitution? And there can be as little doubt, should the Constitution remain unaltered, that it will very rarely happen that the Executive will be elected otherwise than by the House of Representatives.

I shall not enter into any reasons to prove that the prospect of a President being hereafter chosen by the Electoral Colleges, is so distant as only to be contemplated upon as a very improbable and remote contingency. No one who reflects upon the extent of our territory; the variety of our pursuits, situations, and interests; the partiality so natural towards distinguished men in our own States; the difficulty of obtaining a general union of sentiment in the East, in the West, in the North, and in the South, in favor of any two individuals, when Revolutionary services can no longer be made the ground of preference; will, for a moment, entertain the opinion that such a concurrence of the public voice can be anticipated, excepting under circumstances which can but rarely happen.

Questions have arisen, and will again arise, as to the extent of the powers given to the President under the Constitution. It is important that all those causes which are likely to embitter a discussion of this nature should be removed; and no better mode can be devised for this purpose, than that of making the Executive dependent upon the People for his election. All Governments must possess power. Without it, the Army, the Navy, the finances, the foreign relations, the interior concerns of a nation, cannot be regulated and directed. Power must be possessed by our Government; but it should be derived from the Constitution and the laws; and the agents for carrying it into execution should be bound by a strict responsibility to the People. Acts of power, thus guarded, if questioned, would be questioned with calmness, and inquired into with deliberation, because they would be harmless: for, if improperly exercised, a ready and effectual remedy would be provided. On the contrary, when this responsibility does not exist, (and it does not, so far as relates to the President, where the People have no voice in his election,) the most ordinary exercise of power will excite distrust, because it is exercised by one who cannot be made responsible: almost any act of power, therefore, in the Executive, would be investigated with passion; and what, under different circumstances, would have been a temperate debate, will be converted into angry and bitter contention.

I have not only said that the power of electing the President by the House of Representatives was contrary to the spirit of the Constitution, which I have endeavored to show, but I have also said that its framers, could they have anticipated that the election would, generally, have devolved upon the House, would have approved of the amendment proposed in order to prevent it; and I have further stated that this assertion is proved by the contemporaneous opinions and expositions of some of the most illustrious advocates of the Constitution, who promoted its adoption and participated in its formation. My allusions are to the Federalist, the composition of Mr. Jay, of General Hamilton, and of Mr. Madison. This work contains the opinions and expositions of these enlightened patriots, who did more by their writings to effect the adoption of the Constitution than any other individuals in the nation; and the two last named of them were among the most zealous and distinguished members of the Convention. How little such an occurrence as the election of the President by the House of Representatives was foreseen by the authors of the Federalist, and how much the election by such a body was deprecated, will be perceived by the following passages, which I will read from pages 424, 5, 6, and 7:

"It was desirable that the sense of the People should operate in the choice of the person (the President) to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any pre-established body, but to men chosen by the People for the special purpose, and at the present conjuncture. It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the Government. But the precautions which have been so happily concentrated in the system under consideration, promise an effectual security against this mischief. The choice of several to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choice of one, who was himself to be the final object of the public wishes. And as the electors chosen in each State are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, that might be communicated from them to the People, than if they were all to be convened at one time, to one place. Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of Republican Government, might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign Powers to gain an improper ascendent in our councils. How could they better gratify this than by raising a creature of their own to the Chief Magistracy of the Union? But the Convention have guarded against all danger of this sort, with the most provident and judicious attention. They have not made the appointment of the President to depend on pre-existing bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it, in the first instance, to an immediate act of the People of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust, all those who, from situation, might be suspected of too great devotion to the President in office. No Senator, Representative, or other person, holding a place of trust or profit under the United States, can be of the number of the Electors. Thus, without corrupting the body of the People, the immediate agents in the election will at least enter upon the task free from any sinister bias. Their transient existence, and their detached situation, already noticed, afford a satisfactory prospect of their continuing so to the conclusion of it. The business of corruption, when it is to embrace so considerable a number of men, requires time as well as means. Nor would it be found easy suddenly to embark them, dispersed as they would be over thirteen States, in any combination founded upon motives, which, though they could not properly be denominated corrupt, might yet be of a nature to mislead them from their duty. Another, and no less important desideratum, was, that the Executive should be independent for his continuance in office on all but the People themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to the duration of his official consequence. This advantage will also be secured by making his re-election to depend upon a special body of Representatives, deputed by the society, for the single purpose of making the important choice. All these advantages will be happily combined in the plan devised by the Convention, which is, that each State shall choose a number of persons as Electors, equal to the number of Senators and Representatives of such State in the national Government, who shall assemble within the State, and vote for some fit person as President. Their votes, thus given, are to be transmitted to the seat of the national Government; and the person who may happen to have a majority of the whole number of votes will be the President. But, as a majority of the votes might not always happen to centre in one man, and as it might be unsafe to

permit less than a majority to be conclusive, it is provided that, in such a contingency, the House of Representatives shall select, out of the candidates who shall have the five highest number of votes, the man who, in their opinion, may be best qualified for the office."

Can any language more clearly express the convictions of the authors of the Federalist, that the President, excepting in extraordinary instances, would be elected by the People; that it was intended by the Constitution that he should, excepting in extraordinary instances, be elected by the People; that he ought to be independent for his continuance in office on all but the People; and that cabal, intrigue, and corruption, were to be apprehended, should he be eligible by any pre-existing body? It has been said that suggestions, injurious to the virtue of this House, are calumnious and visionary. Were the authors of the Federalist calumniators and visionaries? It has been said that no ill consequences can result from committing the election of the President to Representatives chosen by the People. Was that the opinion of the authors of the Federalist? Is not, sir, every argument which I have offered, in favor of an election by the People, and against one by this House, to the utmost extent supported by the quotations cited? Can it be gravely pretended that the arguments against a pre-existing body do not apply to this House? Do they not, on the contrary, apply to it more strongly than to any other pre-existing body, unless it should be contended, in opposition to universal experience, that power purifies the heart and extinguishes the passions of avarice and ambition? Is it not peculiarly important that the House of Representatives of the Union should be uncontaminated? If they are tainted, the baleful consequences pervade the whole Union, and create a distrust deep and universal.

The honorable member from New York has said, that, from the argument of my colleague, power may be abused by the House of Representatives. This inference follows: that, as power may always be abused, to avoid its abuses the institutions of civilized society ought to be abolished, and that mankind ought to return to a state of savage nature. Is not this a glaring instance, on his part, of what he attributed to my colleague—the pushing an argument *ad absurdum?* Because power is necessarily subject to abuse, must it be given to be abused? May not barriers be raised against the ability to commit abuse? And may not the temptations be withheld, which will take from power the motive and the excitement to commit abuses? Was not this the argument of my colleague, in contending that this House ought not to elect the President, instead of the crude and extravagant inference drawn from it? And is not this argument sanctioned by Divines, by Moralists, and by Statesmen? The honorable member from New York, continuing his perversion of my colleague's positions, attributed to him the assertion that this House was corrupt, and controlled by the Executive. He threw down the gauntlet, and challenged my colleague to the proof. That gentleman expressly disclaimed these charges. He discussed his topics like a Statesman, upon broad and general principles, not like an Attorney General preferring an indictment. He said that a continuance in the House of Representatives, of the power to elect the President, had a tendency to, and inevitably would, produce corruption. He described the various shapes and forms in which corruption would assail its members; and he supported his assertions by reasons and illustrations which I will not weaken by an imperfect repetition of them.

I will here, sir, avail myself of the occasion to disclaim, on my part, in what I have said, or in what I may hereafter say, all allusion to individuals. Allusions of this nature may sometimes be unavoidable: it may sometimes be excusable, and sometimes even a duty to make them; but, unless under peculiar circumstances, they should be avoided. Personality is not argument; nor is it manly to attack the characters of those who are not present to defend them. I will not say that I have not heard reports injurious to some who are, and to some who are not, now members of Congress, as connected with the late Presidential election; but I know, sir, and I have often painfully witnessed the effects of party feelings, even upon the virtuous and enlightened. The representations of those who are under such an influence must be cautiously received. They cannot refrain from mingling their passions with their judgments; their disappointments with their statements; and it has always been my habit to believe slowly and reluctantly, that any one who had long been distinguished for high-mindedness and talent, and who had long enjoyed the confidence of his country, could descend so low as to barter away the jewel reputation, for the paltry emoluments, or the transient honors of an office.

I have, sir, but incidentally remarked upon the effects produced upon the Executive, by his election being vested in this House. A candidate for the Presidency, not bound by the rigid rules of religion or morals, seeing a body sufficiently small in number, and sufficiently permanent in duration to be tampered with, would be tempted to tamper with it. Another candidate, superior to intrigue, depending, and willing to depend, upon the free suffrages of the People, would stand but little chance in the race. The latter might have the largest proportion of the votes of the Electors, and yet, by the arts of his rival, he might be postponed to him in the House of Representatives. Thus a barrier would exist sufficient to exclude the entrance of the meritorious, but interposing no obstacle to the progress of the undeserving. Vice would be rewarded for its baseness, and virtue excluded for its purity. When, through such proceedings, office is to be obtained, you not only banish principle, but you allure it to swerve from its path. You lead it into temptation, the seducing influence of which, the Saviour of the World has taught us we are too frail to resist, without the aid of the Divinity. Imagine, then, a permanent body, exposed, from its permanence, to cabal, intrigue, and corruption, and enabled by its location to have frequent and secret interceurse with a candidate, willing and able to gratify its avarice and ambition. Is it probable that such a body would exercise a free and unbiassed choice? Without viewing human nature through too dark a medium, is it not likely that such a body, under such circumstances, would depart from its duty? If there be always this probability, sometimes it certainly would; and is not such a prospect a most appalling one?

It may be said that my observations imply, that all men are vicious. They are not so intended. Men are compound beings—some are good and some are bad; or rather, in some, vice, in some, virtue, predominates. This House must be composed of beings thus framed: it must be composed of virtue and vice. The object, therefore, of wise legislation, ought to be, as much as possible, to sustain the one, and to repress the other—to keep both from the contagion of temptation, which might sap the foundations of virtue, and which would give encouragement and currency to vice. For whose benefit, principally, are the lessons of the moralist intended? Not of the profligate and hardened sinner—his reformation is too desperate an undertaking—but of those who are virtuous, whilst obeying the native dictates of their hearts, and who, in their communications with the world, are exposed to the pestilence of example, and the whirlwind of the passions. To shield these from vice and crime, is it not inculcated, by precept upon precept, and by line upon line, to beware of the gilded bait of temptation? Even presupposing virtue, this caution is given and repeated; and are the members of this House the only individuals to whom this caution is inapplicable?

This world, it may be said, is a state of trial, and that it

is impossible to guard against the frailties inherent in our nature. It is not always possible to do so; but, for this very reason, they should be guarded against, where it is possible; and I rejoice, upon the present occasion, that such a saving expedient is attainable. Adhere to the spirit of our Constitution; adopt the reasonings and opinions of those who aided in framing it; take away the election from the House of Representatives; abolish the power of a body upon a subject which affords facility to corruption; destroy the means of intercourse between the candidates and the Representatives; commit the election of Electors to the People, whose interest it must be to make a good selection, who can be under no temptation to make a bad one, and whom we believe to be honest and intelligent: for upon that belief is founded our Constitution, the hopes of stability in our Government, and the benefits of responsibility in its officers. Thus the whole superstructure, which might be erected by the machinations of fraud, and the combinations of intrigue, will want a foundation to rest upon. Thus a career will be opened to the rivalry of lofty ambition. Thus the choice and master spirits of the age will be induced to enter the lists; but, if the prize may be borne away by dishonorable means, none but the recreant knight would shiver a lance in so inglorious a field.

If this course be not adopted, ponder upon the consequences. You tempt the Legislature and the Executive to be corrupt; you render the Executive irresponsible to the People, and responsible to the House of Representatives; you afford the means for the creation of that tyranny, so much to be deprecated, a union of the Legislative and Executive Departments, an imperium in imperio, greater than the Constitution, and paramount to the sovereignty of the People. The citizens of this country, it may be said, would not bow down to such a despotism. I believe they would not; and because they would not, it should be prevented. If they would submit to such a despotism, they would not be worth the effort to save them from it. If they would submit to it, they could not be saved from it. But, sir, as long as our Constitution remains as it is, the power of the House of Representatives to elect the President must exist. The great cure for all political evils, so much relied upon by the honorable member from New York, a change of Representatives, would not cure this evil. Change the Representatives as often as you please, still they must have this power: for the Constitution gives it to them; and, whilst the Constitution gives it to them, they will and must exercise it. Even an impeachment against Representatives who had corruptly voted, (could such a discovery be made where the ballot is secret) could not be sustained: for it has been solemnly decided, that a Senator is not liable to impeachment, and upon a parity of reasoning, a Representative would not be. Are we, then, utterly remediless? We are, so long as our Constitution remains unchanged. At a time, sir, when this country was under the dominion of a monarch: when her numbers were comparatively inconsiderable; when her councils were divided; when she was without an armed ship, or a disciplined regiment; without a treasury, without an ally, without powder or ammunition, without muskets for her soldiers, or clothing to protect them from the inclemency of the weather, or tents to shelter them from the fury of the elements—she resisted Great Britain. To encounter such a peril, was she goaded on by oppression upon oppression? Had her citizens suffered those wrongs which make endurance intolerable? Had their lands been ravaged, their towns sacked, their property pillaged, the privacy of their dwellings been invaded, or the fruits of their industry ravished from them by tax-gatherers? Had they been subjected to vexatious conscription, or to bloody proscription? No, sir; they waged war against England, because they would not submit to a petty tax which they did not feel, the proceeds of which were unequal to the expense of its collection, and which was imposed merely as an evidence of the right of the mother country to raise a revenue from her colonies. They refused to acknowledge the right of taxation without representation, though no more than the barren right was contended for; and in defence of an abstract proposition, of a metaphysical distinction, they drew their swords, and rushed into battle, against the most formidable Power in Europe. And is it likely that their descendants have so changed, as to have become insensible to the positive privation of a great and important right, intended by the Constitution to have been possessed by the People? apparent from its text to have been so intended; and declared to have been so intended by some of the most enlightened of those who contributed towards its formation? This, sir, is no abstraction; this is no metaphysical subtilty: a right is taken from the People, and transferred to this House, the exercise of which not only threatens all the evils I have dilated upon, but causes that species of union between the Legislature and the Executive which the Constitution endeavored to guard against; mingles together the Legislative and Executive streams, which ought to flow in divided currents; and thus effects a combination which will sweep away all the barriers which written provisions, or parchment enactments, can oppose to so overwhelming a torrent. The continuance of a power in the House of Representatives, which renders the Executive responsible to them and irresponsible to the People, could not be long endured: nothing can be conceived more contrary to the genius, the principles, the feelings, the prejudices, and the passions, of a Republican nation: nothing more calculated to excite a spirit of insurrection, and to shake the solid fabric of this Union to its centre.

I hope, sir, that I have demonstrated the propositions which I laid down at the commencement of my argument: 1st. That the amendment by which the right to elect the Executive shall be taken away from the House of Representatives, abolishes a practice not contemplated by the framers of the Constitution; that the amendment affects the letter, not the spirit of the Constitution; and is such a one, that those who made it, were they living, would acquiesce in, as congenial with its spirit, and requisite for the support of the principles it was intended to protect; and, 2dly, That the existing practice of electing the Executive by this House, tends to corrupt the Legislature and the Executive, and to produce an irresponsible power, subversive of the Constitution. In this amendment I concur with my colleague. I also concur with him in desiring to take away from the State Legislatures the power of appointing Presidential Electors; because I consider the exercise of that power to be unsanctioned by, and at variance with, the Constitution. This last amendment I regard more properly as a restoration of its true reading, than as an amendment to, or alteration of it. To establish this proposition, I had purposed confining myself exclusively to the text of the Constitution; but as the honorable member from Virginia, who was the second from that State who spoke upon this question, has contended that the State Legislatures have the right to appoint Presidential Electors upon the face of the Constitution, and that the authors of the Federalist have said so; in addition to what I originally intended, I shall endeavor to show that the citations made by that honorable member do not sustain his assertion, and also that the meanings which he has annexed to the word "State" are not only not warranted by the Constitution, but that they are at variance with and contradicted by it. The honorable member quoted authorities in addition to the Federalist; but as I have not those authorities nor the means of access to them, I shall confine myself to what he has extracted from the Federalist, unquestionably the wisest commentary upon the Constitution which has ex-

been published. The first quotation relied upon is from the Federalist, p. 240, which is as follows: "The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and co-equal societies; partly as unequal members of the same society." These propositions I admit; but I am utterly unable to discover what light they throw upon the questions, whether the State Legislatures have the right to appoint Presidential Electors, or whether that right is vested in the People of the States. The next quotation made by the honorable member was from the Federalist, p. 306. This quotation did, I admit, as he read it, seem to support his argument; but I have looked for it in the page referred to, and indeed carefully searched for it through the whole work, without being able to find it. I cannot, therefore, but think that the honorable member has mistaken the authority to which he refers. Under this impression, I shall make no observations upon it, and I have only to request that the gentleman, if he can find the passage in the Federalist, will furnish my colleague with it, who will, hereafter, reply. To prove my assertion, that the authors of the Federalist were of opinion that the Electors of the President were to be appointed by the People of the States, and not by the Legislatures of the States, the citations from that work already made by me, would, I conceive, be abundantly sufficient: I will, nevertheless, on account of the importance of the inquiry, add a few more, which, it seems to me, so far as the authority of the Federalist extends, puts an end to all doubt.

"The President is to be elected by Electors chosen, for that purpose, by the People. The House of Representatives being to be elected immediately by the People; the Senate by the State Legislatures; the President by Electors chosen for that purpose by the People." Fed. p. 376. "The Convention have directed the President to be chosen by select bodies of Electors, to be deputed by the People for that express purpose; and they have committed the appointment of Senators to the State Legislatures." Ib. p. 401. "That Magistrate (the President) is to be elected for four years; and is to be re-eligible as often as the People of the United shall think him worthy of their confidence." Ib. 429. In summing up the excellencies of the Constitution, relative to the Executive Department, he language is, "We have now completed a survey of the structure and powers of the Executive Department, &c. &c. Does it combine the requisites to safety, in the Republican sense? A due dependence on the People? A due responsibility? The answer to this has been anticipated, and is satisfactorily deducible from these circumstances: the election of the President once in four years, by persons immediately chosen by the People for that purpose." Ib. 481, 482. I submit these quotations without a comment. I would as soon endeavor to demonstrate a self-evident proposition, as to prove, by reasoning, that these extracts from the Federalist establish the opinions of its authors to be what I said they were.

I will now proceed, as I originally purposed, to show that, upon the face of the Constitution alone, it is manifest that the State Legislatures have not the right to appoint the Electors of the President, but that the People have. It is a rule, in the construction of every kind of instruments, to annex the same meaning to a word which is used in one part of it, as is annexed to the same word when used in other parts of it. Upon a strict examination of the Constitution, it will be found, that the word "State," when standing alone, is used in it, in one of two senses: either to signify a geographical division containing one of those sovereignties, a combination of all of which constitutes the United States, in which sense it is synonymous with sovereign State; or to signify the People living within the limits of one of those sovereignties, which is synonymous with People of the State. Neither of these meanings is synonymous with the Legislature of a State. Annex either of these two meanings to the beginning of the second clause of the first section of the second article of the Constitution, (which is the sole clause depended upon for giving the right to the State Legislatures) and read either of them in substitution of the word "State," and the result will be the same, that the sovereign States, or the People of the States, are to appoint the Electors of the President. I shall hereafter refer to the Constitution, to show that the meanings which I have given to the word "State," when standing alone, are correct.

Where the meaning of a general proposition, containing an exception or qualification, is doubtful, the rule in law and in logical reasoning, is, in the first instance, to read the proposition without the exception, and then to restrict the generality of the proposition by the exception, so far, and no farther, than the exception or qualification limits that generality. Conforming to this rule, if we omit the exception or qualification in the clause of the Constitution referred to, which is contained in these words: "in such manner as the Legislature thereof may direct," a general, unqualified right would be given to the sovereign State, or to the People of the State, to appoint Presidential Electors. If we afterwards advert to the exception or qualification, it will be seen that it limits or restricts the generality of the right no further than to invest the Legislature with a power to direct the manner in which the appointment of Electors shall be made The substance is in the People, the manner in the Legislature: whereas, according to the practice, both the power and the manner are in the Legislature. Contrary to all reasoning, legal or philosophical, the accident carries with it the principal: the mode contains the substance: the manner comprehends the power; the lesser includes the greater. Can such a violation of reason be consistent with the sound construction of the Constitution? Let me state an analogous case. Suppose, under the Constitution, that the President had the power of directing the manner in which this House should appoint its Speaker: could it, therefore, be seriously pretended that the President had the power, himself, to appoint the Speaker?

The honorable member from Virginia, and every other gentleman who has addressed this Committee, has extolled the language in which the Constitution conveys its meaning: they have praised its comprehensive brevity, and its philological correctness. In order to avoid prolixity, the Constitution sometimes expresses its meaning with too much brevity; but never has any part of it been subjected to the opposite criticism. Had it been intended that the Legislatures should appoint electors, would so much circumlocution have been introduced? By merely substituting the word "Legislature" for the second word in the clause, (1st sec. 2d art.) which is, "State," and striking out the words "in such manner as the Legislature thereof may direct," the right of the Legislatures would have been so expressed as to be unquestionable. But the Constitution has not so expressed itself; its language is such, that if we give meaning to the whole of what it does express, it is apparent that the right to elect Electors is given to the People of the States, and the power to direct the manner of election, to the Legislatures of the States.

Much of my argument would seem to be invalidated, if it could be shewn that the Constitution had given other meanings to the word "State" than those to which I have limited them. I will refer to several parts of the Constitution to establish what I have said. "Representatives shall be appointed among the several States"—art. 1, sec. 2. States here means either sovereign States or

the People of the States. "Each State shall have at least one Representative"—art. 1, sec. 2. State here means as before. "When vacancies happen in the representation from any State, the Executive shall issue writs of election"—*ib.* State here means sovereign State. "The Senate shall be composed of two Senators from each State"—art. 1, s. 3. The meaning here is sovereign State. The remaining references to the Constitution which I shall notice, are those which were made by the honorable member from Virginia to support his assumption that the Constitution annexed several meanings to the word "State."—Times and places for the elections of Senators "shall be prescribed in each State by the Legislature thereof"—art. 1, sec. 4. State here means sovereign State. "No tax or duty shall be laid on articles exported from any State"—art. 1, sec. 9. State here means as before. "No State shall enter into any treaty, grant letters of marque, emit bills of credit," &c. &c.—art. 1, sec. 10. State here means as before. "A person charged with treason, &c. &c. who shall flee from justice, and be found in another State," &c. &c.—art. 4, sec. 2. State here means as before. I will make no more references to the Constitution. I have looked through it, and can find no other meanings given to the word "State," when used alone, than those which I have specified; and those parts of it which are relied upon by the honorable member from Virginia, as furnishing different meanings, will be seen, I think, not to do so. I will no more dwell upon this part of the subject; but will merely add, that in order to maintain that the clause of the Constitution relied upon, confers upon the Legislatures the right to appoint electors, it would be necessary to point out that, in some part of it, the word "State" is used as synonymous with the Legislature of a State, which has not been, and I believe cannot be, shewn. And indeed if that could be shewn, how would the clause of the Constitution then read? "Each *Legislature* supposing State to mean Legislature) shall appoint, in such manner as the *Legislature* thereof may direct," &c. &c. What could be understood by the Legislature of a Legislature?

The honorable member from Virginia says, that when the Constitution refers to an act of the Government, it uses the word "appoint," and when it refers to an act of the People, it uses the word "choose." In this the gentleman is inaccurate. By Government, he meant, I presume, one of the Departments, or branches of the Government, such as the President, the Senate, or the House of Representatives; otherwise the term is without any application: for, in no part of the Constitution is what is generally understood by Government expressed; that is, a combination of the Departments into which the Government of the United States is divided, viz: The President, the Senate, and the House of Representatives. Having premised so much, I will read a few extracts from the Constitution, to shew that the gentleman from Virginia is under an error. "The House of Representatives shall be composed of members chosen by the People every year"—art. 1, sec. 2. "The House of Representatives shall choose their Speaker"—*ib.* In these citations, the word "choose" is applied indiscriminately to an act of the People and to an act of a branch of the Government. "No Senator or Representative, during the time for which he was elected, shall be appointed to any civil office," &c. &c.—art. 1, sec. 6. Here the act of the President is termed "appointing;" but in art. 1, sec. 3, where it is said, "The Senate shall choose their other officers;" the word "choose" is referred to an act of the Senate, another Department of the Government, from whence it is evident, that the words "choose" and "appoint" are used without intending any difference between them.

In proposing a uniform system of voting by districts, I do not agree with my colleague. Were we sitting in a convention, to frame a constitution, or were we discussing a law untrammelled by the constitution, the arguments for and against a district system, and for and against a general ticket system, are so numerous, that I am not prepared to determine for what system I should vote, or whether I should vote for any uniform system at all: but, as the Constitution has given to the States the right to regulate the manner in which Presidential electors shall be appointed, I am not for making any amendment to deprive them of that right.

I shall not enter into the distinction between State and Federative rights. I will not involve myself in a labyrinth of metaphysical inquiries, or a maze of subtle disquisitions respecting the correct construction of the Constitution, growing out of this distinction. Were I to undertake this labor, I do not know that I should be intelligible to myself—I am sure that I should be unintelligible to others. I have an utter abhorrence for abstract principles in politics, when indiscriminately applied to practical purposes. I am satisfied that they never entered into the composition of our Constitution, which is a compact founded upon the practical principles of a free Government, reconciling various prejudices and interests, and modified by mutual compromises and concessions; and in discussing any question under the Constitution, I wish to keep this view of it steadily before me.

In proposing an amendment to take away from this House a power to elect the Executive, we propose to take away a power which this House possesses under the Constitution. In proposing to take away from the States their right of regulating the manner of appointing Presidential electors, we propose to take away a right which the States possess under the Constitution. Jealousies already exist upon the topic of State rights—it is desirable that they should be quieted, not inflamed. Whatever differences of opinion may prevail as to what is, or what is not, a State right, it cannot be questioned that a right, expressly given to the States by the Constitution, is a State right. I do not say that we have not a concurrent jurisdiction with the States, in making any amendments to the Constitution; yet, as an amendment upon this subject does immediately affect a State right, and as it does seem to come more immediately within their province, we should, unless for very urgent causes, let the proposal for such an amendment proceed from them.

It ought to be recollected, whilst we are debating upon this amendment, that we are not the Representatives of the States, as States, but the Representatives of the People of the States in a Federal Legislature—that we are the Representatives of the Federal Union, collected together to deliberate upon the affairs of the Union. The States, when they wish particularly to express their will, speak through the medium of a State Legislature, or of a State Convention. When they thus express themselves, it becomes our duty to listen to their call. Until they thus address us, our interfering might be deemed rather an officious intermeddling, than a paternal solicitude.

If the States deemed the power now existing in them to be an evil, it is presumable that they would have taken measures to remedy it. Now, I know but of three States which have taken any measures towards obtaining a Constitutional uniformity of electing the Executive by districts, and a greater number have expressed a different sentiment. We ought, therefore, in my judgment, to leave this amendment to the States: unless their opinions upon the subject should be so expressed as to manifest that they desire it, the amendment should not originate in Congress.

Another amendment to the Constitution has also been advocated by my colleague, in which I cannot acquiesce: that, if the primary ballot for the President and Vice President be indecisive, the People shall vote directly for the candidates having the two highest numbers up-

the previous ballot. The amendments by which the power to elect the Executive is to be taken from this House, and from the State Legislatures the power to appoint the electors, cannot be effected, without a second election by the People; but there is no necessity for the second election being conducted in a different manner from the first. In the second election, as in the first, electors might be chosen by the People. This mode would be according to the Constitution, in the first election; and, if there be no reason for departing from it, in the first instance, I see none for departing from it in the second. This mode of electing the Executive has prevailed from the period of adopting the Constitution to the present time. It was expressed and understood in the Constitution, that the Executive should be so elected by the People. I know of no injury or inconvenience which has been produced by this mode. It may be said, that inconveniences may arise—that the electors are a permanent body, and may be tampered with; and, therefore, that the same objection exists against them, as against the House of Representatives. The difference between the two cases is great. It was contemplated by the Constitution, that the House of Representatives would rarely, if ever, elect the President, as I have endeavored to demonstrate. Their electing the President is inconsistent with the nature of their functions, and productive of all the injurious consequences which have been dilated upon. Though it be admitted that the electors are, to a certain extent, a permanent body, yet they are so for a short time: the great mass of them must be at a distance from the Presidential candidates. They are scattered over a wide surface, and, between the periods of their appointment and of their balloting, time would not be allowed to intrigue with them. According to usage, the particular candidate for whom the votes of the electors are to be given, is previously ascertained by the People, and the electors are pledged to vote for him. It is not to be supposed that they will deceive their constituents. Their responsibility is too immediate and direct. There never has been an instance of such a deception. If there never has been one, after the trial of nearly forty years, it is not to be presumed that there will be one. As far as we can test a practice by experience, which should be the polar star in politics, and by which we ought to be governed, and not by theory and speculation, the existing mode of appointing electors is peaceable and harmonious, and has fully answered the purposes for which it was intended. Can any change create better effects? When things go on well as they are, it is not wise, it is not statesmanlike, to alter them. It is peculiarly unwise to do so, when alteration cannot be attended with improvement. By the alteration suggested, we may cause excitement and disorder. I do not say that we should; but, if we might, (and no one can be certain of the result of the experiment) is it not better to persevere in the accustomed mode, by which, as far as experience can prove a fact, it has been proved that the elections are conducted as well as can be desired?

I would not depart from the Constitution, without the most grave and serious motives. In varying any part of it by an amendment, I would not go beyond the modification of that part, so far as might be necessary for the amendment required. Should the first ballot of the electors be inconclusive, I would again commit the election to electors chosen by the People, with a proviso, that a former elector should be ineligible, so as to obviate the consequences resulting from a permanent body. At the second ballot, I would limit the subjects of election to the candidates having the two highest numbers on the first ballot; and should there be no election on the second ballot, to avoid the inconveniences and excitements of frequent elections, let the election then devolve upon this House, as such a contingency would very seldom, if ever, occur. As the great States, according to my views, relinquish nothing, I would propose that, on the second ballot, which is substituted for an election by the House of Representatives, that the votes should be counted by States, in the manner in which they would be, if the election came before the House of Representatives; and I would propose this mode, because it harmonizes with the Constitution.

Unless for the strong reasons which I have stated, I deprecate all innovations upon the Constitution. If we indulge in them, we shall gradually fritter away that instrument, until not a fragment of it will remain. We all unite in eulogizing the profound sagacity and practical wisdom of those who framed a national compact, admirably adapted "to form a perfect union, to promote the general welfare, and to secure the blessings of liberty to ourselves and to posterity." Let us verify this admiration by our actions. Let us preserve that compact in its utmost possible purity. The great objects of the Constitution have been obtained. Its benefits we have all experienced. We have gathered, abundantly, the fruits of the tree which was planted by our ancestors. That tree has long grown in a genial soil: beneath its shade we have reposed in prosperity and peace. Like the hardy oak of the forest, it is formed of sound materials; if we only prune its excressences, it may, and will endure for ages: but if we rashly lop off its flourishing branches, we shall deform its symmetry, impair its vigor, and leave bare and unprotected its venerable trunk.

Mr. EVERETT then obtained the floor; when the committee rose, and the House adjourned.

THURSDAY, MARCH 9, 1826.

AMENDMENT OF THE CONSTITUTION.

On motion of Mr. McDUFFIE, the House again went into Committee of the Whole, on the State of the Union, on the resolutions offered by him for amending the Constitution.

Mr. EVERETT addressed the Committee as follows:

Mr. CHAIRMAN: I rise to address the Committee, in a state of indisposition under which I ought, in prudence, to be at home, rather than on this floor. I am opposed to the resolutions of the gentleman from South Carolina, (Mr. McDUFFIE.) It is, with me, a matter of serious question, whether the alterations in the Constitution, for which they provide, are not, in their spirit and tendency, unconstitutional. I am not aware that this topic has been discussed, or that the limit, to which the power of amending goes, has been duly settled by the People of America. Meantime, I am strongly disposed to think, that the Parliamentary licence of amendment, by which we make what changes we will, in propositions that are before us, has no application to the Constitution of the United States. In the ordinary business of legislation, and for the sake of facilitating our proceedings, it is permitted, under the name of amendment, totally to change the nature of a proposition; to convert it from positive to negative, and the reverse; and this, with good reason: for, the entire proposition and the whole subject matter of it, being within the control of the House, it is a mere matter of convenience, in point of order, whether we change one proposition by way of amendment, or discard it, and bring in another. But, our relation to the Constitution of the United States is very different; and no such latitude of amendment can be indulged with respect to that instrument.

The justice of this distinction may, I think, be illustrated by a simple supposition, that should go to vary the relation in which we stand, even to ordinary matters of legislation. In some Representative Governments, that of France, for instance, all bills are introduced by the Officers

of the Crown, who are bound by their duty and oath of office to support them, if required. Suppose something like this existed in our Government; and that you, sir, as Chairman of the Committee of Ways and Means, were under an obligation of this kind, to support the leading appropriation bills of the year. Should you esteem it to be consistent with that obligation, to introduce, under the name of amendments, essential changes in the provisions of those bills? Would not such a step on your part be a direct breach of official confidence? Now, with regard to the Constitution of the United States, our whole legislative action with respect to it, whether in the way of administering, interpreting, or amending, must be governed by the obligation to support it which is imperative on every citizen, and particularly so on us. It is about three months since, in addition to the obligation which we share with every citizen of the country, we were laid under the specific and solemn obligation of an oath, to support the Constitution of the United States. The gentleman from South Carolina comes into the House; tells us that, in its most important functions, the Constitution of the United States has wholly failed; and proposes alterations in it, so essential, so vital, as will, if adopted, (in the judgment of the honorable gentleman) give perpetuity to our institutions; if rejected, leave us exposed, within fifty years, to revolution and ruin. I ask, sir, whether the latitude of amendment can be strained so far, in reference to a frame of Government, which is of the nature of a compact between the parties, and which we are under the strongest general and specific obligations to defend? I think, sir, it cannot.

I am aware, that these remarks may seem somewhat paradoxical; and that, as far as they claim to present an argument, the answer is ready, viz: that the article of the Constitution, which provides for its own amendment, is an integral part of the instrument; that, therefore, the obligation to support it and adhere to it, as a compact, is modified by this amending power; in other words, that we do, while amending, support it. We do while *amending* support it and adhere to it; but the distinction still recurs, that to amend is one thing, essentially to change another. To amend is to make changes consistent with the leading provisions of the Constitution, and by means of which those leading provisions will go into happier operation. Can this be the same thing as to change, what we call, while we propose the change, those essential provisions themselves?

Let us look to the article of the Constitution, which ascertains the right and power of amendment. The fifth article of the Constitution fixes the mode in which amendments shall be made, with this proviso, that, before the year 1808, no amendment shall be made, that shall reach the first and fourth clauses of the ninth section of the first article, and also that no State shall, without its consent, be deprived of its equal suffrage in the Senate. These are the only express limitations of the amending power. Now, one of two propositions must be maintained: either that these two *express* limitations are the *only* limitations of the amending power, or, that there is a prior limitation of the amending power, growing out of the nature of the Constitution as a compact. Unless we admit the latter proposition, there is nothing to prevent a combination of two-thirds of Congress, in the first instance, and three quarters of the States in the second, from depriving the remainder of the States of any advantage they possess in those provisions of the Constitution, which guaranty the Federal equality, which was not to be touched without unanimous consent. Nay, sir, without this prior limitation of the amending power, there is nothing to prevent the only express limitation which now exists from being itself removed by way of amendment, thus leaving the fifth article without conditions. The necessity of admitting this prior limitation is peculiarly apparent, in the case of all proposed alterations, which *unequally* affect the various portions of the country.

I am, therefore, strongly inclined to think, that the principle of this implied limitation must always be consulted; that this must shew us in each case how far alterations may go, and that it does dictate to us that our amendments must be confined to those changes which are necessary, not to alter the essential provisions of the Constitution, but to carry them into more perfect and happier operation. In fact, I can conceive no maxim in politics more dangerous or more false, than that a written compact of Government can be construed to look forward to its own worthlessness; that it can be supposed to be safe in the competence of a body of political functionaries, assembled under a written Constitution, to take a single step on the assumption that the Constitution, which is their life and soul, without which they have no political existence, has failed in the exercise of its most important functions. The proposition carries political suicide in its very terms.

If, in the changing aspect of things, the time shall ever come, which God grant may never be, when the parties to this compact shall feel—for it will be a thing to be felt, not to be reasoned upon—when they shall feel that this frame work of Government has wholly failed of attaining its essential objects, it will be for the unhappy generation who make that discovery, standing as they will do, by virtue of the discovery, in a state of nature toward each other, to re-organize the elements of the political body, as they may or as they can; in whatever way they do it, it will not be that of constitutional amendment, depend upon it. In the mean time, I am in the fullest persuasion, I am under the most perfect conviction, that every proposed alteration, which avowedly goes to change the essential features of this instrument, is neither more nor less than unconstitutional; we have, accordingly, no right even to consider it, which is all we can do at best—we have no right to propose it; it is not within our competence.

Having expressed myself thus strongly on this point, and less strongly I could not have expressed myself, and have done justice to my convictions, I am bound to say, that, if there are any in this House of the class of politicians to which the honorable mover of the resolution alluded, those who feel an indiscriminate reverence for the perfect and imperfect features of the Constitution, I am not one. In setting my face against all alterations of the essential provisions of this frame of Government, I am in no degree influenced by a belief or feeling that, in these most essential provisions, it is a perfect system. Far otherwise: perfect! how can it be? Was it not a compromise between parties equally balanced? Was it not a compromise between parties on the point of breaking up the convention, and going home? For, the secret which the gentleman from New York (Mr. Storrs) thought was yet to be disclosed, was told, near forty years ago, by Luther Martin and Governor Randolph. Yes, Sir: they were on the point of breaking up the Convention, when the most essential feature of the Constitution, the adjustment of the Federal and Popular principles in the General Government, was settled, by a compromise between the two parties, in this excited state. Could we expect, under these circumstances, to find it perfect? No, Sir, I say, boldly—if it requires boldness to make the avowal—that I regard it, in this most essential feature, as a defective system of Government. I am astonished that the great States ever, for a moment, listened to it. Every small State was great at that time; it is now small, and I hope this circumstance will procure me the credit of sincerity in these sentiments,) that they ever agreed to give to small States an equality of power. I am sure they would never consent to it again. If the work were to be done to-morrow, they would not listen to the proposition. Agreement. And what then? Grant that the system is imperfect, shall I the less support it and maintain it? Sir,

is one thing to hold that the Constitution is perfect, so perfect as to be beyond amendment—I did not suppose that any body held that opinion: I do not now suppose that any body views it in that light, not even the gentleman from Virginia, (Mr. ARCHER) who regards it as the work of inspiration. Even he is in favor of one of these amendments, and acquiesces in the other; which, unless he supposes the amendments also inspired, would be patching up inspiration with mere mortal wisdom—Sir, it is one thing to think the Constitution perfect, and another to think that, whether perfect or imperfect, it is a compact which it is our duty, nay, which it is our interest, to support: and it is still another thing to believe, that, even in those points which are fully and clearly within the reach of the amending power, properly construed, and fairly applied, it is better, far better, to bear with almost any political evil, than to fly to the Constitution with amendments. In my judgment, the very worst possible remedy for any evil, not positively intolerable, in this country, is an amendment of the Constitution. It is an acknowledged maxim of political prudence, that frequent changes of the laws, even in matters of ordinary legislation, are pernicious. It is the opinion of every sound statesman, that it is far better to bear with any evil that is not absolutely intolerable, than to render the great interests of the country insecure, by indecisive and fluctuating legislation. But, the Constitution—the Constitution—the only thing permanent which we have: the only thing which the People of the United States have taken out of the grasp of this daily changeful legislation: the thing which is to stand us in stead of all the perpetuities of the old world, ecclesiastical, political, social, and personal. Sir, I do not think it perfect; but it is good enough for me. I have lived under other political institutions; nearly a third of my life, since I came to years of discretion, has been passed under other forms of Government; and I have learned enough of the state of foreign societies, and enough of the political condition of the great majority of this race of man, to be well contented with what Providence has given to us, in the Constitution of the United States. I am contented to live by it: contented, when I die, to leave my children in its safeguard: and I would sooner lay down this right hand, to be cut off, than I would hold it up to vote for any essential change in this form of Government.

The honorable mover of these resolutions tells us, that he was induced to propose them, because he regards the subject-matter of them as the most important function of this Government. Highly important, Sir, it unquestionably is: far too important, in my view of the subject, to admit a change in this part of the compact. But I cannot agree with the honorable gentleman, in thinking it the most important function of the Government; and, if he will permit me the reflection, I must say, that we do lower the tone of our politics, that we lower the tone of our legislation, that we lower the tone and spirit of this People, by allowing questions of this kind so much importance. I am free to confess, Sir, that I regard very many functions of the Government as more important than the election of President. The Constitution of this House; of the other House; of the Judiciary; the power of Congress over questions of Internal Improvement; the power of acquiring and governing Territory, without limitation, beyond the bounds of the United States—these are far more important than the modification of the election of President. And if I believed the power of amendment was unrestricted, I would much sooner discuss, for days and weeks, amendments to the Constitution, that would touch some of these questions, wherein the great interests and industry of the country are wrapped up, than those which we have now in hand. Sir, I take the error to be, that of confounding what is of importance to the individual citizen with what is important to the People at large. To the individual citizen, to the few prominent political leaders, whose talents and services place the office of President within the reach of a laudable and well regulated ambition, it is, unquestionably, a subject of the greatest importance. To them it is a question, whether they shall attain the highest honor, which this or any other country, in this or any other age, ever did or can afford. But is this the light in which the office is presented to the majority of the People? No: the Constitution of the United States has given no powers to the President, depending on the modification of the electoral choice, by which he can be made dangerous to the liberties of the country. Do not mistake me, Sir: I do not say, because I do not think, that we may not have a President dangerous to the liberties of the People—dangerous to the purity of the Constitution. But if we ever have such a President, it will be under circumstances not connected with the modification of the existing Constitution, relative to the electoral choice. A dangerous President, depend on it, will be chosen by an overwhelming majority. I thought that the honorable mover of the resolutions was in a great mistake, in this part of his argument; where he maintained that, in proportion as the President was deficient in popular strength, his administration would be ominous to the welfare of the People. Within reasonable limits, I hold the direct contrary to be true: and that the event the most ominous to this Constitution, and to the liberties of this People, would be, after a contested election, the triumph of a well organized, embittered, and exasperated majority. A dangerous President will be a strong President: and a strong President, to make him unduly so, must be backed by a strong majority in this House, and a strong majority of the People.

But, Sir, the gentleman argued, that this was not only the most important function in the Constitution, but that it was a function in which the Constitution had completely failed. This, I regarded, not only as an erroneous proposition, but as wholly at variance with another proposition, in a subsequent part of the gentleman's argument; which was, if I did not misunderstand him, that all the Presidents whom we have had, with one exception, were the ablest and best men which the country afforded, and were really the choice of the People. Now, Sir, we have had ten Presidential elections: they have resulted, the gentleman says, with one exception, in the election of the ablest and best men—each of whom was the choice of the People: and that exception, if I understood his allusion, was of an individual, who, beginning with President Washington, and coming down, has received the highest marks of confidence, and has been placed in the most responsible stations, by all those ablest and best men. And this, the gentleman calls a complete failure. I call it complete success. I beg leave to tell the gentleman, that, if he expects, by an amendment of this Constitution, or by a new Constitution, in this or any other country, to the end of time, to get a Government that will not be found to fail, at least once in ten times, in its practical operation, he will be disappointed. A result like this, stretching over our whole history, and giving us the ablest and best men of the country, in succession, with a single exception, and that exception made by a political opponent, which (I know the gentleman's candor will permit me to add) detracts something from its weight—such a result, I say, is perfect success, unexampled success, glorious success; and I would not alter a letter in the Constitution, in the hope of obtaining a happier operation.

In respect to the controversy which forms a leading part of the honorable gentleman's argument, the alternative of the General Ticket and District system, I have not much to say: the rather, as I conceive the practical operation of the two systems to come nearly to the same thing. I say this, on grounds of reasoning, and I am not aware that there is any thing in experience, to bring us to a different

conclusion. The two systems, in the long run, must come to the same thing. On the General Ticket system, supposing it to be uniformiy adopted throughout the United States, the unrepresented minorities would be balanced by each other; or, in other words, the minority, whose voice is not heard in one State, on one side of the question, would be balanced by the minority, whose voice is not heard, in another State, on another side of the question. On the District system, the same result would take place. The minority represented in the Electoral Colleges, on one side of the question, in one State, would be balanced, and being balanced, would be neutralized, by the minority represented in another State, on the other side of the question: and, therefore, in their practical operation, there would be very little to choose, between the two systems.

I grant to the gentleman from South Carolina that diversity, in this respect, is an evil. It is an evil that one State should appoint its Electors in one way, and another State in another way. I admit that this is an evil, for which a remedy is desirable; though I do not know—if no other remedy could be applied—whether it would be expedient (if it were competent to us) to alter the Constitution for this purpose. But the gentleman himself tells us there is another remedy. He says that, as the Constitution now is, without any alteration, the States will all be led to adopt the General Ticket system. What more do we want, as far as uniformity goes? If the States will all adopt the General Ticket system, without any amendment to the Constitution, then the only evil which I admit to exist, is remedied: for I maintain that it is no evil that the General Ticket system should prevail, rather than the District system; because, in their practical operation, they must come to the same result. In the few observations, therefore, which I have to make on this part of the gentleman's argument, I desire to be understood not so much as being opposed to the District system, as wishing to show, that some of those inconveniences, which he traces to the General Ticket system, are equally incident to the District system: and that others flow, not from this or that system, but from human nature itself, and are evils inseparable from any kind of choice.

The first argument by which the gentleman supported the amendment, which goes to introduce the District system, is, that, as the Constitution now stands, we have no constitutional provision at all. He even said that, on this subject, we have no Constitution. In other words, because the Constitution gives to the States a discretion on this point, and because the States have exercised this discretion differently, in different States, and at different times, in the same State, we have, therefore, no Constitution. But this is confounding constitutional provision with constitutional restriction. This proposition is at war with the substantial principles of all our institutions; with that principle which lies at the basis of this entire Republic—to throw back on the States as much of the detail of the system as is possible. There is as much constitution here, sir, as in the other most important functions of the Government. There is as much constitutional provision for the choice of electors as for the choice of the members of this House. I have never heard it suggested there was *no* constitutional provision to fill these benches. They do certainly get filled without much difficulty; and the People are as well satisfied that they have the power to fill them, as they would be if there were a constitutional provision that prescribed the mode. We have the power to alter the laws passed by the States, regulating the time, place, and manner, of choosing Representatives, and the time and manner of choosing Senators; and we have never exercised this power. Is there, therefore, no Constitution in these respects? There is another constitutional provision, which guaranties to each State a Republican Government. What is a Republican Government? Of how many branches does it consist? How to be chosen? For how long? What are the checks of these branches on each other? There is not a word of all this in the Constitution of the United States; and yet will the gentleman say, that the whole institution of Republican Government is of less importance than the particular modification of the electoral suffrage for President; or that, being (as I assuredly is) infinitely more important, we have no constitutional provision for it?

I repeat, sir, that it is the life and soul of this Government, to exercise no more power than is absolutely necessary, and to leave as much as possible to the discretion of the States. It is for want of some such adjustment as this that all the Governments that have ever been established over widely extended regions have fallen to pieces. Sir, I am willing to retract what I said. I am ready to think that, in this respect, this Constitution is perfect. When I consider this partition of powers, when I see how the separate States are relieved from all the perplexity of foreign relations, and how the General Government is relieved from all the odium of local administration, I am ready to pronounce it in this part, a perfect system. I apprehend there are no limits to the possible extension of this Government in this respect. I believe it might go into harmonious operation, from Labrador to Cape Horn, as easily as it does from Maine to Florida—I mean as far as this part of the system is concerned. I think this is a part of the Constitution which, of all others, ought to be treated sacredly.

But, at least, the gentleman contends, we have no Constitutional provision which results in uniformity. Even this, as I have already had the honor of stating to the Committee, is at war with his admission, that the Constitution, such as it is, will practically result in uniformity. That uniformity is not, I know, *the* uniformity which the gentleman prefers; but it is the uniformity of one system, if not of another. But I will waive this point, and will follow the gentleman for a moment, in the argument on the subject of uniformity; and I must ask leave to say, considering that this idea of uniformity is the basis of his system, that I could wish he had applied a little more of that sagacity, in which few men equal him, in analysing the idea of uniformity.

There are many incidents to the electoral choice. In some of these, uniformity is provided for by the Constitution, as we have it. In others, where it does not exist, the gentleman wishes to provide for it; while, in others, and in those, in my judgment, not of less importance, he leaves it still wholly unprovided for. We have an uniform Constitutional provision, which ascertains the power that shall appoint the electors; the States shall appoint them. We have an uniform constitutional provision which ascertains the tribunal that shall decide how this appointing power is to be exercised; the *Legislatures of the States*. We have an uniform provision that ascertains the *number* of electors to which each State shall be entitled. Here is a great deal of uniformity, as much, as I have already said, as exists in other most important parts of the Government. But the gentleman maintains that it is not enough. There is one discretionary element in this system, and the States have exercised that discretion by no fixed rule. This must be remedied; and he proposes, as a remedy, to prohibit the States from exercising this discretion, and to lay out the United States into an uniform system of Districts. I beg that the order of the words may be marked, an uniform system of Districts. Sir, that is one thing; but is it to be a system of uniform districts for that is another thing; though the vital difference between them has been overlooked by the gentleman from South Carolina. I will suppose that the State of which I have the honor to be a Representative, shall be entitled, as now, to fifteen electors, and that it shall be required to be laid out into a system of districts, and that the districts

are to be uniform. Suppose this operation to be begun by running a line through the State, a parallel of latitude or a meridian, and dividing it into two portions, as nearly equal as may be, so that we shall have eight electors on one side of the line, and seven on the other. Suppose that, on one side of the line, those qualifications of voters shall prevail which obtain in Virginia, which my friend from that State (Mr. ARCHER) thinks the very perfection of the electoral franchise, which shut out from the polls more than one half of the arms-bearing and tax-paying free citizens, while on the other side of the line, universal suffrage shall prevail. Now, sir, when we come to divide these two portions of the State into districts, though we may call the system uniform, are the districts uniform? Does each of the districts on one side reflect the same quantum of popular voice and popular will, as on the other side? No, sir; we have the *word* uniformity, and it is the only thing we have; and that is in the wrong place. The very object at which the gentleman aims, under cover of this word *uniformity*, eludes his grasp. The system is uniform so far as this, that all the States will be divided into districts; but the districts are as un-uniform as possible.

Is this doubted, sir? Look, for a moment, at the qualifications of voters in the different States. I have, for this purpose, looked through the Constitutions of the United States, as contained in the collection printed in eighteen hundred and twenty, and comprehending all of them but the very last; and I think I may say that I have not found two States in the Union where the qualifications for voters are precisely the same. It seems as if the ingenuity of the framers of them had been tasked to find out some qualification for voters in each State that should differ a little at least from the qualifications in every other State. In some of them it is required that the voter should be a citizen of the United States; in others it is not. Now, from one Presidential term to another, we have forty thousand emigrants arriving in this country. Under one State Constitution they may be voters if they possess the other requisites; and under other Constitutions they cannot be. This is of great importance: for it might put it in the power of an irruption of this kind from abroad to change the fate of a contested election. Then, apart from slavery, there is the discrimination of color. In my State, that forms no disqualification; in most other States it does. Now, sir, in the State of New York, there is a free colored population near half as large as the entire population of that State (Delaware) which you so worthily represent, and which, in New York, is not entitled to vote except under a burdensome qualification of property, and, in most States, is not entitled at all. Is not this a great difference? The distinction of sex; even that is not a constant discrimination. In one State (New Jersey) all the inhabitants possessing fifty pounds of proclamation money may vote; and, in times of high party excitement, the inhabitants have all voted, male and female, till the evil was thought so considerable that an honorable gentleman over the way, (Mr. CONDICT) fearing the possible effect of this new gynecocracy, more prudently than gallantly undertook to apply a remedy; and proposed a law, which took from the fairest and best part of creation that influence at the polls which we are all willing to concede to them every where else. But, this exclusion is only a matter of law; the Constitution remains the same; and, in times of high party excitement, should they ever return, who shall tell us that sex will not again make a variety in the qualifications of voters in the different States? Again, the diversity in property, as a qualification of a voter, is so great that, in one State, more than half the free population, who pay taxes and bear arms, are excluded, while other States limit to the polls the poor man, who has nothing but his life to bind him to the community, nothing to contribute to its support but the labor he bestows on the highway, but whose life and liberty are as dear to him as the broad acres of his rich fellow-citizen to their possessor. Lastly, there is the great distinction between freedom and slavery, which allows the friend who sits at my right hand, (Mr. HAMILTON) to have near twice as much political power as is conceded to me, being a citizen of a non-slave holding State. Yet, you tell me, sir, that a system, which takes no account of this discrepancy in the qualifications and numbers of those who compose the districts, is uniform. Certainly, it is any thing but uniform.

The answer made by the gentleman from South Carolina to this difficulty, is, that, if this were a matter of ordinary legislation; if it were a matter within the grasp of the changeful discretion of a State, he should think it was an evil that called for a remedy. Sir, if it were, as he represents the matter, a constitutional fixture in the States, it would only prove that no remedy could be had. It would only prove that uniformity was not merely difficult to be had, but positively unattainable, the obstacles to it being guarantied in the Constitutions of the States. But it is not competent for the Constitutions of the States to make any limitations on this subject. The Constitutions of the States cannot fix the qualifications for voters for electors of President and Vice President. This is left to the Legislatures of the States, and is as much within reach of amendment (or alteration, as I should rather call it,) of the Constitution, as any thing in this connexion. If the gentleman, therefore, wishes to have an uniform system, he must—there is no avoiding it—bring in the proposal of an amendment, which will go to lay off this country into districts, each of which shall represent an equal portion of the popular will; of the power, the knowledge, the desires, and interests, of the People of the United States. Any thing short of this, may have a greater or less degree of merit; but it will not have the merit of uniformity.

Further, sir, it is in the regulation of the qualification for voters, that the most successful attacks may be made on the purity of the electoral franchise. Will gentlemen consider what is now passing before us, in the great kingdom of France—a kingdom, at this moment, more instructive to the American statesman, in the events there passing, (though they may be less astonishing and alarming than those of former periods) than it has been at any time within the last fifty years. There they are making the experiment of a grand electoral system. The vast territory of the kingdom, comprising thirty millions of inhabitants, is laid out into departments and arrondissements; they have their electoral colleges of arrondissement, and their electoral colleges of department, and all looks as fair and systematic as the diagrams in your General Land Office; and what is the result? It is so contrived, by regulating the qualifications of electors, that, in a Chamber of Deputies, consisting of four or five hundred members, and at a time when popular opinion was, perhaps, equally divided in the Kingdom, there were some fifteen or twenty members of the liberal party, and all the rest were on the side of the Crown. This is what an artificial regulation of the qualification of voters can do, in perverting the purity of the electoral franchise. I wish to be understood, sir, as speaking on American principles; I am not sure that a Representation like ours would be safe in France.

And here, sir, I feel it my duty, in reply to some intimations of the honorable gentleman, to make a single remark, shewing the inconvenience of treating this subject, not as a constitutional question, resting solely on the terms of the compact, but as one of abstract popular right. The gentleman spoke of the sublime spectacle of ten millions of freemen marching to the polls; and he alluded to the late election, as an election that had resulted in the choice of a candidate, who was not the favorite of the People. Now, sir, if I enter into a political compact, by which I agree that my friend here shall have two votes, while I shall have but one, I will not afterwards murmur at the terms of that

compact. I will not say it is a hard compact, especially if I do not think so, as I do not in this case. When you come to count up the result of the election, I will not refuse to admit that his candidate has twice as many votes as mine, if that be the arithmetical balance. But when we come to talk of popularity, that is another thing; and I cannot permit it to be calculated by the ratio of the three-fifths. And for this reason I must insist that the honorable gentleman is not authorized to say, that the last election resulted in the choice of an individual who was not the favorite of the People; I mean taking the majority of the votes as the guide to that conclusion.

Having touched on this point, I ought, perhaps, to add that, if there are any members in this House of that class of politicians to whom the gentleman from North Carolina (Mr. SAUNDERS) alluded, as having the disposition, though not the power, to disturb the compromise contained in the Constitution on this point, I am not of the number. Neither am I one of those citizens of the North, to whom another honorable member lately referred, in a publication to which his name was subscribed, who would think it immoral and irreligious to join in putting down a servile insurrection at the South. I am no soldier, sir: my habits and education are very unmilitary; but there is no cause in which I would sooner buckle a knapsack to my back, and put a musket on my shoulder, than that. I would cede the whole continent to any one who would take it—to England, to France, to Spain: I would see it sunk in the bottom of the Ocean, before I would see any part of this fair America converted into a Continental Hayti, by that awful process of bloodshed and desolation, by which alone such a catastrophe could be brought on. The great relation of servitude, in some form or other, with greater or less departures from the theoretic equality of man, is inseparable from our nature. I know of no way by which the form of this servitude shall be fixed, but political institution. Domestic slavery, though I confess not that form of servitude which seems to be most beneficial to the master—certainly not that which is most beneficial to the servant—is not, in my judgment, to be set down as an immoral and irreligious relation. I cannot admit that Religion has but one voice to the slave, and that this voice is, "Rise against your Master." No, sir, the New Testament says, "Slaves obey your Masters;" and though I know full well, that, in the benignant operation of Christianity, which gathered master and slave around the same communion table, this unfortunate institution disappeared in Europe, yet I cannot admit, that, while it subsists, and where it subsists, its duties are not pre-supposed and sanctioned by religion. I certainly am not called upon to meet the charges brought against this institution, yet truth obliges me to say a word more on the subject. I know the condition of the working classes in other countries; I am intimately acquainted with it in some other countries, and I have no hesitation in saying, that I believe the slaves in this country are better clothed and fed, and less hardly worked, than the peasantry of some of the most prosperous States of the continent of Europe. Consider the checks on population. What keeps population down? Poverty, want, starvation, disease, and all the ills of life; it is these that check population all over the world. Now the slave population in the United States increases faster than the white, masters included. What is the inference as to the physical condition of the two classes of society? These are opinions I have long entertained, and long since publicly professed on this subject, and which I here repeat in answer to the intimations to which I have already alluded. But, sir, when slavery comes to enter into the Constitution as a political element, when it comes to affect the distribution of power amongst the States of the Union, that is a matter of agreement. If I make an agreement on this subject, I will adhere to it, like a man; but I will protest against any inferences being made from it like that which was made by the honorable mover of these resolutions. I will protest against popularity, as well as votes, being increased by the ratio of three-fifths of the slaves.

I shall proceed now to offer a few cursory remarks on the merits of the different modes of choosing Electors discussed by the honorable gentleman.

The gentleman passed lightly over the appointment of Electors by the State Legislatures: he treated it as a manifest usurpation, in which he had the concurrence of the gentleman from New York, (Mr. STORRS.) I did intend to have said something more in detail on the subject, but the gentleman from Virginia, (Mr. STEVENSON) has exhausted it, that it is not necessary for me to go into the argument. I shall only remind the Committee, in addition to what was stated by that gentleman, that, at the first appointment of Electors, in 1788, before the Constitution can be said to have gone into complete operation; at that early moment, a very considerable proportion, all the States but three, did appoint their Electors by the act of their Legislatures. In my own State they were appointed by the concurrent act of the Legislature and the People—the People in large Districts making a nomination of twice as many persons as the State was entitled to appoint, from which the Legislature selected the Electors. We hear a great deal about contemporaneous exposition, and we have the Federalist quoted, and Mr. Dickinson quoted, and other sources of the same kind, which certainly I hold in all respect. But I do think the solemn acts of the great majority of the Legislatures of this country are as good a contemporaneous exposition as the speculations of any individual statesman, however respectable. An appointment by the State Legislatures is not a mode that I am partial to—nor is it popular in my State; but I cannot agree with the gentleman from South Carolina, and the gentleman from New York, who spoke first, on this subject, in calling it a usurpation.

Let us pass to the consideration of the General Ticket system. The first objection to this system, which the honorable gentleman urged, was, that it had the effect of crushing the minority; and he drew a distinction between that submission of the minority to the majority, which is necessary in all Governments, and a total annihilation and prostration of the minority. I must say, Sir, with great deference, that this seemed to me a distinction without a difference; because the choice is to result in an individual. Suppose the President to be chosen by Districts—there are two hundred and sixty-one votes: He may be chosen by one hundred and thirty-two. What will become of the remaining one hundred and twenty-nine in the minority? Are they not annihilated? Are they not crushed? are they not prostrated? Where are they represented? where is their voice? who knows or cares what they think? The President is chosen by the Constitutional majority of Districts. This is a result from which, on the principles of the honorable gentleman, you cannot escape. The same holds in our State elections—in the election of Governor, the election which calls out, and that for very good reasons, the heartiest zeal of the People, in the State I, in part, represent. There have been great heats in these elections: they have been very closely contested, and in a vote of eighty or ninety thousand citizens, the successful candidate has sometimes been chosen by a majority of two or three hundred: yet I have never heard it hinted that, even in that extremity, the minority was not fairly and fully represented.

But the view of this subject, on which the gentleman seemed most to rely, to demonstrate the unfair operation of the General Ticket system, was the case of two States, one of which should be unanimous in its preference of a candidate, and the other, a little larger, should be almost equally divided. By the operation of the General Ticket system, it might happen, that the favorite of the majority in the large State, though the choice of but about

quarter part of the aggregate population of the two States, would still be chosen. Why, Sir, that is one possible result of the General Ticket system, as considered between two States. But I will show you another result, not only equally possible, but far more probable. Take the case of Pennsylvania and New York: Pennsylvania, being unanimous, and giving twenty-eight votes for her candidate; New York, not being quite unanimous, but giving thirty-one votes to her favorite candidate. There is a great contest between these rival States, their candidates are each aiming, and their States for them, at the brightest, the most glorious prize in the world; and you call in the small, discontented, factious minority of New York, five votes only out of thirty-six, and say to this minority, you shall be the umpires in this great question; we will leave it to you, impartial, unprejudiced men! to assign this most precious prize. Sir, to whom will they assign it, under the influence of those feelings, which cannot but actuate so small a minority in so great a struggle? Unquestionably to the Pennsylvania candidate; unquestionably against the majority of their own State. Is this a result which would tend to harmonize our Republic? No, Sir, it would tend to civil war, as much as any ground of contention between two powerful and neighboring States in the Union, on the subject of this election.

But, I have a better answer to the case of the honorable gentleman. It is a case, which, on his principles, cannot happen. The remedy he provides, supposes the non-existence of the disease. If his premises are true—I will not say his conclusions do not follow—I say they cannot follow. What is his general supposition? That States are not unanimous—that States have minorities; and the evil is, that those minorities should be unrepresented. What is the gentleman's particular case? Why, that out of two States, one is unanimous and one is not; whereas, the first supposition is, that the States are not unanimous. Now, if, out of two States, one is unanimous, out of twenty-four States, twelve will be unanimous. The probability is, that States will not be unanimous; the probability is, that the minority in one State will be balanced by the minority in another; the further probability is, if there be an unanimous State in one part of the Union, on one side of the question, there will be an unanimous State in another part of the Union, on the other side of the question. In contradiction to these premises, the gentleman puts a case, amounting to this, that out of any two States, one will be unanimous, and that one will be nearly equally divided. The supposition, therefore, is contrary to his own premises.

This leads me to remark, that the fair protection of the minority is in the majority of the other States, and it is not necessary to make any further constitutional provision for it. The gentleman from South Carolina seems to me, as was very forcibly shown by the gentleman from Virginia, (Mr. ARCHER) in the error of confounding the choice of an Executive officer—who is not a *Representative* of any part of the People, not even of those who choose him—with the constitution of a representative body like this, for which it is necessary that the country should be divided into the smallest practicable sections, and that each section should have its representative, in order that its local peculiarities and interests should be attended to. But far different is the case of the President; he is an Executive officer; he must carry the laws into execution equally for all—Tros Rutulusve—he is not the President of this or that party. He cannot say, if he would, this law, which bears hard on my friends, shall not go into execution against them; but for those others, my opponents, I will grind them to powder with it. If the representative of any, he is a representative of all, and this by the necessity of his office; it is not a matter of choice with him. Now, in creating this President, the Constitution provides two hundred and sixty-one moments of power. To New York it gives thirty-six of them; and how shall New York exercise this her share of that power? In such a way certainly as to gratify the greatest portion of her citizens; and to obtain that result, the question must be put to a vote of the People, as the People of New York. No, says the gentleman, if New York happens to be divided, as nineteen to seventeen, I will take away thirty-four thirty-sixths of her power. Just in proportion as her citizens deviate from unanimity, I will mulct them in a thirty-sixth of their voice in the election of the President, and when they are equally divided, they shall have no power at all. The gentleman will contend that this evil will find a remedy in other States, where a similar result will be produced; and what New York loses in one way, she will gain in another. That, Sir, I grant, is the practical operation; I have allowed, I have urged that, on this very principle of compensation, there is between the General Ticket and the District system very little practical difference. But, in the one system it is a stipulated provision; in the other, it is a practical effect.—The majority, not the minority, are entitled to the stipulated provision, that their will shall prevail; and it is enough to console the minority, that, in the practical operation, what they lose at home, they gain abroad.

I think the gentleman's next objection to the General Ticket system was, that it tended to form and keep up geographical parties. This would have been plausibly and even forcibly stated, if it had been true that the States are geographically peculiar, or that those sections of country which are geographically peculiar, are so many States. But this is not the case. We have in this country, and I am not sorry to see it, because I believe it is one spring of our prosperity, the materials perhaps for five or six geographical parties or geographical interests. I think we may carve out of the map an Eastern, a Central, a Southern, a Southwestern, and Northwestern section. I do not think at present, you can get more. Now these sections are not States, to be bound together by the general ticket system, so that they will, in virtue of that system, vote unanimously in any given case. I think they never will do it. Even in New England—which the gentleman from Virginia, (Mr. ARCHER) named as the part of the Union most likely to march in phalanx—even in New England, an unanimous vote will rarely if ever be given. Geographical parties must rest on geographical bases. You might as well talk of the sound of a color, as of a geographical party, that rests upon any thing but a geographical basis; and when you get a geographical basis, when you get any thing that interests New York as New York, or South Carolina as South Carolina, do not you think, Sir, they will go in a phalanx, whether you have the District or the General Ticket system? Believe me, they will. Geographical parties are not to be divided by those imaginary lines which you are going to run between your electoral districts. The Alleghanies, the Mississippi, the Potomac, the Hudson, the great Lakes—these will make geographical parties, if any thing is to make them.

But, Sir, I am not prepared to admit that geographical parties are the greatest evils this country has to fear. Party of all kinds, in its excess, is certainly the bane of our institutions; and I will not take up the time of this committee by disputing, which is most deleterious, arsenic or laudanum. It is enough that they are both fatal. The evil of geographical parties is, that they tend to sever the Union. The evil of domestic parties is, that they render the Union not worth having. I remember the time, Sir, though I was but a boy, when, under the influence of domestic parties, near neighbors did not speak; when old acquaintances glared at each other, as they passed in the streets; when you might wreak on a man all the bitterness of your personal and private enmity, and grind

him into the dust, if you had the power, and say, he is a democrat, he is a federalist; he deserves it. Yes, Sir, when party spirit pursued its victim from the halls of legislation, from the forum, from the market place, to what should be the sanctuary of the fire side, and filled hearts that would have bled to spare each other a pang, with coldness and estrangement. Talk not to me of your geographical parties. There does not live the man, I thank God, on earth, towards whom I have an unkind emotion—one whose rights I would invade, whose feelings I would wound. But if there ever should be a man to whom I should stand in that miserable relation, I pray that mountains may rise, that rivers may roll between us—that he may never cross my path, nor I his, to turn the sweetness of human nature into bitterness and gall in both our bosoms.

I believe the gentleman's next objection to the General Ticket system, was, that it tended to throw the power of the State into the hands of political intriguers, through the instrumentality of that much famed political institution—the caucus. On this subject I cannot speak with much confidence. I never attended a caucus in my life, except as an edified spectator—one among four or five thousands, assembled in Faneuil Hall, to do what we are now doing—consider the state of the Union. Farther than this, I know nothing from experience on this subject. The gentleman tells us that it is of the nature of the caucus, that by the aid of that political organization, it is in the power of five or six leaders, in the command of four or five thousand well drilled veteran troops, to put to flight twenty thousand of the ordinary voting militia. But I suspect the gentleman over-rates, or he mistakes in his haste, the power of the caucus. I believe it may reconcile, on one great point, a previously ascertained majority, of which the members had been separated only by subordinate divisions—I believe it may enable a previously ascertained majority to act in concert and unison with each other—I believe it may serve to reduce a question to an issue between a majority and the minority. Farther than this, I cannot believe that caucussing can go. It is a game at which more than one side can play; and I do not believe we are so wanting in "political magicians," or whatever you choose to call them, that four or five are all that this country, or any State in it, at one time, can produce; and that they will all be on one side. I believe, that, taking things as they are, the only way you can put twenty thousand voters to flight, is by marching up to the polls with twenty thousand and one—that will do it, and nothing else will.

But, how does the gentleman's system afford any remedy to the evil of caucussing? The only effect of the district system will be, that we shall have two hundred and sixty-one caucusses, instead of the twenty-four already provided for; or, (if you double the number, that each side may have its caucus,) five hundred and twenty-two instead of the forty-eight now likely to exist. This would most probably be the effect of introducing an uniform District system. Another thing: what is to become of the minorities on the District system? I could here tell the gentleman something about that arrangement in my own State, to which he alluded by a name—which, out of respect to a venerable patriot and statesman of the Revolution, now no more, and who had nothing to do with the transaction, I shall not repeat. At a time, when the parties in the State were nearly balanced, there was a small majority on the Federal side; fifty-one thousand, perhaps, on the one side, and forty-nine thousand on the other. In that state of public feeling, by virtue of a system of districts, consisting of adjacent territory, and the same amount of population, (for in all these details, I believe the division was perfectly fair,) it was so contrived that the minority chose twenty-nine State Senators, and the majority chose eleven; and more votes were given for these eleven, than were given for the twenty-nine. This is, indeed, an effectual protection afforded by a District system to the minority! The gentleman from Virginia, (Mr. STEVENSON) pointed out to you, in the State of Maryland, at the last election, a similar result, affording an illustration equally strong of the benign effects of the District system.

In this part of the subject, the gentleman made a pathetic appeal to the political leaders of New York. He told them they must have felt, in the fluctuation of their parties, that it was really better for themselves, that they should not possess the power of alternately wielding against each other the whole strength and patronage of that vast State. Sir, I care not how often the parties of New York have been up and down. What are these fluctuations of party in New York to us, to them, to anybody? When I look at New York, which I always take a pleasure in doing, I can see nothing but her magnificent metropolis; her ever multiplying institutions for charity, for science, for the arts, for social improvement: her Western paradise of abundance and prosperity; and, the glory of the age, her great canal. These have gone on, are going on, and I trust will go on, under all the fluctuations of her parties; whilst I could name to you States, which have always marched to the polls in a Macedonian phalanx, that have fallen far behind New York in these great objects of social organization. As to the parties in New York, I have read their papers more or less for fifteen years, and I do not now know the meaning of their little local appellations, nor am I going to lay my hand on the Constitution, and alter it, in order that the factions in New York

"May fall with dignity, with temper rise."

No, sir, this consideration will, I trust, on mature reflection, have no weight even on the mind of the honorable gentleman who suggested it, as an *argumentum ad hominem*, addressed to the politicians of that State.

The last chief argument of the gentleman on this subject was, (for I must pass over several topics in this discussion) that the admission of the district system was the only compensation which the large States could offer to the small States, to induce them to give up their equality in the eventual choice of a President in this House. Why should they give it up? The gentleman says they should give it up, because, in the first place, it is an illusory power—a power not possessed by a small State, but possessed by the single individual of that State, called to exercise it on this floor. But there are States, which have more than one Representative, and which are yet to be called small; and I think, on his own principles, I could prove to the honorable gentleman, that it is a real substantive power possessed by twelve smaller States, that, as such, they stand on an equality with the large States when the election comes to this House. At any rate, if the gentleman objects to the exercise of the power here, he must consent to adopt the amendment proposed by the gentleman from Pennsylvania, (Mr. FRANKLIN) which, though it takes the eventual choice from this House, secures to each State its equal vote. No, says the gentleman from South Carolina, the majority of the People will not consent to be governed by a minority.

I entertain a high respect—the gentleman, I am sure, believes that I do, an unaffected respect—for his talents and political sagacity; but when I heard this proposition fall from him, I was at a loss in what light to regard it—serious I could hardly consider it; less than serious, of course, the occasion did not admit.

The majority not submit to be governed by the minority! Look at the other end of this building, at the Senate—of which it was so justly said by that distinguished statesman, who, in his constitutional capacity, sits in the chair of that House—when he acceded to it

chair, by the almost unanimous voice of the nation, "while the other branches of this Government are confined, with few exceptions, to what may be considered their appropriate powers, to the Senate alone is granted a participation in all the different powers of the Government, Legislative, Executive, and Judiciary. Yes, sir, and what is the Constitution of that Senate? What is the power of the majority of the People there? Pass what bill you please in this House, by a majority of four to one, and send it to that House, and it may be rejected by the Senators from those States whose representation on this floor is forty-five out of your two hundred and ten. Do you impeach a functionary of this Government, and demand justice on him, by a vote of one hundred and ninety to twenty? When you carry the impeachment up to that House, the Senators of the States represented on this floor by twenty members, can deny you the justice which you, and the People, through you, demand, in a proportion of nine to one. Fall into a state of war; let the country be reduced to the last point of exhaustion; let a treaty at length appear, with the olive branch of peace; let there be a faction in the Senate, from States which stand in the proportion of one to ten in this House, and they may reject that treaty. In the very last convention which that body did reject—the convention relative to the slave trade—one article was stricken out, though the vote stood, twenty-nine for retaining, and sixteen for striking out; yet it was stricken out, because there was not a Constitutional majority for ratifying that article. Consider the power of the Senate over the Judiciary branch of this Government, which, in the late debates, was justly called the sheet anchor of the Constitution. It is probable that, on the bench of the Supreme Court, there may soon be four vacancies. The Executive of this country might be prevented from sending the best man of the country into either of these vacancies, by an union of the Senators from the States whose representative power is only forty-five out of two hundred and ten; while this House would be prevented from driving the most undeserving individual from that bench, (in the supposition that any one could be there to whom such a character belongs) though he united the venality of the Chancellor, with the cruelty of Jeffreys, by a combination of the Senators from States who possess but a tenth part of the representative power on this floor. Yet, the gentleman tells us that the majority of this People will not be governed by the minority.

Sir, disguise it as you will, this is a Constitutional question. It goes to the compromise between the States, on which the Government rests, as on its corner stone, as on its foundation. In this system there are some features which are purely federative, some which are of a mixed federative and popular character; not one that is purely popular; yet, all that part of the honorable gentleman's argument—I do not certainly mean to misrepresent it—which insists on the right of the majority of the People to govern, would be applicable only to a system that was purely popular throughout. I should not have to vary this part of the gentleman's argument in the least, if I should adduce it, in support of an alteration of the kind I mentioned in opening my remarks, which would go to take away the equality of the representation of each State in the Senate. What is more unjust, on abstract principle, than that your State, sir, (Delaware) should have as much power as Virginia, and my State should have as much power as New York? But these abstract principles here go for nothing. It is a compact, entered into by parties who said they would not agree to any thing else. When this Constitution was drafted, Governor Randolph proposed to have a proportional representation in the other House, as well as in this. What did the small States do? They said, we will not take it, we will not agree to it; and, rather than accept such a Constitution, we will break up the Convention. They said more, sir; that they would sooner take a foreign Power by the hand, than have a Constitution on the principle by which the honorable gentleman supports his resolutions. The election of President, and the adjustment of the two principles in that part of the Constitution, was the other most difficult point. Mr. Wilson informs us, in his speeches in the Convention assembled in Pennsylvania to ratify the Constitution, that this was the point on which the Federal Convention most labored; as it was also the point on which they thought themselves, and were thought by their contemporaries, to have met with the most perfect success. Now, sir, it is on this most delicate adjustment, that the gentleman lays his hand. In the primary election he proposes to take from the States the right to exercise their voice without division; and, in the secondary election, to take from the small States their equality of power in this House. As far as this goes, it is making a new Constitution; it is opening the question from the foundation: it is breaking up every compromise which the Constitution contains; and, as was observed by the gentleman from Virginia, (Mr. STEVENSON) when this is done, it is not a matter of question, it is a matter of certainty, that you could not renew any of these compromises. At all events, any argument addressed on this subject to the Committee, in order to have weight, must be, not an argument on general principles, as to the right of the majority to prevail over the minority, but a Constitutional argument, to show that the adjustment of the Federal and popular principles of the Government requires to be revised and settled on a different footing.

But, sir, I will briefly follow the gentleman in some of those arguments, by which he urged on the House the adoption of his first resolution, which goes to prevent the election from devolving on this body. I accompanied the gentleman, with unfeigned delight, in the broad and philosophical views, clothed in most eloquent language, which he took of many important subjects in general politics; and if I ever felt obliged to differ from him, it was not so much in establishing his principles, as in drawing his conclusions.

His general train of thought, in this part of his argument, appeared to be somewhat as follows: A vast extension of liberty has taken place in modern times, particularly in the United States of America. The great political problem to be solved, has been, to reconcile this great extension of liberty, with the strength of an Executive, sufficiently powerful to administer the Government. This, especially, was the problem to be solved by the framers of the Constitution of the United States, and the mode in which they decided it, was this: they created an Executive of great powers, and reconciled this power with the security of the Constitution, and the preservation of the liberties of the People, by the principle of elective responsibility. This responsibility is to grow out of a popular choice; and, therefore, the honorable gentleman inferred that the choice should be sent back from this House, in some form or other, to the People. This appeared to be the general train of his argument.

Agreeing, as I cordially do, in the first proposition, that an unexampled extension of liberty is enjoyed, and constitutionally secured, in the United States, I cannot, on this part of the subject, go farther in unison with the honorable gentleman.

In the first place, the power of the Executive is not great, as the gentleman describes it, but very small. The gentleman stated it to be equal to that of the King of Great Britain. Sir, I must say that this seemed to me to be an exaggeration too violent to be admitted, even in the heat of argument. I shall not follow my friend from Connecticut, (Mr. INGERSOLL) in the comparison of the powers of the King of England with those of the President, nor shall I trouble the Committee by referring to the

chapters in the Federalist on this subject—which I doubt not are better known to the gentleman from South Carolina, than to me—in which the same comparison is so forcibly pursued. I will confine myself to the single point of the tenure of the two officers—the President of the United States being elected for four years—the King of England being hereditary, and for life. In consequence of this single difference of tenure, the difference of influence between the two functionaries (and it is a question as to influence) is positively infinite:—I cannot use a weaker term. I hesitate not to assert, that, if I have learned any thing of English history, it is this: that, if the King of England had been elective, and for four years, there has not been a ministry, since the time of the Cecils and the Walsinghams, that could have sat on their benches for four weeks. Sir, the President has no power of the nature to create influence: he can do nothing of himself, in that way. The only power that he may be said to have, which is absolute—and this is not of a nature to confer personal influence—is that of negativing a law passed by less than two-thirds of Congress. As to patronage, he cannot appoint to an office of one hundred dollars per annum, without the consent of thirteen sovereign States. He cannot treat with a foreign power to build a light-house on a desolate rock, without the ratification of sixteen independent States. There is only one office, I believe, to which he has the power of appointment; and I have now, in my drawer, a resolution to take from him that solitary piece of patronage—the office of Librarian to Congress.

No, Sir, the Executive is not strong. It therefore needs no curious search after the principle, by which the strength of the Executive is to be reconciled with the liberty of the People. The framers of the Constitution went on no such search, for a principle of reconciliation between the liberties of the People and the powers of Government. They went on a far simpler and nobler principle; that of giving to the Governors no power likely to be abused, in the circumstances under which it is given to them. They went rather on the principle of having no Governors at all. I thought it was very justly said, on this floor, a few weeks since, that we have no Government; there is nothing in this country which deserves the name of Government; or, if there is any Government, it is here: if there is any throne, you, Sir, are seated on it. The People *are*, what they are often ironically called, the Sovereigns.

The gentleman may tell me that, if this be the case, our Government does not differ from the ancient democracies. Widely, totally, Sir; and let us consider how: for it is in this that the great improvement of the modern political system resides. The improvement is, that we have, and act upon, what they had not, or in very imperfect degrees, and in very limited measures—the idea of delegated power. What is the nature of delegated power? That the People who delegate it, shall delegate just as much as is safe in the hands of man, as he is, and this upon the terms of a written compact, and for a limited period. And shall we be told, that one of the depositaries of this delegated power, on the terms of a written compact, for a period of four years, has all the Executive power of the King of England? who makes war, who makes peace, who issues Orders in Council with the force of law? who governs half the world in the form of Colonies, possessing only the right of appeal to his little Privy Council? who grants pensions out of the droits of the Crown, over which Parliament has no control? that King who can do no wrong; that King who never dies; and who can raise the commoner to the peerage, by his sovereign will? The single power of pensioning, out of a fund over which Parliament has no control—the single power of raising to the peerage—exceeds all the power which, not the President alone, but all the branches of this Government united, possess, to corrupt the mass of the country. And here, permit me to say, that my recollection does no injustice to the gentleman, nor injustice to the Constitution, in quoting from it the ratification of the Executive power. In the printed report of his speech, the words are, "all Executive power" is given to the President. But the words of the Constitution are, "*the* Executive power; and, instead of understanding with the honorable gentleman, *all* the power given to the Executive of any country, the expression in the Constitution imports *the* Executive power, which this writer's system gives to this officer, called the President.

This, I conceive to be the theory of our liberty, so far as the power of the Executive is concerned: and its liberty is farther secured by our statute of distributions, by our prohibitions of nobility, by our absence of standing armies, and other republican institutions, at war with those institutions in the old world which are the supports of their monarchies. The gentleman's theory, on the other hand, is very nearly the theory of despotism. If the gentleman from South Carolina should go to an acute and philosophical subject of an absolute Government, he would find him to state the relation in which the monarch stands to his subjects, in very nearly the same terms in which he has stated the relation between the President and the People of the United States—the relation of almost indefinite power, exercised on principles of benevolence, love, and paternal feeling. He, too, would disclaim checks and balances, as power clashing with power. This is the motto of arbitrary Governments, since the world began:

> nunquam libertas gratior extat,
> Quam sub rege pio.

This is not the theory of our liberty: the framers of the Constitution did not provide us a kingly President. They provided an Executive, in the form of a dependent, a concurrent, a transitory, and an impeachable agent. The residuum, the greater part of the power, they kept in their own hands. There, Sir, I love to see it too; there, I will also idolize it. In the hands to which it is constitutionally delegated, I will pay it proper honor, be they the hands of Presidents, Senators, Representatives, Electors. And, for the very reason that the honorable gentleman places confidence in a President, chosen by the People, I also will place confidence in the Representatives, who claim it by the same title.

In this confidence in delegated power, the gentleman ought to go along with me, thinking and speaking as he did, of the system of the ancient democracies, which we all regard as inconsistent with permanent and rational freedom. How have we improved on these democracies? The gentleman says, we have created an Executive, indeed, of kingly power; but we have reconciled that power with their liberty, through the elective responsibility, and the mutual love and confidence inspired by it, which (and not checks and balances) are the securities of the People's rights. Now, I have shown, on the one hand, that this is the principle of absolute despotism; while, on the other hand, by an unexpected fatality, it is the principle of unlimited democracy, and goes to the root of delegated power. He throws back the election, as far as possible, into the People's hands, because, if they do not exercise it themselves, it will not be safely exercised. The gentleman is certainly inconsistent: He asks us, with a tone of emphasis, whether the People are not fit to choose their President? I say they are. I am not going to be placed on the ground of denying that the People, in any and every resort, from first to last, in every stage, are fit to choose their President. I think they are most fit: and that is an answer to his question. And now allow me to propose my question to him: Are they not fit, also, to choose the four Heads of Department? The gentleman

answers, Yes. More fit than one of the most sagacious of our Presidents was to appoint them: more fit than the wisest President ever will be. Well, do not let us stop here: the argument gains by admission, as we proceed. Are not the People fit to choose the Attorney General, the Postmaster General, the Judges of the Supreme Court, the Officers of the Army and Navy, the Foreign Ministers, the Collectors, the Surveyors? Whom are they not fit to choose? Will any gentleman pretend to say, of this, of that, or of any office, that it is one to which the sober sense of this People is incompetent for the election? I answer for every gentleman who hears me, there is not one who will take upon him to say, that there is such an office. Then, Sir, do not let us play with this subject: let us put our hand on this lion's mane: let us have an amendment which will go to the root of the matter: let us have an amendment to introduce universal suffrage, under which every officer, civil, military, executive, or judicial, shall be chosen by the People. Why will not the gentleman do this? His principles carry him to this extent. I will tell him why he will not do it—why no sound Republican statesman will do it—because this would be the ancient democracies over again: it would be forswearing all the improvements which have been made in political science. It would be giving up our representative institutions: shutting our eyes on the advantages of a well regulated system of delegated power. This I hold to be the reason; and a full and fair answer to all that the gentleman urged, on the fitness of the People to elect the President.

A word more, in this connexion. The gentleman spoke with great force and eloquence on the subject of the art of printing, and of its power in diffusing intelligence and knowledge amongst all the members of the community; all the members of a State; throughout the world; and he contrasted our situation, in that respect, in reference to a capacity for a free Government, with the situation of ancient nations. I shall certainly not be one to contest the almost miraculous energies of the press, in the application for which the gentleman himself contends; and in which he is borne out by the facts. Still it is important to the argument to draw a distinction. It will not do for us to argue from what we should be, without the art of printing, after having, for four centuries, been building our whole intellectual system upon it, to what the ancient nations certainly were, never having had it. They had other instruments of improvement; not, indeed, so efficacious, but by no means contemptible. At the meridian of the refinement of Greece, there was not a considerable city in that country, not an important settlement on the Ionian, Syrian, Libyan, or Italian shore, not an Island in in the Archipelago; in a word, not a place of note on the map of ancient Greece, that had not made improvements in many of the most important arts of life, which we, with all our libraries, and all our books, have been able but partly to imitate. Among the means and instruments of this improvement, were domestic slavery, which delivered the free citizens from all the cares of gaining a livelihood; the itinerant minstrels, (Homer—who lived not only before printing, but before writing—was no more) the traditionary wisdom of sages, travel to the seats of science and cultivation, manuscript circulation, and the living voice of living instructors. These were means of diffusing and transmitting intelligence and improvement, which I will not certainly put on a level with the art of printing, but which were adequate to the existence of free institutions. Sir, it was not want of intelligence—not want of light: it was the want of something else, which we have: not the art of printing, but the representative system; the plan of delegated power; that great conception of modern times. If Athens, Sparta, Thebes, instead of arrogating to themselves successively a despotism—not over barbarous provinces, for that would have been a smaller evil—but a despotism over States, as enlightened as themselves, had entered into a grand electoral and representative system; if they had given to each province its relative power in the General Government, convened their electors, from all those wide spread States, from every part of the world where Grecian liberty had taken root, and Grecian letters had spread; had they thus done as we have done; if it were not idle and pedantic to talk of what might have taken place, under different circumstances, two thousand years ago, I would say, that Greece might have stood, in all her glory, to the present hour. I see nothing to have prevented her—filled as she was with cultivated cities, with an enterprising, intelligent population, and never more abundantly than at the moment when her liberties were overwhelmed. And what, Sir, let me ask, overwhelmed her? The consequences of that jealous policy which the gentleman enforces; which, to a certain extent, he wishes to engraft in the Constitution. The language he holds to them is this: You did right to cling to your local power, each within his little domain. You might have elected your provincial representatives every year, but you could not have trusted them, in any given contingency, to designate from the few whom yourselves had selected, one who should be your head. You might have taken the election in your provinces into your own hands; you could not have trusted even yourselves. The People of Athens could not have trusted themselves to meet as the People of Athens, and express the will of the city of Athens. You must have stolen aside, the gentleman tells them, to your little districts. You must have given a voice to the virtuous minority in the Spartan interest, a voice to the virtuous minority in the Theban interest, a voice to the virtuous minority in the Macedonian interest, a voice to the virtuous minority in the Persian interest. You might have called up your electors, your representatives, your presidents, before you, as often as you pleased, and summoned them to account for what they had done. Every two years, every year, you might have passed them in review, and as each passed you, you might have thrust him from the line, if he had been unfaithful.—It is all idle, all vain; that power is safe, of which you keep the exercise to yourselves: you cannot trust the purest hands in the community to be held up to vote for you.

If I did not fear to do injustice to an argument to which I listened with as much attention, I am sure, and I doubt not, with as much pleasure, as any member of this House, I should say, that, in this part of the gentleman's argument, he did not appear to pursue a consistent train of thought. He denounced the ancient democracies: and the arguments by which he supported his amendment, go to the root of delegated power. He spoke much, and justly, of the essential virtue of the People in this community, and yet said, that the moment an individual was designated from this virtuous community, and by this virtuous community, to act in a constitutional function, he was open to suspicion. He enlarged on the intelligence diffused through all parts of the community, by the instrumentality of the Press; yet, I do not remember that he depended, in any degree, on the power of a virtuous public sentiment, and of an untrammelled free press, to preserve the balance between the People and their rulers; though it is, in my judgment, an element of our liberty inferior in value to none other.

And now I am brought to what I must deem an extraordinary part of the gentleman's argument, that which concerns the corruptibility of this House. But, in the first place, I would offer a few words in reply, on this subject, to the gentleman from Virginia, (Mr. STEVENSON) who last addressed the Committee. He said, with a liberality which, while I commend it in him, I certainly do not intend to deny to any other gentleman, that he would take the eventual election from this House, not because he be-

lieved in its corruptibility, but because he was desirous of placing it beyond suspicion. Beyond suspicion, Sir: are we going then to alter—if you please, to amend—the Constitution of the United States, until, after a contested election, or before a contested election, the purity of leading individuals shall be beyond suspicion; and that, too, in a state of society, where the mild and merciful maxim is proclaimed and acted upon, that "the private character of a candidate for office is fair game to be hunted down?" Sir, beyond suspicion! Can any gentleman tell me how long it is, since an anonymous miscreant, in the papers, accused THOMAS JEFFERSON of having pillaged thirteen hundred dollars, I think it was, from the public chest? Has any gentleman forgotten that pathetic complaint of GEORGE WASHINGTON, that he had been assailed, in language fit only "for a pickpocket, for a common defaulter?" Sir, beyond suspicion!

> "Be thou as chaste as ice, as pure as
> snow, thou shalt not escape calumny."

But, as to the corruptibility of this House, I thought, in the first place, the argument which the gentleman from South Carolina built upon it, was at war with his own system. On this system, he says, choose your Electors in districts, because coming from the People, being chosen by the People, they will not betray the People. But how are we chosen? The greater part of us are chosen in districts. We came from the People, and we must go back to the People; we must meet them face to face. If the President is chosen by the People, says the gentleman from South Carolina, he is entitled to confidence; he is beyond suspicion;—beyond suspicion, because he is thus chosen. I say, then, by the same reason that this House is beyond suspicion—I mean if the argument of the gentleman is good—and the rather, as we hold our places for two years, instead of four, and must sooner go back to the People from whom we came. I could not but think, therefore, that the gentleman's argument, in this respect, was inconsistent with itself. He says, choose the President yourselves, because he whom you choose will not betray you: and then choose him yourselves, for this House (though of your choice) will betray you. He deems, at one moment, that kingly power, in the hands of the President, is safe, if the People have elected him; but, at the next moment, he maintains that a very limited power in our hands is unsafe, though we are chosen directly by the People.

But let us look at the matter of fact. I deny the peculiar corruptibility of this House. The gentleman compared us with the British Parliament, and the patronage of this Government with the patronage of that. Has he duly considered that, out of six hundred individuals, of which the House of Commons consists, it was asserted by Mr. now Lord Grey, in 1793, that about three hundred and seven, "forming a decided majority of the House," hold their seats by the gift or influence of one hundred and fifty-four individuals? Do we hold our places here by such a tenure? Does the American Representative buy his seat, and thus get a kind of equitable right to sell his vote? Can he unite high civil and military character with his Congressional station? Above all, is the coronet—that bright and splendid prize, which no subsequent demerits can abate, no revolution in politics take away, and which time and death, that conquer all things, can but partially tear from his hands, which, when wrested from the possessor, goes down with his name and fortune to posterity—that bribe which even Chatham, the gentleman's great exemplar of political purity, was unable to resist—is any such bribe held out to assail our purity? Sir, I cast off the character of a politician; I speak as a man; I say what I feel, and nothing that I do not feel. I was shocked when I heard the honorable gentleman—an intelligent and patriotic American citizen, as I know him to be—I was shocked when I heard him repeat, and repeating, sanction, what, when it was first uttered [illegible] years ago, was considered the insolent calumny of a foreign envoy; and which, taken in connexion with a reference to what was said by Walpole, went the length of declaring that every member of this House had a price—that this price was so cheap a one as a dinner. Yes, sir, that we were literally ready to sell our consciences, our constituents, our country, for a mess of pottage. Sir, if this House of Representatives is not essentially pure, I ask, in the name of Heaven, what are the prospects of liberty in this world, under this dispensation? Where and when are you to have a free, safe, and representative Government? How are you to get it? How are you to keep it? The gentleman says, "lead me not into temptation." This is his remedy against corruption: do not set me to choose a President, and I will not abuse the power you give me on that occasion. This is, indeed, compendious politics. It does seem to me like the children's play: "ask me no questions and I will tell you no lies." The choice of a President is not the only, nor the greatest thing we have to do. Have we not peace and war, life and death, prosperity and adversity, for ourselves, for our posterity, for all the nations perhaps to come, whose fate is involved in the success of this great example of popular institutions,—have we not all this in our power? Can we not, any day, by law, by constitutional law, turn half the industry of the country out of its channels, and spread bankruptcy, and ruin, and despair, over the land? Choose a President, sir! If we stop the passage of the Appropriation Bills, for the support of Government, where is your President and his Cabinet then? Scattered to the four winds of Heaven, by the exercise of an ordinary act of legislation.

But, the gentleman says, it is not merely office which is to be the bribe, but it is the emolument of office. Sir, if this House be what the gentleman represents it to be, does he not suppose, that in 1807 or 1811, the British Government would have paved this floor, and filled these desks with gold, to have had us choose France for our enemy? But, without resorting to the extreme supposition of foreign bribery, let me allude to what might have passed within our own country. Those "factious cities," those seats of corruption and intrigue, in the dark days of the restrictive system, when the grass was springing up between the paving stones of their streets; when their ships were rotting at the wharfs; when the arm of humble industry, not less than that of gigantic speculation, was palsied; when the contriving head of that daily labor which must work for daily sustenance was struck with stupor and despair; had this House been what the gentleman represents it, and those cities what he represents them, I would have raised the embargo in three weeks, and would have found the ways and means very easily to do it. But I will put this matter to a prompter test. If the gentleman from South Carolina will give me his vote, and that of twenty or thirty of his friends, not in the cause of corruption, but in one of the purest causes a politician ever maintained; if he will only give me his aid to procure a just indemnity for those fellow citizens who, some fifteen, some twenty years, have been knocking at your door—some of them, as the gentleman from North Carolina (Mr. SAUNDERS) forcibly expressed it, shivering beggars at a bolted door,—asking just compensation for those claims on a foreign Government, which, for your own political purposes you renounced, and others equally strong, on the same Government, which you now neglect to enforce;—if he will give me his vote, and those of twenty of his friends, to procure our fellow citizens this bare justice, when I come to call his attention to this subject, as I hope ere long to do, I will send him home in a coach and four. I believe there are about thirty millions at stake in that controversy, of which I will undertake for the claim-

ants to pile up ten millions in that area for every gentleman to fill his pockets, till he cannot stagger from the Hall with the weight. Does the gentleman object to the publicity of the proffer? Sir, we will do it with the silence of death; the contract shall be sealed at deep midnight; the conscious stars shall not look down upon it; the gentleman's left pocket shall not know what his right pocket receiveth.

I do but jest, sir, indeed, and perhaps too broadly, on a subject so serious as this; yet what have I done? I have supposed the gentleman to do in a single case, what he supposes the House always prone to do. I have supposed him to do, in a just cause, and for a fortune, what he says we are all prone to do corruptly and for a dinner. But, perhaps the gentleman thinks I am doing him injustice, in pushing his argument to an extreme which he never contemplated, and in speaking of a kind of corruption he disclaims. I own, sir, that he did state, that he did not mean to say that the corruption was of a direct and pecuniary kind, although he did aver that gain was our idol, and that it was the emoluments of office that created the temptation. He said, however, I will grant, that the temptation was to come in the guise of honorable station and confidential trusts.

In this part of the subject, which is somewhat delicate, the gentleman very handsomely disclaimed all historical allusions to what was passed. He, however, alleged, if I did not misapprehend him—for I took no notes of his speech—that this House had been warned by experience, that corruption was on the threshold, and he made a somewhat significant allusion to that Mosaic Cabinet, which Burke has so happily and so memorably described.

In reference to this, and to ascertain, by practical example, the extent of this danger to which our purity is here exposed, I desire to ask, what were the differences in political opinion which divided the various candidates for the Chair, at one time, five or six in number, and their friends, during the late Presidential election? I had thought that, in the subsidence of the great parties which formerly divided the country, the choice had become, in a great degree, one of personal preferences; that every citizen was free to give his voice for the individual whose success he most wished to promote. I know, in the part of the country with which I am best acquainted, that no differences of political opinion were assumed to exist among the candidates or their friends. There was, indeed, an attempt made to enlist, under the banner of that eminent Statesman of Georgia, to whom a tribute so feeling, and I doubt not so just, (for I have not the honor of his personal acquaintance) was lately paid by the gentleman in the Chair, the remainder of the old Federal Party, against whom the gentleman from New York (Mr. CAMBRELENG) says, his city had to throw the shield of the country in the last war. But I never heard it suggested, that those who proposed, or those who acceded to this arrangement, had sacrificed their principles, or did any thing unbecoming of honorable men to propose or to do. They gave their support to the candidate they peferred.

Besides, sir, consider the necessity of the case. The candidates for the office are numerous; and but one, of course, can succeed. Is it not necessary that he who succeeds should take to his confidence some of those, who, in some stages of the controversy, have been his rivals or competitors, or the active supporters of his rivals and competitors? If the distinguished citizen, to whom no man in the country feels greater gratitude than I, the Hero of New Orleans, whose services no one more heartily, more enthusiastically appreciates—if he had succeeded in this high contention, would he have driven from his councils *every one*, who, in any stage of the canvass, had been a competitor, or a leading friend of a competitor; or if he had acted in concert with any one, who had at first been his competitor, would it have been a proof of corruption against them both? And if, to avoid the suspicion of corruption, he had driven from his confidence, and excluded from his councils, every one of his four competitors, and all their leading friends, would he not both have stopped the wheels of the country's progress, and acted in direct opposition to that manly advice, which, so honorably to him the giver, so honorably to him who was the object of it, the gentleman near me, (Mr. DRAYTON) he pressed upon the late President some nine years ago?

While I am on this topic, I will beg gentlemen to remember, that there is diversity of opinion on all these matters. Of political questions we may, with special propriety, hold with Sir Roger de Coverly, that a great deal may be said on both sides. The gentleman from South Carolina says it is universally admitted, that the favorite of the People was not chosen at the late election. The gentleman from Virginia (Mr. ARCHER) says that the People universally demand this amendment. I have only, on the other hand, to say, that it is universally admitted that the favorite of the People was chosen; (and I trust some gentleman, in this debate, will bring forward the facts, which I believe to exist, though I am not in possession of them, to prove that, as far as plurality of votes is the index, the favorite of the People was chosen.) I have only to say that the People call for no amendment whatever. What does it all prove? That the gentlemen think one way, and that I am so unfortunate as to differ from them.

Before this case of corruptibility is made out, the gentleman ought to take into consideration one element of political responsibility, to which he alluded at large in another part of his argument, but which he seemed wholly to omit here, where its most direct application exists: I mean the responsibility of the Representative to his constituents. This is a test from which no man can escape; a pledge of the integrity of every leading statesman, at least, beyond the power of any Executive patronage to countervail. Coming from the People, must he not go back to them? None is so high that he can be raised above this standard, and none is so obscure, that he can slink away and creep below it. He must come up or come down to it, as the case may be. If a Representative of the People, a Member of this House, on a trying and a critical occasion, has defied the will, and bartered the interests of his constituents, think, sir, of the return of that man to his home. Will not shame sit upon his brow, and heaviness weigh on his heart, as he goes to meet the People whose will he has resisted, and whose rights he has sold? Will the trappings of Executive patronage save him in that awful hour? Will they not press him down, with ten-fold heaviness, to the dust, which he degrades while he treads on it? But if, with the same influence, in the like critical juncture, he has done what he thought his duty to the Republic, unawed by menace, and unseduced by blandishment, his homeward march will be a march of triumph; his constituents, as they come out to meet him, will exult at the "sound of his well known voice;" and he will receive, at their hands, that reward which is beyond all the pride and power of office—the hearty welcome of the People who created, the People who sustain, the People who approve; of the People who send him back, with added confidence, to the service of his country.

Sir, I deny the power and the application of this whole argument of corruption. I will speak on this subject with perfect plainness. I care not what inference may be drawn from what I say. I say the Administration of this Government, at this time, is one, under which any honest man may take office. To the councils of the Nation any man is free to go, with honor, who can contribute any thing to the administration of the public affairs: and, as a practical proof that this is so, I point to the honorable and honest men, men of all names and of all parties, who have

taken office under the present Administration—men who are as pure, and as free from suspicion, as any other men, in this House, or out of this House, or in this country.

And, then, as to a coalition, on which the honorable gentleman from New York, (Mr. CAMBRELENG) was so learned—of which he had such an abhorrence—an abhorrence which he endeavored to communicate to this House. Sir, the gentleman should be cautious in giving us his authorities for and against coalitions. If he arrays Chatham, Burke, and Fox, on one side, and Sheridan, (who, by the way, was in all the coalitions,) Mr. Moore, and even himself, on the other, the House may regard it as a case of the *malim errare*. I know not what standard the honorable gentleman may have fixed for himself, nor what point he hopes to reach, at the end of the long political journey which he considers to be before him. He will not be much to be commiserated, if, when he retires, it shall be said of him, he was no more independent than Chatham—no more pure than Burke—no more patriotic than Fox—their coalitions included.

Besides, sir, while the honorable gentleman was speaking with such severity of coalitions, did he not, in the same part of his argument—in the same breath, in which he denounced them, exult in the Union which was taking place in New York? The *Union!* What a beautiful, immaculate word! How that word flows, like honey, from the lips! The Union in New York! Of whom, and for what purposes? The gentleman says, "to enable New York to present an undivided front to the Nation:" and this, too, in what the gentleman meant for an argument in favor of the district system. Sir, are there two rules of political morality? Does that gentleman say that it is corrupt for the administration of the Government to seek a union of councils, where there is no difference of principles, and not corrupt, but virtuous, that a union of councils should be sought against it?

The gentleman from South Carolina spoke of a Mosaic Cabinet. I will ask that gentleman if there is no such thing as a Mosaic Opposition? The gentleman said, with great justice, as far as I know his history, that he had no reason to be ashamed of any political banner under which he had fought. But, if I mistake not the signs of the times; above all, if I understand this doctrine of political Mosaic, the time may soon come, when he will be not ashamed, certainly, but somewhat amused, to find with what banners he is fighting in conjunction. He will find himself in the position of some of those shrewd Ministers of France, who, while by one courier they sent aid to the Protestants in Germany, by another sent letters of arrest and dragonnade to the Protestants in France. The principle of union, I take to be at least as good, on one side of the question, as on the other.

Sir, I shall intrude on the forbearance of this Committee but a moment longer, exhausted as their patience must be, and my strength is. I listened to the honorable gentleman with alternate delight and thrilling horror, as, with such touching eloquence he expounded to us the apologue of our frail first parents in the garden of Eden. When I found him going back to the primitive records of our race, and searching the pages of inspiration, to find the key to our political situation here; and when I saw him returning with the discovery, that the President of the United States was the Devil; that the Senate were advising and consenting spirits of darkness; and the service of our beloved country, in the highest and most honorable trusts, the everlasting curse; I was almost ready to exclaim, under the excitement to which the honorable gentleman had wrought us all—

> "O star-eyed science, hast thou wandered there,
> To bring us back the tidings of despair?"

Certainly, sir, if I had made this cheerful discovery, I should not have brought it to this House, to be set forth in an elaborate argument. I should have packed up my trunk, and stood ready for the Convention bill to pass in Virginia, that I might have started with my good friend from that State, (Mr. ARCHER) for the interior of Africa, or with "long-suffering Captain Symmes," for the interior of the Earth. But I read that interesting lesson, which, I allow, appears to have been dictated in reference to the Presidential Election, with a different moral. Our first parents abode in union and in peace; their action, like their hearts, was one. The ambitious tempter plotted against this harmony and concert. In despair of prevailing over their united strength, he sought to divide and conquer. He drew our frail mother to a solitary spot, to a lonely *District*, in the garden. He talked to her, in artful words, of amending her state; he bade her exercise the right of acting for herself; he flattered her wisdom, her vanity, her love of power. Had she remained by her partner's side, this eloquence had been vain: but, bereaved of his counsel, separated from his presence, with no arm to support, no eye to witness—

> "——— Her rash hand in evil hour
> Forth reaching to the fruit, she plucked, she ate!
> Earth felt the wound; and Nature from her seat,
> Sighing through all her works, gave signs of woe,
> That all was lost." ———

Ay, sir, that all was lost.—And let the States that now compose this happy Union, misled by the eloquence of the honorable gentleman, contract the habit of tampering with the Constitution; let them, in the excitement of an election passed, or of an election to come, disturb that curious, that happy adjustment of powers, which is now our life and our peace, and all will be lost for them. Sir, let the People of this country believe what the gentleman has so earnestly told them, of the corruptibility of this House, of their Representatives, and I say not all *will* be lost, but that all *is* lost, irretrievably—totally—forever.

But such, I thank Heaven, is not my opinion—all is not lost—all is safe—very safe. The country stands at this moment in that position, firm and erect, in which Providence intended that it should stand: at home, a model of a wise and prosperous administration of domestic affairs: abroad, an exemplar to the discouraged nations of that long desired union of liberty and law. Sir, if I held the opinions to which I allude—which I hope, on mature reflection, the gentleman from South Carolina himself will revise—I say sincerely, I would not come here to proclaim them. Here they can do no good; the hour is gone by; the battle is fought and lost. But I would go with them to England, and I would there sound them in the ears of the reformers, so called; that poor deluded company, who, without leaders, without counsel, are following the phantom of reform through the dark paths of treason and assassination to the scaffold. I would fly with them to the continent of Europe, and see if I could there do nothing to repress the movements of revolution, ready to break out in that fair quarter of the Globe, in pursuit of the same delusive good, proved by the failure of our experiment in this favored land, to be thus delusive. I would go with my doctrines to Turkey, and there strive to nerve the arm of the Sultan, that he might drive the steel still deeper into the bleeding heart of mangled Greece, fighting for the same insulting mockery of freedom for which we fought, and, at best, for the same treacherous and short-lived success. Then, sir, if I could find on the face of the Earth one mild, parental, beneficent despot, who loves his People as his children, I would go and lay my forehead on his footstool, and beg him to set his foot on my head, as a recreant citizen of a recreant Republic. If I could not find such a living monarch, in weeds of deepest sable, I would join that mournful procession, that spectacle, perhaps never before witnessed on Earth, the funeral convoy of the nations, which even now, while I utter

the words, is following the kind and departed arbiter of life and death of fifty millions, from province to province—from mourning Asia, to mourning Europe.

When Mr. EVERETT concluded, the Committee rose, on the motion of Mr. BRYAN,

And the House adjourned.

FRIDAY, MARCH 10, 1826.

INDIANS IN THE STATE OF NEW YORK.

Mr. GARNSEY offered the following resolve:

Resolved, That the Committee on Indian Affairs be instructed to inquire into the expediency of making an appropriation for holding a Treaty with the Indians West of the Gennessee river, in the State of New York.

In answer to an inquiry of Mr. FORSYTH, Mr. GARNSEY said, the measure to which the resolution referred, was one in which his constituents felt great solicitude; and he had received numerous applications from them in relation to it. There were no less than six of these tribes within the Western District of the State of New York, and the inhabitants were very desirous that they should consolidate themselves on one of their reservations. The Indians, themselves, were now willing to adopt that measure, but no treaty could be made with them, except by the General Government. The famous chief Red Jacket is desirous of having the consolidation take place on the Allegheny river. The Indians now reside near the villages in their neighborhood—one tribe of them is settled near Lewiston, another near Lockport, one in the immediate vicinity of Buffalo, and another near Lodi. The consequence of this vicinity of their abodes to the villages and towns of the whites, is, that they are becoming daily more and more dissipated, and are a serious annoyance to that part of the State. So general and so strong is the conviction of this, that it would have been easy to present a petition with fifty thousand signatures; yet he did not now ask any definitive measure—he only desired an inquiry. Both the President of the United States, and the Secretary of War, had expressed their opinions in favor of such a treaty—he hoped, therefore, that the resolution for inquiry into the expediency of making this provision would pass.

Mr. COCKE said, that, as the resolution only asked for an inquiry, there could be no such formidable danger in referring it to a committee. The committee would act on their responsibility, and if they did not shrink from the additional labor imposed by the inquiry, he hoped the House would not object to putting the subject under their care.

Mr. HOFFMAN wished to propose an inquiry to his colleague. Was the Legislature of New York desirous that the General Government should interfere in the control of the Indian tribes residing within the State? If they are desirous of such interference, I have no objection that the inquiry should take place: but, if that Legislature are opposed to any treaty by the General Government, with the Indians under its control, the inquiry can be of no possible use; his impression was, that the State Government considered the disposition of these Indians as exclusively their concern.

Mr. GARNSEY observed, in reply, that the Legislature of New York had no control over these Indians; it had sold its pre-emption right to their lands; it was true, the Indians resided within the bounds of the State, and, in some respects, were bound by its laws, though it had been very seriously questioned if the Courts of that State have any jurisdiction over them; and, at one time, the Court itself had decided that it had no jurisdiction. He referred to the case of Tommy Jemmey, an Indian, who had committed murder, but who was discharged for supposed want of jurisdiction to try him. The Legislature of the State has no authority to make a treaty, it being forbidden by the Constitution to any power but the United States to make treaties. The General Government has its Agents and Interpreters, Messrs. Jones and Parish, residing in that State, but one hundred miles from the Indians; these Agents are appointed by the General, and not by the State Government.

The continuance of these Indians near the villages is a very great annoyance to the State, and their consolidation would be a great benefit, as well to the public as to the Indians themselves. The sale of four-fifths of their land would produce to them a very handsome sum, which might be applied to the purposes of agriculture and improvement in the domestic arts; this would render these unhappy tribes worth something. Why should the gentleman object to the inquiry? Let the facts be ascertained and reported, and then the House can judge what ought to be done. Mr. G. stated that these Indians had some persons among them who were of respectable acquirements—particularly a young man by the name of Jamieson, who had enjoyed the advantage of an excellent education, and who possessed as brilliant talents as most young men of his age in that State—he possessed much control in his tribe, and was in favor of the consolidation. He repeated the assurance, that there was no act by which this House could confer so great a benefit on the State of New York, as by promoting the removal of these Indians.

Mr. ADAMS, of New York, made some observations in opposition to the resolution, which our Reporter could not hear, but was believed to state, that the heirs and creditors of the late Robert Morris had often held treaties with these Indians, with a view to obtain their reserved lands—but that the Indians had always refused.

Mr. ADAMS moved to lay the resolution upon the table.

The motion was negatived—Ayes *55*, Noes 99.

Mr. FORSYTH said, that the present was merely a motion for an inquiry—and if it had been on an ordinary subject, there would have been no reason for opposing it; but the subject to which it referred was of a peculiar character. The situation of the Indian tribes within the United States was known to every one to be very peculiar. The Government of the United States had, from the very beginning, been governed by contradictory principles in its conduct towards them. In some of the States the Indians are considered as a part of the population, and are governed by the State laws as dependents or citizens. In other States they seem to be subjected to a mixed authority, consisting in part of the authority of the United States, and partly of that of the State; while, in other States, the whole authority over them is usurped by the United States. New York he considered of the second class; the new States and the Territories as forming the third; and all the other States containing the Indians, except those blessed with the presence of Creeks and Cherokees, as the first. North and South Carolina, and Georgia, and Tennessee, have the benefit of a peculiar code, an examination into which will no doubt hereafter be made. The present inquiry relates to those Indians who are placed under a mixed government, made of that of the United States, and that of the State of New York. I am opposed to any inquiry on this subject. What is a treaty, in the sense of the Constitution? It is an agreement formed for national objects, and submitted to the national Legislative Council. But are the treatics with these Indians submitted to the Senate? Have the General Government any farther concern in them, than the sanction arising from the presence of their Commissioner? Would the gentleman wish the House to pass a law asserting the power of the United States? Sir, I am in favor of curtailing, and not of extending the power of the General Government over the Indian tribes

within the States. We have nothing to do with this matter. The United States can only send their Agents to stand by and see fair play between the Indians and those who want to purchase their lands. We are told by the gentleman who moved the inquiry, that the Indians are not under the control of the State Governments—he says the State Government has nothing to do with them. Sir, have not the State Governments hanged them? Have they not adjudged them to the whipping post? I believe they do both. The gentleman says, that some time ago an individual was set at liberty who had been guilty of murder—that may have been the fact; but afterwards, if I am not misinformed, the Court did assert their jurisdiction; and the Legislature, after much deliberation, passed an act recognizing it; and you cannot rightfully interfere with it. If the President of the United States thinks this a favorable time to remove these poor creatures and consolidate them in one place, he can send his Agent, and no doubt the same course will be taken, as has been usually resorted to in other cases. Red Jacket, who, with all his great qualities as the chief of his tribe, is the victim of the vice of the savage, if I am rightly informed, whenever the subject of a treaty for the disposal of their land has been mentioned to the nation, lays aside the bottle, and can never be prevailed on to give his consent to it. I hope the resolution for an inquiry will not prevail.

Mr. MALLARY said, that the gentleman from New York had moved an inquiry of a character very interesting to a part of his own State. What may be the actual state of the facts I do not know—I am incapable of deciding—the gentleman from Georgia does not inform us—and, until the inquiry is made, the House can form no opinion on the propriety of the appropriation—the question before us is not whether Red Jacket does or does not lay aside his bottle—but it is whether your committee shall inquire on a subject which belongs to their cognizance. Is the House afraid to trust the committee? He believed this was the first time such an inquiry would be refused in this House.

Mr. STORRS said, he thought there could be no objection to an inquiry merely. The gentleman from Georgia is correct as to the situation of some of the tribes of Indians in New York. The Stockbridge and Brotherton tribes are treated, in every sense, as subjects of the State jurisdiction; but other tribes, as the Senecas and Oneidas, are not considered so. Two or three years ago, it was the opinion of the Court of Errors in that State, on a question whether an Indian of the Oneida tribe could inherit Revolutionary bounty lands from his father, that some of these tribes were independent nations, and not under allegiance to the State. In another case, of a homicide by an Indian on the Seneca reservation, the jurisdiction of the State over the party was questioned in the Courts, and it was found so difficult to maintain the jurisdiction, that the party was pardoned, and a general act was passed, asserting the jurisdiction. Some of the tribes in the State hold their lands under the State; but others retain their original title as tribes or nations. Commissioners have sometimes been appointed by the United States to form treaties with them.

Mr. HOFFMAN said, that this question was thought very differently of in the State of New York from what it was here. The act of the Legislature, to which the gentleman from Georgia had alluded, was passed for the express purpose of declaring its sentiments on this subject; and that act declared the Indians to be subject to its laws, and liable to punishments for the infraction of them. I wish that act to be sustained—and therefore I say that the House ought not, in any manner, to interfere—it was a private controversy between the Government of New York and the Indians under their own control. There was no need of any Agent of the United States to superintend the treaty—it was a matter for the Legislature alone. If the Indians were so drunken and abandoned that no act of ours can do them any good, I hope the Sate will be left to perform those acts which justice and humanity may dictate, and to which they are abundantly competent. He did not wish this House to inquire into the domestic policy of the State of New York.

Mr. COOK said, that this subject, in our future intercourse with the Indian tribes and with the different States, was destined to produce considerable difficulty. I should like to know if it is intended to invest the lands which may be relinquished by the Indians, in the Government of the United States or in the State of New York. He thought, for his own part, that the whole history of our legislation toward the new States on the subject of Indian lands was directly in the teeth of the Constitution. The General Government could not constitutionally acquire land within the States without the consent of the States. He questioned whether the limitation in the Constitution which forbids the States to make treaties, refers at all to the agreements respecting Indian lands. He thought these agreements were to be distinguished from treaties. It was an inquiry of serious moment, whether the right to purchase Indian lands does not belong to the States rather than to the General Government. He knew of nothing in the Constitution which gives any preference in this matter to the General Government after a territory shall have been erected into a State. These were questions which, if he was not mistaken in the state of feeling which began to prevail to the West, must soon come up for discussion. Was New York or the United States to have these lands, should the Indians be removed? The Indians, if he understood the gentleman's statement, were viewed in that State as a sovereign power. Has the United States the pre-emption right to the lands they may wish to sell? I, for one, said Mr. C. am against any such power.

At this point the debate was arrested by the SPEAKER, the hour having elapsed for the consideration of petitions and resolutions.

DEAF AND DUMB ASYLUM IN KENTUCKY.

Mr. T. P. MOORE, of Ky., moved to postpone all the orders of the day before the bill "for the benefit of the Asylum for teaching the Deaf and Dumb of Kentucky," and the bill was taken up, in Committee of the Whole.

The bill having been read, Mr. MOORE, addressed the committee as follows:

Mr. CHAIRMAN: In recommending to the committee the bill for the benefit of the Asylum for teaching the deaf and dumb in Kentucky—in urging a measure which will effectually extend the patronage of the Nation to that benevolent institution—I am sensible that I present a subject not calculated to kindle the zeal of politicians, nor in any manner to rouse those stormy feelings which serve to augment the force of declamation, and to deepen and prolong the course of debate.

It is not a proposition to erect a fortification, or to construct a canal: to lavish millions in removing mountains from the land, or uprearing towers in the sea; to push discoveries through the ices of the poles, or form alliances on the verge of the equator. No, Mr. Chairman: the cup that I present to the lips of the committee contains a draught of pure benevolence; no poisonous drug lurks at its bottom; no dangerous spirit sparkles on its top. It is innocent and salubrious, and wherever there is a taste for justice and humanity, it must be palatable.

It is now an axiom amongst all reflecting men, that the diffusion of knowledge is the surest support, as well as the highest duty, of good government; and it is a maxim, I believe, among American Statesmen, that, as our Government is thoroughly popular and representative, the universal education of its citizens is essential to its per

fection and stability. The justice of this position cannot be disputed, nor can its application to the interest of that afflicted portion of the community in whose behalf I appeal be denied. They have a claim of right upon their fellow citizens to be elevated to the rank of intellectual beings; to find their proper place upon the scale of society; to enter into the world of thoughts and reflection; to have their capacities invigorated; their passions impelled; to be enabled to sympathize with their fellow creatures; to love their country; to adore their God; and to share in all the varieties of suffering and beatitude of which human destiny is composed. It would be neither equitable, nor politic, I apprehend, to confine the blessings of education to youths of the highest promise. The sum of knowledge, like the great lamp of Heaven, while it shines on the mountains, must pour its beams into the lowest valleys. The whole surface of national intellect is to be visited by light; and if the reflection of man is to imitate the wisdom of his Creator, the gloom of humility and misfortune should not be permitted to obstruct the penetration of its genial influences. These general remarks, I indulge the hope, will dispose the committee to consider that the public patronage, and private beneficence, of Kentucky, which have been so long, and so liberally exerted in this interesting service of humanity, should no longer remain without their encouragement and assistance. The means derived from these sources have been employed (as will be rendered apparent by a perusal of the documents connected with this application, all of which have been printed and placed on each member's table,) to the very best advantage in the establishment and conduct of the Asylum at Danville.

In the year 1822, the Legislature of Kentucky incorporated and endowed the Asylum for teaching the Deaf and Dumb, and located it at Danville, a central point in the State, combining as many general and local advantages for the site of such an institution, as any spot which could have been selected in the Western Country. They threw open its doors to the whole Deaf and Dumb population of the adjacent States, and placed it under the control of a Superintending Committee, who have employed competent teachers, purchased ground, buildings, &c. and whose vigilant and enlightened devotion to the interests of the institution have been demonstrated by the rapid progress of the pupils confided to their care. The judicious management of the Asylum has led to a constant increase of its numbers; but this philanthropic institution is without adequate means to sustain an augmentation of its numbers. It has struggled on to this time by the aid of private charity, and the endowments made by Kentucky; but it would be improper to conceal the fact, that the Legislature cannot afford further assistance. The People of Kentucky have done much for the cause of literature and humanity—they are generous—their soil is rich—but they are remote from market, and their moneyed concerns embarrassed—and it cannot be denied that the various States, and the entire population of the Valley of the Mississippi, are dependent on this single institution for the means of this particular instruction; and in its present condition it cannot completely answer the wants of Kentucky. Experience has proven, both in Europe and America, that the instruction of the Deaf and Dumb can only be usefully and successfully imparted, in institutions regularly established, and superintended by competent teachers. The estimates which have been made in Europe and America lead to the conclusion, that in any given mass of population, one out of every two thousand is Deaf and Dumb; and it may therefore be fairly inferred, that unless the Asylum at Danville is enlarged, about one thousand of our fellow citizens now living must pass from youth to death, in a state of torpor and ignorance. Let gentlemen who are not alive to the importance of the subject, conceive this number of unfortunate wretches collected. This misery amassed, these specimens of misfortunes assembled together, could any exhibition of human degradation exceed it in horror? Does not the mind shrink and startle at the very conception? And does the conception surpass the reality? The diffusion of this calamity, though it may conceal, does not diminish it. It is immeasureable, indescribable, and cannot be exaggerated by fancy or equalled by fiction. To remove all this distress, and to furnish the means of preventing it in all time to come, will require of Congress but a small expense of thought, and a few acres of land. An appropriation which would hardly suffice to complete the capital of a Corinthian column, will effect this great purpose of wisdom. The expense of *that* clock, to count the fleeting hours of the day, will erect this lasting monument of Philanthrophy. Nay, Sir, the money expended upon the frivolous embellishment connected with it, graven upon inanimate stone, will kindle into thought and awake to rapture thousands of spell-bound and inert intelligencies. I cannot believe that this useful bounty will be withheld, especially as the Asylum of Connecticut received a donation from Congress in the year 1819, of a township of land, from which it has derived a handsome revenue, and has been rendered permanently useful, and which sanctions by precedent this application. But, Mr. Chairman, the bill on your table is freed from all the objections which have been urged against the appropriation to the Connecticut Asylum; it is restricted to the location of the land in one tract, and it is designed for the benefit of the indigent deaf and dumb. It is to alleviate the sad condition of that class of our fellow-creatures, whose bereavement is a part of the vast machinery of eternal wisdom. To reclaim from native insertion their rich, though hidden faculties; and, by uniting the virtues of earth with the omnipotence of Heaven, to constitute man a fellow-laborer with the Deity himself, in the delightful office of ennobling humanity. The heart, at best, is but seldom a fit lawgiver; yet, in such a cause as this, its impulses may be safely trusted: for it is the cause of oppressed and suffering indigence, and it appeals with cheering hope to those generous sympathies with which, on this floor, it needs no advocate. It may not, Mr. Chairman, be improper to add, that we of the West, with a liberal spirit, have voted thousands annually to erect light-houses, clear beaches, &c. on the Atlantic frontier, which, although some of them are national in their character, and indirectly beneficial to us, yet it will not be denied, that, by furnishing profitable employment to the citizens on the sea-board, it diffused comfort and happiness, and that appropriations from the Public Treasury fall light and seldom upon the West.

But I will not so far undervalue the force of the subject, or underrate the wisdom, humanity, and intelligence, of the Committee, as to believe they will reject the bill, which, as Chairman of the Committee, I have been instructed to report. Memorials from the Asylums of New York and Pennsylvania have been referred to the Committee, no doubt for the purpose of offering amendments to this bill. Although I should be deeply mortified at the failure of the bill for the benefit of the Kentucky Asylum, and would feel under many obligations to the gentlemen having charge of the New York and Pennsylvania memorials, if they would not encumber this bill with amendments; yet, if they should deem it their duty, I cannot vote against them, because I am persuaded Congress could not make a more beneficial appropriation to any object.

Mr. CONDICT moved to amend the bill, by inserting in it a provision for the benefit of the incorporated asylum of New Jersey.

Mr. C. said, that he made this motion in pursuance of the request of a joint resolution of the two Houses of the New Jersey Legislature: but, as the nature of the subject

was obvious, and familiarly known, he forebore to offer any remarks in support of the motion.

Mr. BUCHANAN thought, from the statement of the gentleman from Kentucky, there could hardly be a doubt as to the propriety and humanity of following the precedent set, in giving a township of land to the asylum for the deaf and dumb in Connecticut. At the proper time he should agree to the proposition of his friend from New Jersey, but at present he considered the cases quite different. This application has been before the House for three sessions; it had been referred to a Committee, and that Committee had made two reports; and this asylum at Danville has been in successful operation for several years. He trusted this bill would pass on its own merits. The State he represented, Mr. B. said, had also a similar asylum, but, for his part, he did not feel it his duty to embarrass the progress of this bill, by offering an amendment in favor of that asylum, though he knew it to be in successful operation.

Mr. MALLARY said, it was sometimes the practice to embarrass the progress of a bill, by offering an amendment, entirely differing in its object, though he could not believe the gentleman had that object in view, in the present instance. He could not ask for New Jersey what he would be unwilling to give to Kentucky. He presumed the gentleman was favorable to the principle of the bill, but he thought there was no necessity for the gentleman from New Jersey to press his claims in behalf of his State, as it had a tendency to embarrass the passage of the bill. It would be best to present it, meritorious as it was, disconnected with that of any other State.

Mr. CAMBRELENG said he thought it right to state, that he had intended to have offered an amendment to this bill, embracing two institutions, in favor of which a bill was introduced last session of Congress; but not wishing to embarras the bill, to which he took great interest, he did not do so. Petitions from New York and Pennsylvania, on the subject, were now lying on the table; and after the bill got into the House, he should move that both these petitions be referred to a Select Committee, that their merits might be examined. He hoped, therefore, the gentleman from New Jersey would withdraw his motion, and refer it to the same Committee.

Mr. WURTS said, a memorial had been presented during the present session, in behalf of the institution established in Pennsylvania, for the deaf and dumb, and he had prepared an amendment to include that institution; and he believed he could show, if an appropriation was made any where, for such a purpose, it should be made there also; but, in accordance with the views entertained by the gentleman from New York, he should not offer it. He believed, with the gentleman from Kentucky, that they could not make an appropriation for an object which was more valuable than the one now under consideration. He did not say this lightly, having been a director of an institution of this kind for some time, and being well convinced of the benefits which flowed from it. He should vote for the bill without amendment, under the conviction that this House would do, in other parts of the Union, that which it had done in the Eastern States, and which he hoped it would do, in the valleys of the Mississippi.

The amendment was rejected.

Mr. VINTON moved the following amendment, viz: to strike out the words "or a tract of land equal thereto;" which was agreed to.

Mr. THOMPSON, of Ohio, moved further to amend the bill, so as to except from the grant of land section number 16; which was also agreed to.

Mr. McCOY said, he did not know where this township was to be taken from. A good portion of the land which the United States pretend to claim, was ceded for special purposes, to pay the debts of the Nation. He recollected, some few years ago, this House did, [illegible] their fits of humanity, grant to the asylum in Connecticut a township of land. They were immediately applied to by the State of New York, and next [illegible] the House took a stand, and refused to grant it, [illegible] New Jersey, and Pennsylvania, and New York, [illegible] prepared again each to ask for a township of land. The House was gathering up a kind of legislation it [illegible] impossible for them to get along with, and soon the people of this country would be unable to build a house, unless this Government gave them the money. He should forbear making any more comments on the bill—he was opposed to it, although he supposed it would pass as it seemed to be a favorite.

The bill was then ordered to be engrossed, and read a third time to-morrow.

The House adjourned.

SATURDAY, MARCH 11, 1826.

The resolution offered yesterday, by Mr. GARNER, of New York, proposing to instruct the Committee on Indian Affairs to inquire into the expediency of making an appropriation for holding a treaty with the Indians West of the Genesee River, in the State of New York, was taken up.

Mr. MARKELL offered the following to be added to the resolution:

"Also to inquire whether it be necessary to continue in the employment of the United States more than one Interpreter among the said Indians."

The modification was accepted by the mover, and the resolution, as modified, reads as follows:

"*Resolved*, That the Committee on Indian Affairs be instructed to inquire into the expediency of making an appropriation for holding a treaty with the Indians West of the Genesee River, in the State of New York. Also, to inquire whether it be necessary to continue in the employment of the United States more than one Interpreter among the said Indians."

Mr. STORRS observed, that there seemed to be some misconception of the nature of the resolution, or it would not meet with opposition. He would, therefore, state to the House, what the question before it really was. The proposition is offered that the United States should [illegible] money out of the Treasury for the purchase of lands, or for obtaining them in any way. The resolution arises out of a statute passed by Congress, which makes it a penal offence for any person to purchase lands from any of the Indian tribes within the United States, without the consent of the United States. If the State of New York wishes to obtain lands held by the Indians, and which they are ever so willing or desirous to sell, she cannot do so without the presence of a Commissioner appointed by the United States, and the present resolution is only to inquire whether it is expedient to make an appropriation to enable a Commissioner on the part of the United States to attend and sanction a treaty between the State of New York and certain Indians in that State. Commissioners for this purpose have always been appointed. [Here Mr. STORRS referred to the 1st volume of the Laws of the United States, in which several such treaties are printed.] In 1819 a Commissioner was appointed to hold a treaty with the Seneca tribe, and all that is now asked, is, that the same thing may be done again. The lands which it is proposed to obtain, belong to the State of New York, or to those to whom the State has sold the pre-emption right.

Mr. FORSYTH said, that the subject, as an inquiry only, was not one of very great importance; yet it was desirable that the House should know what they are doing. We want no treaty with these Seneca Indians. The United States are to derive no benefit from making a treaty with them, and why should we inquire about it? The uniform practice [illegible] appropriating the means of making it? The uniform pra

tice of the Government has been merely to appoint a Commissioner. No appropriation law has ever passed this House, for employing and paying such Commissioner. The usual mode has been, for the parties who wish to purchase land of the Indians, to make application to the Government through the Department of War; the President then appoints a Commissioner to be present at the treaty, and he is paid out of the contingent fund.

Mr. F. here read an extract from a memorial to the President from the claimants, respecting the lands held by the Senecas, to show their opinions of the nature of their title:

"The undersigned, adverting to the special provisions of the compact between Massachusetts and New York, take occasion here to remrak, that the right of the proprietors of the legal title, to treat for the extinguishment of the native claim, has always been considered as subject to no control, beyond that of a mere superintendence, by agents of the Government of the United States and of Massachusetts, in order to see that treaties are fairly conducted and rightly understood."

If these claimants are correct, can there be any necessity for this inquiry? All that is necessary, is for a Commissioner to be present to see that the Indians are not imposed upon, that the transaction is conducted with fairness, and no advantage taken. Is any law necessary? If it is, then in all former cases, the Government has acted under an usurped authority. A Commissioner was appointed in 1819—nothing grew out of his appointment; application has, at some period since then, been made for a similar appointment, and the Government has refused. If I understand this case, the Indians referred to are in possession of the lands in question; and the parties who are seeking this treaty say they can extinguish the Indian title. If they have the right, let them extinguish it. Why should we seek to interfere with State rights? The State of New York claims jurisdiction over both the soil and the persons of those Indians. On examination, I find that I was critically accurate yesterday when I stated the facts of their condition. There are in the Western part of that State, the remnants of several tribes; some of them are under the complete control of New York; among these are the Onondagas, &c. but the situation of the Seneca tribe is somewhat different, as regards the soil. New York, under a contract with Massachusetts, claims the jurisdiction over the territory held by them—but a decision of some of the Courts having disclaimed criminal jurisdiction over their persons, the State passed an act asserting such jurisdiction. Under the contract between the States of New York and Massachusetts, Massachusetts ceded the jurisdiction, and New York ceded the pre-emption right to their lands; this right was sold to Gorham, Phelps, and others, from whom, after passing through several hands, it came to Mr. Ogden, who has since formed a company; and all that is now sought is for the benefit of this Company. Now the State and the Company have already, according to usage in like cases, power to make what contracts they will with these Indians, subject only to the sanction derived from the presence of a Commissioner on the part of the United States.

In such a state of things all inquiry is worse than useless; it is positively injurious; we are interfering and inquiring about a matter with which we have nothing to do; we shall only bring ourselves into collision with a great State, and that in relation to a question of great delicacy. I have no objection that these individuals should receive such aid as is ordinarily granted in similar cases—but no more. Let the President send a Commissioner, and pay him out of the contingent fund as heretofore. Why should we intermeddle? Do gentlemen wish this House to throw its influence into the scale in order to induce these Indians to sell their lands? Gentlemen tell us the Indians are already willing and desirous to sell: then why, in the name of heaven, do they not do it? If gentlemen reply they cannot, without a Commissioner, then let them apply to the President of the United States and get one.

Mr. STORRS stated a number of facts in explanation. He referred to a treaty made in 1793, by George Clinton, then Governor of the State, in relation to several tribes, in which the Senecas were not included. This tribe remained as before the treaty, and held their lands under their original title, subject to a law of the United States, which prohibited the making of purchases of Indian land without the consent of the United States. The State of Massachusetts had a claim on part of those lands, and in the compromise which took place, New York confirmed to Massachusetts the pre-emption right, which was afterwards sold to Gorham and Phelps, with a reservation of 200,000 acres. The company have extinguished the Indian title to all the land, saving these reservations. At one of the treaties, Wadsworth was United States' Commissioner, at another Smith was Commissioner; attempts have frequently been made to treat with the Senecas, but hitherto without success. Now the company ask, and so does the State of New York, that Commissioners may be appointed; they ask not that Congress should violate State rights, but that they should enable this purchase to be conducted without any violation of the laws of the United States. Never was a more reasonable request presented. The resolution asks a simple inquiry, and can only produce a statement of facts.

Mr. HOFFMAN insisted that the State of New York has an interest in all that relates to these Indians and their Lands. Its Legislature has solemnly asserted the right of jurisdiction over both. They are subject to that jurisdiction, both in civil and criminal matters. Since this subject was under consideration yesterday, he had consulted with one of his colleagues, in whose district many of these Indians reside, and I now, said Mr. H., repeat the inquiry I made yesterday, Why is the Legislature of New York silent on this occasion? Does that Legislature apply for a treaty? It does not. If the company who are desirous of obtaining these Indian lands shall succeed in the purchase, and make no adequate provision for the Indians, (and, notwithstanding their loud professions of such intention you have no security that they will do so at all,) the State of New York will have to provide for them. That State has, therefore, a great interest in this subject. The gentleman, indeed, speaks as if the State was content that such a treaty should proceed. But I hope that this House will not be of that opinion until the Legislature of the State shall speak for itself. For my own part, I am very confident in the opinion that no such feeling exists. He tells us that the Indians do not ask it: the company does not: the State of New York does not: Why then should the House interfere? Let our committees be better employed than in making such inquiries. I hope the resolution will not be adopted. Let the State of New York propose this measure to the Government when it shall see proper. It may, on many accounts, be very inconvenient to that State, that the treaty should be made at this time.

The gentleman from Georgia says, let a Commissioner be appointed; but I cannot consent to go even so far as that: a difficulty may arise, and your Agent may possibly be arrested by a New York Justice of the Peace. Be assured that, whenever your Agent shall go there and propose such a sale, Red Jacket will be ready to meet him, and will drive him from his purpose by arguments which he will find it in vain to resist. Sir, it is impossible your Agent should prevail with those Indians against the influence of their favorite Chief. He will call a council, and there he will examine your policy toward the Indian tribes, and your guardianship over them in a manner not very complimentary nor very creditable to this Government. The picture he will there draw before the eyes of his nation, will be, by no means flattering. Sir, I hope

that, until the State of New York herself shall apply to you on this subject, these unhappy remnants of a much injured People will be suffered to enjoy their own property and to cultivate their lands in peace. I hope you will not, to gratify the cupidity of a few individuals, drive these poor Indians to the rocks on the mountain's side. Sure I am, the Indians wish no such thing.

Mr. GARNSEY said, he regretted the necessity under which he was placed, of making some reply to the arguments which had, so unexpectedly to him, been adduced in opposition to a resolution for a mere inquiry by one of the Committees of this House. Generally, he believed, such resolutions were passed without a solitary objection. The subject to which the present resolution referred was one of great consequence to that part of the State in which these Indians resided. He regretted that the gentleman who was last up, had devoted no more time to an examination of the subject. If he had properly examined it he would never have ventured to assert on this floor that the State of New York has a control over the Seneca tribe of Indians in relation to treaties.

Mr. G. here went into a detailed history of all the treaties which had been held in the State of New York, in relation to these Indian lands, and insisted particularly, on that held in 1797, by Thomas Morris, Attorney for Robert Morris, Jared Wadsworth, a Commissioner on the part of the United States, and William Shepard, a Commissioner on the part of the State of Massachusetts, in which the Senecas disposed of all their right to lands, except the reservations now referred to. Robert Morris sold his right to the Holland Land Company; and, in June, 1802, that company held a treaty with these Indians, at Buffalo, at which John Tayler, late Lieutenant Governor of New York, was the Commissioner on the part of the United States, and in which the Senecas quit claimed to the company, all right to lands in New York, except those same reservations. He insisted that the State never assumed any control over them, in these sales, or in relation to their lands at all, and he challenged his colleague, (Mr. HOFFMAN) to show one instance of such interference. Since the year 1784, nine different treaties had taken place, in relation to Indian lands in New York, at which United States' Commissioners had been present. Yet New York, as a State, never applied to the General Government on those occasions. The Legislature never interfered. Why should the gentleman now ask for a Legislative application, before he will consent even to an inquiry, on the subject of a treaty? The gentleman had entirely misunderstood him, if he had supposed he asserted that this application had not the assent of the Indians. He made this application, in pursuance of the request of these Indians themselves. He had not acted in consequence of any wish of the company, in the matter; but of the desire of the Indians, who wish to sell the land, but are prohibited, by a statute of the United States, till the General Government shall interpose its sanction to such a measure. And will the Government refuse to do so? Will you chain down these poor unhappy Indians, and say you shall not sell your lands, wish it as you may? You shall reside on these reservations, which you cannot cultivate, and which would bring you a large sum of money? Why will gentlemen refuse to these Indians the same privilege as is enjoyed by other Indian tribes, and by other citizens? All men are created equal. The Declaration of Independence, and the Constitution, both declare this—and, in the teeth of both, will you deny to these crumbling remnants of a decayed People, the right to sell their own land, if they wish to sell it? They do wish to sell it—they are desirous of taking advantage of the times, and availing themselves of an advantage which is within their reach. Hunting has ceased long since, on their reserves—they cannot or will not labor, and they are daily becoming more idle and dissipated. They wish to concentrate on the Allegany, or some one of their reservations, and to sell the rest. Will you surround them with fixed bounds, and say no, you shall not remove? You shall stay where you are, whether you wish it or no, until vice and disease shall have completed your destruction? The State of New York has no control over them. The United States have made treaties with them ever since 1784. The laws of the United States are positive, in prohibiting all sales, except the General Government consent. [Here Mr. G. quoted the law of 1802.] What does the resolution ask? To give the President power to appoint a Commissioner? No, he has that power already. Does it contemplate giving my rights to the United States which they do not now possess? Not at all. Nor does it propose to give any right to land: for that right is already extinguished. It is only to inquire into the expediency of furnishing the means to pay a Commissioner on the part of the United States: the treaty-making power is with the United States, both by the Constitution and by the laws of Congress, and the United States have always had Commissioners by them appointed. It is, in a word, only to grant these poor wretched Indians the means to sell their land and fill their pockets. Will the House deny it to them? They cannot make a treaty till you consent, and if you refuse, they must reside on their lands till they are clothed in rags and starve. These Indians are under your protection: to show this, it is only necessary to advert to the fact, that you grant them now $ 4,500 a year, and send an Agent from year to year to pay them the money; besides which, you appoint an Interpreter to reside near them. The power has never been denied to the General Government since 1784. The State of New York has herself decided that these Indians are independent. John Tayler, her Lieutenant Governor, was the United States' Commissioner at the treaty of Buffalo: would that man ever have accepted of this appointment if the State of New York had had the right to treat with them herself? Would he compromit the rights of his State in this manner? Never, sir. Are gentlemen afraid, if they sanction this inquiry, that their committee will do wrong? that they will report as facts what does not exist? Sir, I stand here to plead for these friendless Indians—I am their advocate in this matter—they wish only the power to dispose of their own property, and they ought to have it.

Mr. KELLOGG said that it seemed to him, if these Indians were so desirous as was represented to dispose of their lands, the gentleman would have, before now, presented to the House a petition to that effect. Red Jacket, their Chief, is well capable of dictating one in very impressive language—but no petition is here. My friend says the State of New York exercises no authority or jurisdiction over them; but, sir, another friend and colleague of mine on this floor, who acted as Sheriff of the county where many of them reside, can tell you that he has taken some of these very Indians to the State Prison. Sir, I very much doubt if the State of New York has not claimed, and does not now claim, the right of jurisdiction over them all; and I also very much question the right of this company, at least to the extent they claim to possess it, in relation to the land of these Indians; and I think it would be improper for this House to make any appropriation for a Commissioner and a treaty, unless the State of New York shall first have applied for it; and if the State of New York does not acknowledge the rights claimed by the Company, it will certainly be improper to appoint a Commissioner for the purpose of enabling them to get more of the Indian land. It is very inexpedient, in my judgment, to meddle with a matter of this kind, more especially at a time when so much is said on the subject of interference with State rights; the motion for a mere inquiry sounds, to be sure, as a very simple and harmless thing: but are we to inquire about any and every subject which may be proposed to us? I think not; and view-

ing the present inquiry as inexpedient, I move to lay the resolution on the table.

The question being taken on this motion, it was decided in the affirmative.

DEAF AND DUMB ASYLUM IN KENTUCKY.

The bill "for the relief of the Deaf and Dumb Asylum in Kentucky" having had its third reading, and the question being "Shall it pass?"

Mr. McCOY said, he had rather the bill would not pass, for several reasons, which he would endeavor briefly to state. The first was, that the House has no power to pass such a bill, unless it was to be found in that part of the preamble of the Constitution which relates to the "general welfare," or unless it is to be found in a message of the late President of the United States, which allows Congress to appropriate money for any purpose under heaven, at the pleasure of the Government. Besides this he had a great and strong objection to the policy of the measure. The Government of the United States is a great land holder; it has much land in the market—a great deal more than it ought to have at any one time. If you pass this bill, you bring a new land company into the market, who will have their lands to dispose of: for the land you are granting will certainly be sold; and, as you give to one State, you cannot with justice withhold from another; so you will have twenty-three more land companies soon in the market, with each its township to dispose of. Besides this, there is a bill on your table which sets apart a large portion of the public lands for the purposes of education in each State. Here, then, are to be twenty-four more companies. This course of proceeding will, it must, break down your sales of the public lands. These companies will undersell you, do what you will. I had rather, therefore, if a bill must pass, pay the money at once, and keep your lands in your own hands. But as I know very well that no observations of mine will influence the House to change its determination, I ask only that the yeas and nays may be taken on this question.

The House sustaining the call, the yeas and nays were ordered accordingly.

Mr. SCOTT rose to correct an erroneous impression under which the worthy member from Virginia labored, respecting the bill, which proposes to grant lands to the different States for the purpose of education. He seems to fear the creation of many land companies, and thinks this bill will give away the lands to the States, for them to bring into the market. It proposes no such object; it only proposes, that after the United States themselves shall have sold their lands, the nett proceeds of a certain part of them shall be given to the different States for the purposes of education; it therefore contains nothing which can prejudice the General Government as a landholder; its appropriation rests on your sales; it presupposes that you sell your lands, and does not prevent the sale.

Mr. McCOY replied that he stood corrected; he had not so understood the bill, but was glad to find he had been in an error.

The question on the passage of the bill was then taken by yeas and nays, and decided in the affirmative.

So the bill was PASSED, and sent to the Senate.

DISMAL SWAMP CANAL.

Mr. HEMPHILL moved to postpone all the orders of the day preceding the bill for a subscription of stock to the Dismal Swamp Canal Company.

The motion prevailed; and the House took up the bill, in Committee of the Whole.

Mr. HAYNES said, that, reluctant as he was to trespass on the attention of the Committee, yet, standing in the relation he did to the Committee by which the bill was reported, and believing, as he did, that its passage involved a most improper expenditure of the public money, silence, on his part, might be criminal. He must, therefore, ask the indulgence of the committee, while he offered a few remarks in support of the views which he held on this subject. Passing over, at this time, the Constitutional question in relation to the power of the House to engage in works of this kind, he was one of those who believed it inexpedient to engage in detached undertakings, of internal improvement, until a general system has been adopted by Congress.

Although frequent reference is made to such system, where are we to find it? Are we to seek for it in the celebrated report of Mr. Gallatin, or in the subsequent report from the Department of War? Or are we to find it in the various and detached reports subsequently made to this House from the different Departments of the Government? But the question, whether the General Government has adopted a system of Internal Improvement, is answered, in effect, by the resolution submitted during the present session, instructing the Committee on Roads and Canals to inquire into the expediency of the adoption of such a system.

It was, therefore, obvious, that no such system has yet been adopted and whether it would be, might well be doubted. In relation to this canal, it appeared to him that it was entirely inconsistent with the system of canals recommended by Mr. Gallatin; but, however this might be, he considered the work as substantially completed already.

On referring to Mr. Gallatin's report, it will be perceived, that the capacity of the canals proposed, was intended for vessels drawing seven and a half feet of water.

Upon an examination of the report from the Board of Engineers upon the subject, he found that a large portion of the Sounds of North Carolina, with which this canal communicates, were below that capacity.

On reference to this report, it would be found, that, for the first 69 miles, there is no remark at all, respecting the depth of water. From Wade's Point to Harbor Island, for a distance of 100 miles, there is a depth of nine feet water: thence, 40 miles further, to Shepherd's Point, only five feet. From Shepherd's Point to Boyne Inlet, a distance of 25 miles, the depth varies from two to five feet; thence, to New River Inlet, the passage is almost wholly obstructed by salt marsh; from which place to Masonborough, 40 miles, the depth varies from one and a half, to three feet. Thus it appears that, for a very large portion of the route, embracing a distance of 200 miles, the navigation will be impracticable to that class of vessels which now navigate the bay. In addition to all this, it must be remembered, that the depth of water in these sounds is greatly regulated by the tide, which rises from one to five feet.

The soundings mentioned in the report of the Engineers, were taken at high tide; it may, therefore, be very questionable, whether vessels fit for the Bay can navigate any part of those Sounds. In illustration of the nature and situation of this canal, it would only be necessary to refer to the act of the Legislature of Virginia, of 1816, in which the period of its completion is extended to the first January, 1823. The report of the directors themselves discloses its situation still more fully.

If the Canal had not been completed at the time limited in the act of 1816, evidence to the contrary would have been adduced, in the fact of an application for a further extension of time. But it does not appear that any such application has been made, or has been necessary.

In the report of the directors, it will be found, that among their estimates for the completion of the canal, the only sum which can apply to its enlargement in any way, is the item of $10,000 for embankments. But all these inferences are conclusively established, on reference to the representation of the honorable gentleman from Pennsylvania, now Chairman of the Committee on Roads and

Canals, (Mr. HEMPHILL) made in January, 1823, on this floor.

[Here Mr. HAYNES quoted the following extract from the Speech of Mr. HEMPHILL:

"One of the canals, alluded to in the report, has been completed last Fall, under the superintendence of some of the Corps of Engineers. It is the Dismal Swamp Canal, which is twenty-two and a quarter miles in length; in breadth, thirty-eight feet at the surface of the water, and in depth, six feet. It is the first Canal in America that is calculated for Sloop navigation, and is sufficient for the common sized Bay-craft that navigate those waters, and will admit vessels to pass through the locks with sixty or seventy hogsheads of Tobacco, or nearly three hundred barrels of Flour, with their masts standing."]

Now, Sir, I would ask, if this statement was not correct, how did it happen that my honorable friend from Virginia, (Mr. NEWTON) who discharges, so faithfully, his duty upon this floor, and who is so particularly mindful of whatever concerns this canal, did not correct it?

As he did not, Sir, I am warranted in the conclusion, that the statement was substantially and entirely correct.

But, Sir, we have been informed by the honorable gentleman from Pennsylvania, (Mr. HEMPHILL) if I did not misunderstand him—and if I am mistaken he will correct me—that a sloop from New York has recently passed through a part, or all of the canal, taken lading, and is now probably on her return to the place of original departure.

But, Sir, it appears from the estimates of the directors, that near 50,000 of the sum asked for, is intended for the construction of another canal, to connect the Dismal Swamp Canal with Northwest River. So far as this new canal is considered, leaving out of the question all considerations respecting a general system of internal improvements, and the constitutional power of the House, it is manifest that it must be a work altogether local in its character, and not by any means an undertaking of National importance.

By referring to Mr. Gallatin's report, it will be found that such is the shallowness of Currituck Inlet, with which this Northwest River Canal is intended to communicate, that vessels drawing five feet water are not certain of a passage through it.

Indeed, the estimates for this canal, when compared with the sums expended upon the Dismal Swamp Canal, shew that it can, in its effects, be but local. But how are we to acquire title to the land through which it is to be constructed? I say constructed, because I hold that there is no difference, in principle, whether we construct a work ourselves or do so by means of another. It is as much our act in the one case as in the other. The act of incorporation will show how a right of way was acquired by the Dismal Swamp Canal Company. [Here Mr. H. quoted the act.] That a sovereign *State* may thus forcibly appropriate the land of its citizens, may be admitted, but I do not understand how this Government can appropriate it without their consent. Nor is it contended, as far as I have heard, by the advocates of internal improvement, that a road or canal can be made through a State without its consent. Nor can it be contended that the rights vested in the stockholders to survey and condemn the land of the citizen, as granted by the State of Virginia, expresses any consent on her part that this Government, which was not in their contemplation, should exercise those rights. But if this reasoning should be considered inapplicable to the Dismal Swamp Canal, it certainly applies with full force to the Northwest River Canal, which has not yet been commenced.

But it may be contended, that our interest in the undertaking, and all the rights which we acquire in the partnership, are to be imparted by the stockholders; that we have no concern in the means by which they have been acquired; that, however forcible its acquisition by them, it is transferred voluntarily to us. But this is not the case; the bill contemplates no such transfer, and if we go into the concern, it must be on the footing of the original stockholders. I put it to every gentleman, if under such circumstances, we can, with the least propriety, go into a measure of this kind? The opinions of Virginia, on this subject, are well known.

But, Sir, it is proposed to attack the principles through the medium of her interest. I know of no instance in which the land of an individual has been appropriated by this Government but by his consent.

I believe it is the uniform practice, if you wish to construct a light house, fort, or arsenal, you first obtain the right to do so from the owner of the land on which you desire to build it.

But, it may be contended, that the appropriation of a part of the sum contained in this bill, is necessary to enable the stockholders to construct locks of durable materials; that these locks must be of stone.

But, Sir, I am authorized by my honorable friend from New York, (Mr. ADAMS) who has much practical knowledge of canalling, to say, that wooden locks, for economy of construction and convenience of repair, are greatly preferable to stone. That honorable gentleman permits me to say, that a wooden lock, on Wood Creek Canal, if I mistake not, continued in good repair for seven-and-twenty years; and that the lock in Niagara River, through which vessels ascend from the basin at Black Rock, is also of wood. There cannot, therefore, be any occasion to call upon this House for the funds necessary for the construction of locks.

For these reasons, Mr. Chairman, I am opposed to the passage of the bill, and earnestly hope that it will be rejected.

Mr. SAWYER said, he was very sorry to see an undertaking like that of the Dismal Swamp Canal opposed by intelligent gentlemen on this floor. He felt confident, that if the gentleman who had just taken his seat could once see that work for himself, it would move his admiration, and instead of opposing it, he would only wonder at the enterprise and perseverance by which so great and difficult a work had been advanced to its present point of completeness. If he had seen the deep and impervious swamp which had been penetrated; if he had witnessed that band of slaves laboring up to their middle in mud and water, accomplishing a work which none but themselves could ever have effected; he would have stood in amazement at the boldness of their undertaking, and the untiring energy with which it had been prosecuted for thirty years. The work was now nearly completed, and the funds of the company were completely exhausted. To accomplish the full purpose of its usefulness, the canal must be made to correspond with the other works in that great chain of internal communication of which it is a part. The company do not come to this House before they have made any exertions of their own. They have first put their shoulder to the wheel, and now they call upon Hercules. An objection had been made from the opinions existing in Virginia, as to the constitutional powers of this House. But what have we to do with the opinions of Virginia? Political opinions, we all know, are very evanescent, and the duration of their prevalence very uncertain. Opinions may be held by one Legislature, and utterly denied by the next. I hope gentlemen will have a little more compassion than to reject the bill, because a political opinion happens to prevail in Virginia. My own State holds on that subject better views. The Constitutional question in relation to internal improvements, is there considered as settled. The expediency of such improvements is also settled. The expediency of the present undertaking is set forth in the report

of the Board of Engineers, and has been fully proved by the execution of the work thus far. By means of this canal, the naval stores necessary for your maritime defence, have reached your navy yards, which, else, would never have got there. My constituents have a deep interest in this canal; without it, they must encounter a tedious and dangerous navigation of 300 miles round Cape Hatteras, before they can reach Norfolk—a point, which, in a straight line, is only 60 miles distant. As to Norfolk, the canal is the artery through which the very life's blood of its wealth and commerce is to flow. But it is not on this account that the House is called to pass the bill. The undertaking is profitable to the Union at large, and the money we invest in it will pay us as much interest as the same sum would save to us if employed in paying the national debt. As to the depth of water in North Carolina, even if the representation of the gentleman from Georgia was correct, his argument would not apply, because the main water communication goes not to those Sounds, but to Ocracock inlet; and any vessel that can pass Ocracock bar, can go into the canal: in that inlet there is at least ten feet water to the very mouth of the canal.

Mr. HOFFMAN said, he had some objections to this bill, which he wished to state to the committee.

What are we asked to do? By this bill we are asked to give one hundred and fifty thousand dollars of the public money for stock which has already been offered to those who have invested near half a million in the company's concerns; and, although these previous investments are unproductive, for want of this further subscription, yet they refuse the stock. They know its value best, and refuse to take it: and this House is asked to subscribe.

The gentleman who explained to the committee the situation of the company, informs us that it is indebted—perhaps it would be too strong to say insolvent—but the company is in debt and cannot pay; a circumstance not very flattering to those who are invited to take the stock.

What is the information with which we are furnished, when we are asked to subscribe? For I now waive all objections as to the constitutional power of Congress to make canals. It would be improper to urge them where the objections to the policy of the measure are so strong.

Gentlemen tell us the stock *will* be profitable. This may be, and I will believe them when I see that they are willing to subscribe their private funds. When they do this, there may be no impropriety in our subscribing for the stock. While they hesitate and refuse, we ought not to subscribe.

What would an individual require, if he were asked to vest his funds to the amount of $150,000 in such stock? He would ask, What has already been expended on the work? What proportion of the work has been finished? What part of the work remains to be done? Of all these, he would ask a statement detailing the particulars. He would require a statement of the proceeds. He would call upon you to show what amount of transportation had been carried on. What tolls, and on what received: and a probable estimate of future tolls. He would demand of you to satisfy him, that a vessel ladened with her cargo, in any of the Sounds South of this canal, would, on her way up the Chesapeake, as high as the Potomac, prefer passing through the canal. The canal route might be easiest to Norfolk, but would it be preferred for a passage from the Southern Sounds to Baltimore? What information? Where is the evidence to enable us to judge of the probable future proceeds, profits, and transportation, of this canal? We have none. One fact we know, that this company, after having received the proceeds of the canal for twenty or thirty years, is unable to pay its debts. Surely, if the stock were worth taking, the proceeds should enable the company to pay its debts.

The report laid on our table tells us, indeed, that fifteen thousand dollars will be needed for one lock: that another will cost twenty thousand dollars. But what these locks are to be, what their dimensions, of what materials, or their mode of construction, we are not informed. All that is left to the discretion of the Engineer who may be employed. Nor are we informed of the quantity or kind of labor to be done, or the price of any part of it. If we ask how much earth excavation is yet to be done, to widen, deepen, and complete the canal, where shall we find the estimate? By the charter, the bottom of the canal was directed to be thirty-two feet, and the locks were to be as wide. Now, we are told that the locks are eighteen feet wide, and the water line of the canal forty-two feet. It appears to be wholly unsuitable for vessels drawing six or seven feet water, and only wide enough for boats drawing three or four feet and carrying about forty tons.

When, the other day, I asked for some further information on this subject, the gentleman from Virginia (Mr. NEWTON) replied, that we had the facts already before us; and read a part of the printed documents. But that document did not state any one of the particular facts relative to this canal, which I deem essential to inform the committee. I am willing to give a reasonable credit to the statements of the Engineer; but, while we do this, we have a right to know the particular facts upon which these statements are made.

Another gentleman from Virginia, (Mr. MERCER) informs us, that he has recently visited this canal, in company with the Secretary of the Navy and United States' Engineers. Probably these gentlemen rode on the towpath, or were drawn on a boat, or passed through a lock. Sir, I should like such a jaunt, particularly in company with the gentleman and the Secretary of the Navy. But, however pleasant the journey, or respectable the company, such a *survey* would furnish very little of the information necessary for the committee and the House. A prudent individual, before he would subscribe one hundred and fifty thousand dollars to the stock, would wish to know something more than could be learned by passing along the canal. He would particularly desire to have a correct knowledge of the charter of the company.

When, shortly since, I asked what power the charter secured to the stockholders, in the choice of directors, I received an answer more summary than satisfactory. I was told by the gentleman from Virginia, (Mr. NEWTON) that it gave them the same powers as were secured to the stockholders in all other companies. If the charters of all companies were, in this respect, alike, the answer would have been satisfactory. But, as this is not the fact, I took the pains to look into the little book containing the charter, and I found that, by the charter, you would have one vote for every share for the first ten shares of stock, and one vote for every five subsequent shares. It appears, therefore, that your six hundred shares of stock will give you, if I have calculated rightly, one hundred and twenty-eight votes in the choice of directors. Now, a broker, by buying up the other shares, using the names of different individuals to subscribe for them, taking his proxies, may, by a very easy process, vote you down, get the appointment of the whole Board of Directors, and, consequently, of President, Secretary, Engineers, Jobbers, Lock-tenders, and Assessors of damages, Superintendents, and all others connected with them, and regulate their salaries and pay. All these employments he may distribute among his family and friends. Such an event has taken place in the management of one of your Branch Banks. You have had some experience on this subject, and it may take place here, if the concern should ever become worth the notice of a broker. The interest of such a person, owning the direction, would be very different from the interest which you would have. His interest would be, not that the *dividends* should be considerable, but that these salaries should be as large and beneficial to his creatures as possible. Your interest requires that the work should be

well and cheaply done; and that the dividends should be considerable, and not exhausted in salaries. Under such management, the canal, though of no use to the public, may be made very profitable to those concerned in the direction. I am not drawing an imaginary picture. The charter contains such provisions, that a broker may get the whole management of the institution at a price much less than you pay for the proposed subscription. The canal, and its direction, would be wholly in his own hands. The *trustee* is, in every thing, to be treated as an owner by the company. The broker can easily procure the requisite proxies, and may thus defeat you in an election, without difficulty.

It may be said, in reply, that the charter of the Delaware and Chesapeake canal contains similar provisions, as to the power of the holder of stock, in the choice of directors. This may be so; but, if it did, I know that that stock ought not to have been taken. I cannot consent that the money of the nation should be placed where stockjobbers may seize it at will. I find that the State of Virginia has exercised much power over the charter of this company. She has altered it again and again. Whether the company had, or had not, forfeited its chartered rights, I cannot say. The charter may be forfeited; and, asking for favors, the company may not have thought proper to resist. Virginia has created an entire list of new tolls for the company. Some of these may have been increased; but can the gentleman from Pennsylvania, at the head of the committee, (Mr. HEMPHILL) who reported this bill, say that every one of them was increased; and yet, in the same act, Virginia inserts a proviso that nothing in the act should be construed to deny to any subsequent Legislature the power to reduce the tolls. Have we a right to vest the public money in a concern, the proceeds of which may, at will, be reduced by the State of Virginia?

The gentleman from North Carolina (Mr. SAWYER) says, that it is very possible that the opinion of Virginia, respecting the right of Congress to make internal improvements, may change. This is no doubt true. They may change; they may become more hostile to your interference than they now are or have been. I believe they will. It is surely not safe to suppose that those who have heretofore believed that you have the right to make canals, should continue always to think so. All changes of opinion will not necessarily favor or enlarge your powers. There may be changes against you as well as for you. The States that were with you yesterday, may think differently to-morrow. We have had some experience on this subject, and we have a right to expect more. Are you certain that Pennsyvania, Delaware, and Maryland, will always go with you? Sir, there is a certain lens, which, at times, enables us to see the power of Congress over Internal Improvements, which, at other times, we cannot discover. That powerful *lens* is our interest. We have seen enough on this subject to establish the fact.

In this case we have not, I contend, such information as would induce a private individual to vest his money in the company's stock. I therefore put the question to gentlemen, if they think they have a right, in purchasing stocks, to place the money of the United States in an undertaking where they would not venture their own? If the United States wish to make canals, let them do it; but, if they purchase stocks, let them buy those which are good.

The gentleman from Virginia, (Mr. NEWTON) has addressed an argument to the committee, which deserves a reply. He tells us, that, on all former occasions, he has been liberal towards Internal Improvements, and that now we ought to be liberal towards him. Liberal? Sir, with what? Our own money is in our own hands; with that we may be as liberal as we please; and I hope gentlemen have been liberal before they came here—and if this canal will be as profitable as we are told it will, that gentleman can easily persuade the moneyed men of his State to subscribe for this stock. Liberal, sir, with the money of the public. No doubt that is very easy liberality.

But what is the fact? Has the House always been as liberal as the gentleman supposes? I recollect that, when New York asked you to aid her in her great work, the Government was in a constitutional decline. You had scruples about your power; you were then quite unable. New York, by her actual consumptions, contributes one seventh of your whole revenue. She furnished the most satisfactory evidence that the stock would be productive, but you refused to aid her with a single dollar. After refusing her, where the money would have been safe and productive, you are to be liberal, in passing this bill to purchase stock in the *Dismal* Swamp Canal. Liberal! Sir, I admire a liberal man, and hope gentlemen will be very liberal with their own estates. But I do not like this liberality which vests the public money in poor and unproductive stocks. We must be liberal with public money in buying stock that nobody else will buy. Very liberal in vesting the funds of the United States in a company indebted and broken, if not bankrupt—a company that has had thirty years in which to try their experiment, and now come here and ask us to pay their debts. When New York asked you for aid, she did not come here with loose, general, indefinite statements: she produced exact, correct, and minute statements and estimates, and all the information desirable, in the most accurate form. You refused the application; she went on; her calculations have been verified. Her canals are finished, and have, for some time, realized about twenty per cent. After refusing to vest your funds in such an undertaking, on such information, I hope the gentleman will not suppose that we oppose this bill from illiberality.

Indeed, sir, this work is one in which you ought not to engage with your present information. I appeal to the friends of Internal Improvements: do not waste and misapply the public money; do not act upon imperfect information. If you will aid these works, apply the funds of the United States judiciously. Employ able Engineers; make accurate surveys from Long Island Sound to Georgia. The object is a great one; obtain perfect estimates, and proceed on a plan that all can understand. Do not bring the cause of Internal Improvements into disrepute by the manner of proceeding. If you wish to test your power, lay your line on the waters of the Chesapeake; wind up the valley of the Potomac; tunnel the Allegany; cross the Ohio; and reach the head waters of the Mississippi. Exercise the constructive power which the Court has awarded you in McCulloch vs. the State of Maryland. Do something worthy of the United States, and in a manner worthy of yourselves. But, when your rod shall smite the rocks of the mountains, remember that the waters that gush forth may be waters of bitterness. The power may be a usurped one: if the States complain, your Constitution will be amended; if they submit, time may confirm your doubtful authority.

How do you proceed? In executing a power so doubtful, not in your minds, but denied by so many, will you ask the friends of Internal Improvement to wind their way through New Jersey, in the Raritan canal, and pay that State a bonus of 100,000 dollars for a charter? Will you deal even-handed with Delaware and Maryland, and crawl through the deep-cut of the Chesapeake and Delaware canal? At the South, must Virginia subscribe stock, and become a creditor to the company to pay you a bonus to aid her, and wind your way through the Dismal Swamp? On what terms and conditions are you to get on farther South? Is this power to be exercised under the supreme power of the States, and the superintendence power of corporations? Do not disgrace the cause. Do something like the United States: employ your own officers, who are accountable to you: place your mon-

where you can guard it: construct your canals so that in war you may have power to use them, and in peace the right to employ them in commerce and the transportation of the mails. Do not waste your funds on canals in such a manner that, when war thunders upon your coast, and you desire to employ them to transport the means of defence, the direction shall be in other hands; and when you ask to convey your troops to meet invasion, your Secretary of War shall be told, "the embankments have failed, the walls are fallen, the locks decayed, and you cannot pass." But perhaps it will be said, the Chesapeake and Delaware Canal Company were also in debt. True, you subscribed; and as that company had expended a large sum, (some hundred thousand dollars) in useless labor, it may have been insolvent. But, whether that subscription was a good or bad one, it cannot justify the present.

The gentleman from Virginia (Mr. MERCER) seemed to suppose, that, if we felt real doubts as to the constitutionality of this measure, the question might be now raised and discussed. Reserving the question for a proper occasion, I must decline such a discussion, in a contest with a miserable corporation. The power exercised in this case, seems any other than the power of making a canal. It will make none. It is a subscription for stock in a company, the tolls of which are to be regulated by the State of Virginia, and whose whole direction may be obtained by a Williams or Barker, and placed beyond your control.

Why should gentlemen ask us to exercise a doubtful power in the most odious manner? Yes, sir, you buy the privilege of carrying a canal through New Jersey. You ask leave of Virginia to advance through her territory. On what terms, for what sums, are you to be allowed to canal through other States? Are you to buy up charters? If this becomes a matter of State finance, rely upon it, the *bonuses* for canals will soon rise. In what light will this purchase of canal companies be viewed? There can be but one opinion on the subject.

Sir, we call for information; we ask to have it in a written form, in a tangible shape; we ask for correct estimates; we ask for a survey and chart of contiguous waters to the canal. We know that the canal has been in progress for thirty years; and the bill before us tells us that it is intended as a part of the contemplated canal line near the Atlantic coast. Calculate its width and depth, and it appears unfit for the purpose intended. The whole work must be torn down. The canal is too narrow, the locks too short. It is easy for gentlemen, while engaged in mere Congressional engineering, to say that the canal is large enough for vessels that can navigate the bays. But I would rather credit the opinion of practical Engineers, such as are employed in constructing the Raritan, the Delaware and Chesapeake canals. They state that a canal for the passage of the bay craft must have a depth of eight feet water. They declare that the locks must be, in the clear, one hundred feet long and twenty feet wide. This canal, when completed as contemplated, will have but six feet water, with locks ninety-six feet long and eighteen feet wide. The Engineers of the Raritan, and of the Delaware and Chesapeake Canal, are able men; the chief Engineer, Judge Wright, for good sense, science, and practical skill, has no superior, perhaps no equal, in the United States. All these agree that these canals are of the proper dimensions for, and no larger than is necessary for bay craft. They act accordingly. Would they expend their money to make the canal of a size perfectly useless, and so expensive? If, therefore, their opinion is correct, and I have no doubt of it, it is perfectly certain that the Dismal Swamp Canal is too small and shallow in its dimensions. And if it be large enough to pass the craft which can navigate the Sounds South of the canal, it proves that these Sounds, as appears to be intimated by the report of the Engineer on your table, are too shoal to pass the vessels which are proper for the navigation of the Chesapeake and Delaware bays.

But the gentleman from Virginia, (Mr. NEWTON) in answer to my inquiry on this subject, states, that the depth of water in the canal will be sufficient for vessels which can navigate the Sound farther South; and that it is desirable to employ not sharp, but flat bottomed craft, to increase the tonnage. Sir, I must say that these scows are, perhaps, fit craft for mud Sounds, shoals, and shoal canals; but I can assure the gentleman that flat bottomed boats will make a sad figure in Delaware bay, and be of little use in Long Island Sound. If this canal is to be employed as a part of a chain of Atlantic canals, it is evident that there must be a transhipment at Norfolk. If it be said that works of this description are convenient to transport munitions to our fortifications, and timbers to our naval depot, I deny it: not of this description; a canal properly constructed might be. I deny that this is such a canal as this House ought to patronize.

The gentleman says he has been liberal, and his observation leads me to remark, that Norfolk, in the desert, appears to be a liberal situation. The Rip Raps are near it, Point Comfort is not distant, Fortress Monroe and Fort Calhoun, as well as the Navy Yard at Gosport, are in its neighborhood; and, lastly, the Dismal Swamp Canal, with its 150,000 dollars of stock for the United States. Sir, you may subscribe for this stock; but, if you do, my advice is, that you should be sure that the United States will receive their share of the tolls.

Mr BUCHANAN said he had risen to make a few remarks, in reply to the arguments of the gentleman from Georgia and the gentleman from New York. Each of the gentlemen had disclaimed the intention of entering upon the constitutional question; and yet both of them, in the course of their remarks, had touched upon it more than once.

If there be any principle of constitutional law which, at this day, should be considered as settled, it is, that Congress have the power to aid Internal Improvements, by subscribing for stock in companies incorporated by the States. That right is the only one proposed to be exercised by the present bill. Gentlemen talk about entering the territory of a State, and making improvements therein without its consent. Does this bill propose that the General Government shall enter the territory of any State? that it shall erect any toll gates? that it shall exercise any act of sovereignty? or perform any other act by which it can possibly come into collision with any State of this Union? Not at all. It is a mere proposition to take stock; and if this Government cannot do that, what can it do? Suppose, for the sake of the argument, (though he feared such a case was not very likely to happen) that there should at any time be a surplus of money in the Treasury. Must it lie idle, useless to the Government, and useless to the People? Is it a violation of the Constitution to invest it? Deplorable, indeed, is our condition, if we must stand still and gaze upon our money, and have no power to put it into circulation for purposes of public usefulness, by becoming the proprietors of stock. I am not, certain, said Mr. B., what is called a high constitutional man; but yet I could never see how the Constitution could be brought to bear, with the least plausibility, against the exercise of this power. We have, already, stock to the amount of 7,000,000 dollars in the Bank of the United States; and we have subscribed liberally to the Delaware and Chesapeake Canal.

Sir, I will ask the gentleman if he believes it is correct to bring the grievances of New York upon this floor? Is it wise—is it statesman-like to say, that, because the Government, six or seven years ago, was in a state of embarrassment, and unable to aid the New York canal, that it is therefore never to aid any work of general importance within the limits of any other State? Does that

gentleman think that New York will never agree to help any of her sister States, because this Government was unable to help her? Sir, I believe better things of the State of New York. I have a high opinion of her magnanimity. I believe that she will ever be ready to stretch forth her hand to her weaker sisters, when the object in view is of a character to promote the general prosperity. The gentleman tells us to do things like the United States. He would have us to march from the Atlantic to the Pacific: to pass, at a bound, over the Rocky Mountains, and to undertake some vast system of Internal Improvements which should be worthy of ourselves. The gentleman from Georgia also tells us that he will never agree to become a proprietor of stock in this little Dismal Swamp Canal. Let him see a splendid system, then he will go for the whole. But, Mr. Chairman, I say that, with perhaps one exception, no Government, in any part of the world, ever did enter upon a general system of improvement of any kind, and did not, in the issue, lose half its money. This Government has afforded a striking example of the truth of my remark.

I am not for waiting for any such system. The principle of self-interest is a sufficient excitement, and a sufficient guarantee, in all such undertakings. Let them be conducted by individual enterprise: and when we enter in only as stockholders with those who have risked their fortune on the success of the work they are conducting, we have the best security that it will be well executed, and that our money will not be thrown away, unless, indeed, the whole undertaking is to be one great fraud. But I trust we are not to be prevented from doing right, by any apprehension lest a New York broker should come in, and, by some stroke of legerdemain, should get the whole concern into his own hands. I hope we are not to be terrified by such spectres of the imagination. The gentleman tells us not to exercise a doubtful power in an odious manner. An odious manner, sir? Rely upon it, such interference as is involved in a subscription of stock, instead of being odious, is precisely the most popular mode in which the power of the Government can be exercised. You come in collision with no State, or State right. You aid the State and get its gratitude and good opinion. The gentleman has urged another argument, equally without foundation. He would have us to go to work like brokers: we must narrowly examine the stock, and see if it will yield six per cent.; and we are to do nothing that an individual would not do, who is governed by no motive but that of self-interest.

But, sir, so long as individuals are certain that they can get six per cent. from any stock whatever, be assured we shall never be troubled by any solicitations to subscribe. The gentleman seems to forget that Congress should have other objects, much higher, much nobler, much wiser, in view than a six per cent. calculation. He seems to forget that an object which conduces to the public defence, is one legitimately within the scope of our legislation. We are sent here to consult the best interests of the Union, the prosperity of its foreign and domestic commerce, and its security against the attacks of an enemy. These objects, sir, we shall never effect while we are governed by the cent. per cent. notions of the gentleman from New York. This bill stands on the same ground as the bill for a subscription of stock in the Delaware and Chesapeake Canal, (and the gentleman may rest assured that Company is not insolvent.) I hope, sir, that what has been done to aid that great and useful improvement will not be withheld from the Company created by the Legislatures of Virginia and North Carolina, to accomplish an object of the same nature.

The gentleman has made a calculation, for the purpose of convincing the Committee that vessels, such as might navigate this canal, could not pass along the Sounds, which lie to the South of it, on account of their shallowness. Well, sir, and because we cannot pass a certain distance to the St. Mary's, are we not to subscribe—and although it is certified to us, by the Board of Engineers, that vessels can pass a distance of one hundred and seventy-nine miles South of the Canal, in nine feet water—the force of this argument may be felt by the gentleman from Georgia, but I confess it is entirely lost upon me.

Mr. HAYNES said, that he was obliged to the gentleman who had advocated the bill, for an opportunity to explain more fully the grounds of his opposition to it. The gentleman had mistaken or misrepresented the statements he had expressed when last up. He was far from being in favor of a splendid system of internal improvements; on the contrary, he was most decidedly opposed to it. He had confined himself, in opposing this bill, to considerations of its expediency alone. The gentleman seemed to have equally mistaken the feelings and motives by which he was actuated. The ground of his opposition had no reference to the State or States which were to receive this benefit: he should oppose it with equal earnestness, if the money was to be expended in Georgia. The gentleman from Pennsylvania had used an argument which proved too much, and therefore proved, in fact, nothing at all. He had said that he found there would be a navigation, in nine feet water, for one hundred and sixty-nine miles; but, if the gentleman would examine a little more carefully, he would find, that those one hundred and sixty-nine miles included the canal itself, as Pasquotank river, and did not extend to the Sounds to the South of it.

It is not my intention, said Mr. H., to be drawn into any discussion of the Constitutional question, but I wish to ask the Committee, by what authority the funds are raised to pay for these shares. The Government certainly has no right to put its hand into the pockets of the citizens, unless it has the intention of appropriating the money to some useful object; and it made no difference whether the work was done by themselves or by others. Now, he did not understand that this Company had received any moneys from this Canal, though they had been in the management of the concern for thirty years past. In answer to my inquiry for their profits, I am told that the tolls amount to ten or twelve thousand dollars per annum. Yet the Company is in debt, and unable to go on. If we are to invest our money in stock, it must be with a view to the increasing of it; but I am yet to learn that the annual proceeds of this Canal are to receive any great increase. We have been told that, during the war, all the groceries which supplied the adjacent interior, passed through this canal; and, as long as three years ago, the canal would bear vessels carrying seventy or eighty hogsheads of tobacco, and three hundred barrels of flour. All the products of the neighboring country pass through it already, and yet the Company are at a stand. Believing, therefore, that the canal is not likely to be a profitable concern, and, if it were, that its beneficial effects are not so diffused as to render it an object of national utility, I hope that we shall dismiss the bill. And in that hope I move that the Committee now rise.

The question was taken on Mr. HAYNES' motion, and negatived, by a large majority.

Mr. MERCER said, that he rose with reluctance: and should not have risen at all, had not some of the remarks of the gentleman from New York been applied in so particular a manner to him, that he could not well avoid some notice of them. I was unfeignedly astonished that the gentleman should imagine that I brought the discussion of the constitutional question; on the contrary, I most heartily concur with other gentlemen in the opinion that this is not the occasion on which that question should be brought under examination. I am fully satisfied that there are many distinct clauses of the Constitution which fully justify the passing of the present bill—some that

not sustain the general power to make roads and canals, in its fullest extent. I cannot forbear to notice one inconsistency in the remarks of the honorable gentleman. He says, if this canal is to be as profitable as its friends have contended, there can be no difficulty in procuring subscribers to embark in it. Will not the same argument apply, with equal force, to the application made to the United States to subscribe to that great work, which does so much honor to the gentleman's own State? The New York Canal was not accomplished by the exertions of individuals. It never could have been. So strong was public sentiment in opposition to the undertaking, that its advocates jeopardized their claims to popular favor, by sustaining its practicability. By the argument of the gentleman, the very necessity which induces a petition for the aid of the General Government, is turned into a reason why it should be denied. The memorialists tell you they have gone a certain length towards the completion of their undertaking, and that their means are exhausted. Then, says the gentleman, the stock cannot be valuable, and we ought not to aid it by our subscription. But the friends of the enterprise insist that their stock will hereafter be profitable. Then, says the gentleman, there can be no difficulty in obtaining private subscriptions, and that required of the Government is unnecessary. Why were not these arguments urged in the case of the Delaware and Chesapeake Canal? That Company, too, was in debt, and, according to the gentleman's inference, insolvent; and, therefore, we ought not to have given them our aid. We are told by gentlemen that we have no estimates submitted to us; no surveys; that, when New York applied for aid to her Canal, she placed her estimates before us, and furnished us with the most complete information; that they proved, as the event has verified, that the Canal would yield an income of twenty per cent. Well, sir, notwithstanding all these fair estimates and accurate surveys, had not New York applied to this Government for aid? The canal was expected to yield twenty per cent.; yet the wealthy capitalists of New York refused to subscribe to its stock. This Canal is expected to yield but ten per cent., and yet the gentleman asks, why do we not subscribe at home? Sir, he might with more justice make the same complaint of the citizens of his own State: while, on the contrary, he reproaches the Government with disregarding their petition for aid.

But, sir, the fact is not so. You have the information before you; all that you need, to show that this work has a claim upon your patronage. Sir, I am yet to learn that there are abler Engineers any where to be found than some of those which have been employed by the Board of Public Works of Virginia. As to the misapplication of the sum now asked of the Government, that is effectually guarded against in the third section of this bill. The gentleman seems to forget that it contains a proviso that no part of the money which it appropriates shall be paid, till a report of the United States' Engineers shall declare that the canal can be rendered a part of the internal communication which is to be extended along the sea-board. Sir, is there any force in the argument, that we are not to aid this canal, because vessels which pass through it cannot proceed all the way to Beaufort and Charleston? The same objection might have been urged against constructing the Delaware and Chesapeake Canal; it does not enable vessels to penetrate as far North as New York. Another Canal, through New Jersey, is necessary for this purpose. But this canal, though it be not the whole chain, is one link, and a very important one, of that chain: a link without which the chain would be incomplete. We have the same assurance of its utility which we had in the case of the Delaware and Chesapeake Canal. The gentleman remarks, with truth, that interest often forms the lens through which the powers of Congress are regarded. An instance of the truth of the remark is furnished in the case of the New York Canal. When New York asked the aid of Government in constructing that canal, it viewed the powers of the Government through the convex lens of which the gentleman speaks; but now she turns towards the Constitution a concave lens. She has strong doubts of that of which she did not doubt at all in 1811 and 1813. The appropriation in both instances was for lands; and both periods were times of national distress, of non-intercourse, and embargo, of approaching or of actual war, accompanied by great financial embarrassment. And the application was resisted as an improper intrusion upon a long-tried and highly expedient system of managing the public lands. No question was made in this House, of the power of the Government to grant the lands, if it were deemed expedient to do so. To excite the fears of the House, an extreme case has been supposed; we have been told that a New York broker may possibly get the whole stock—the company, canal, and all, into his power. But surely the gentleman overlooks the fact, that the shares held by the State of Virginia, and by the United States, should this bill prevail, will always be sufficient to guard against so extraordinary a danger; a very small proportion of the stock will be held by individuals. Such a piece of management as the gentleman apprehends, would be a gross fraud. The broker is both to purchase and to distribute the stock in single shares, among various holders. If he kept clear of the law, he might, without difficulty, be counteracted. The present request for our subscription is the result, I understand, of a unanimous wish of all the directors of the company; and consistency requires that we should do, in this case, what we did in the precisely similar case of the Delaware and Chesapeake Company. It is true that a vessel drawing eight feet cannot go to Beaufort, by the way of this canal; but what then? Does that prove that it is not proper to prepare it for the passage of mast vessels drawing six feet water? A steam boat of 300 tons may not draw six feet. And although it be possible for the other canals in the chain to float vessels of eight feet draft, and the navigation of the Sound may limit the depth of this canal to six, it is not the less expedient to give to it the largest dimensions of which it is susceptible.

Mr. HEMPHILL moved to amend the third section of the bill, by adding thereto the following proviso:

"And it is further provided, That to carry this act into effect, the sum of $150,000 is hereby appropriated, to be paid out of any money, not otherwise appropriated."

Mr. HOFFMAN said, he had an answer for one of the observations made by the gentleman from Virginia, (Mr. MERCER) and another for one of the remarks of the gentleman from Pennsylvania, (Mr. BUCHANAN.)

The gentleman from Virginia alleges that the fact that the New York canals produce a profit of about twenty per cent., proves that the stock of the Dismal Swamp Canal will be productive. Sir, if, when New York offered you the opportunity of subscribing to her canal stock, her canals had been in operation, receiving tolls as the Dismal Swamp Canal has, (adopting the correction of my friend from Georgia, Mr. HAYNES,) for five and twenty years, and had been unproductive all that time, it would have been a good reason for refusing the subscription. If the New York Canals are profitable, how does this prove that the Dismal Swamp Canal will be, when it has been tried, and found worth nothing, for five and twenty years.

The gentleman from Pennsylvania alleges that I ought not to bring the private grievances of New York here. I have not done it, sir; she has none. If New York has changed her opinion since she came here for canal aid, it may be that she has done it because she feels *some* respect for the judgment of Congress. It is not my argument that makes the United States a stock-jobber, dealing as a broker. No, sir, I despise and decline the trade. It

is the argument of the gentleman himself, who is so grieved to see your treasure lie idle, and corporations suffering for loans; and if he will make the United States a broker, I insist that he should purchase profitable and not worthless stocks. If she will invest her money to make it productive, she should not make investment in such stocks as even a broker would refuse, and no prudent man subscribe for.

Mr. STEWART said he rose to answer one or two of the arguments of the gentleman from New York, which had not been noticed by others. The principal argument was, that this stock was not profitable. He believed, on the contrary, it could be easily demonstrated that this stock would be profitable. He would, however, remind the Committee, and the gentleman from New York, that unless we complete the chain of coastwise canals, what we have done will prove comparatively useless. It was not to be expected that this canal would prove profitable until it should be finished. The tolls have already been very productive, and will be much more so, as soon as the canal is opened throughout for the reception of vessels. There can be no doubt that when all the commerce between the Northern and Southern States shall pass through this canal, it will be very profitable. This is a reason why we should act upon it. The great question, however, is not whether the canal is profitable. Do we legislate with a view to profit? Are we to make it a cardinal point of inquiry whether the canal will be profitable to the Treasury? The great question is not whether it will be profitable, but is it necessary to accomplish the great national object for which it is recommended—the defence of our sea-board? Is it necessary to complete the chain between the North and the South? If it be, we ought to go on with it. He cared nothing about the profit of the undertaking; he was only anxious to accomplish it for great national purposes—for defence in war, and commerce in peace. These are high and commanding considerations, to which, as statesmen, we ought to look; and not to questions of profit and loss. Look at the reports of Mr. Gallatin; look at the communications from Mr. Calhoun; look at the reports of the Board of Engineers; they all contemplate this chain as essential to our national defence. The country is not to be defended by forts and fortifications only; but by means of canals, which will enable us rapidly to concentrate our forces at any important point where their presence might be required for the defence of our extended seaboard. The gentleman says we did not aid New York when she came to Congress for assistance. He was sorry for it: her canals were calculated to promote great national objects, and, therefore, ought to have been aided by national means. He would, at any time, grant an appropriation to the State of New York, for any great national purpose. If the New York Canals had been completed previous to the late war, it would have been the means of saving more blood and treasure, more disgrace and disaster on the Northern frontier, than all our forts and fortifications put together. Do we make appropriations for forts, with a view to profit—because they will yield us six per cent. interest for our capital? Quite the contrary: instead of being profitable, they are a constant drain on our Treasury; a perpetual source of exhaustion. You must keep up costly and decaying armaments, and a standing army, to prevent their dilapidation. How is it in time of peace? Do your forts and fortifications carry on your commerce? No. In time of war can you move them to the point of attack? Will they transport your troops and munitions of war, *pari passu*, with the movements of the enemy along your coast of four or five thousand miles? But in peace, forts are worse than useless; they are a burden of expense. How is it with respect to canals? They are the channels through which your commerce is conveyed, from the cotton growing districts of the South to the manufacturing districts of the North; from one section of the Union to another; they promote the great interests of the country; they will enable the North to move at once to the relief of the South, in case of foreign or *domestic* war; they resist the influence of literature and science; bring all parts of the Union together; and bind us with ligaments of the most enduring character. In this view, they are profitable.

The only expenditure which the United States has made, which yields a pecuniary profit, is in stock of the United States' Bank, &c. Profit! Do we make appropriations for the Navy, with an expectation that it will be profitable? Is it for profit that we legislate? What profit is there in the annual appropriation bills which will return us a profit? He would vote for the bill because it is connected with our national defence, and because this great chain of canals is intended to be carried on, *pari passu*, with the forts and fortifications, forming part of the system, and by far the most important part of it. Your forts can only repel when they are attacked; but by means of canals, you may carry your troops from place to place, transfer your military energies from one point to another, as circumstances may require; and present a barrier to the invading enemy, when he least expects it. This, in his judgment, was the most efficient system of defence for a country like this, with such an extensive sea-board, relying for its defence, not upon standing armies, but upon the militia, dispersed throughout the whole country. With such materials, the means of their rapid, cheap, and easy concentration and movement, was every thing. On this principle, he would vote for the bill; not because it would be profitable; although he believed that, when the whole should be completed, the result would be such as to satisfy those who looked for nothing beyond a profitable investment of finances. Hitherto, unfinished as it was, it had yielded a considerable revenue; but when completed, with the other links in this great chain of communication between the North and the South, from Boston to the St. Mary's, he had no doubt the stock would become highly productive—equal perhaps to the New York canal, and sufficient to satisfy even the gentleman from New York himself.

The question was then taken on the amendment of Mr. HEMPHILL, and decided in the affirmative—yeas 87, oe 37.

The Committee then rose, and reported the bill as amended.

Mr. EASTMAN, feeling some doubts respecting one of the provisos in the bill, moved an adjournment.

The motion was negatived; and the question being on the ordering of the bill to a third reading, was determined in the affirmative—yeas 89, nays 54.

So the bill was ordered to be engrossed for a third reading on Monday.

And the House adjourned.

MONDAY, MARCH 13, 1826.

DISMAL SWAMP CANAL.

An engrossed bill "to authorize the subscription of stock in the Dismal Swamp Canal Company," was read a third time.

Mr. HAYDEN called for the yeas and nays on the question of the passage of the bill, and the call was sustained by the House.

Mr. POWELL said, that the yeas and nays had been ordered upon the engrossment of the bill; and that, consequently, it was not expected they would be again required, at this time. For the purpose of giving every gentleman an opportunity of voting upon the bill, he moved for a call of the House. This motion was not agreed to.

Mr. MANGUM said, this bill involved a subject of great importance, and as the yeas and nays had been ordered, he

wished every member to have an opportunity of voting on it; and, with that view, wished that the bill might be permitted to lie on the table until to-morrow, as the House was now not full. The vote on the bill, on Saturday, was looked upon as the triumph of certain principles, and was exultingly held up as such by certain prints in this city. Mr. M. therefore wished the sense of the House to be fully expressed on the question, that every member might toe the mark; and, to afford all of them this opportunity, he moved that the bill be laid on the table.

This motion was also negatived—ayes 69, noes 94.

The question was then taken on the passage of the bill, by yeas and nays, and decided in the affirmative—yeas 102, nays 72.

So the bill was PASSED, and sent to the Senate for concurrence.

AMENDMENT OF THE CONSTITUTION.

The House then, on motion of Mr. McDUFFIE, resolved itself into a Committee of the Whole, Mr. McLANE, of Delaware, in the Chair, on the resolutions for the amendment of the Constitution.

Mr. BRYAN addressed the Committee as follows:

Mr. CHAIRMAN: I regret that, to the other disadvantages under which I labor in addressing the committee in this stage of the debate, that of bodily indisposition should be added; but, as I have the privilege of the floor to day, I am determined to exercise it.

I am not desirous to impose upon this committee a general essay upon the Constitution; but I confess, sir, I am solicitous to explain the reasons of my vote, and willing to assume all the just responsibilities of my station. In doing this, as briefly as I can, I may be permitted to regret my political inexperience and want of constitutional learning; but, sir, I derive some consolation from the belief, that, if I am inexperienced, I am also unprejudiced. I have not been reared at the feet of any political Gamaliel; my opinions of men and measures, erroneous though they may be, are my own; they have not been assumed by *compact*: and therefore, Sir, I feel myself at liberty to correct and amend them as experience may dictate. Upon the subject of this Constitutional reformation I have earnestly endeavored to discover the true meaning and spirit of the Constitution, and am sincerely desirous to carry these into full and complete effect. God forbid that I should ever be so weak or so wicked as to displace one stone of this hallowed temple where liberty delights to dwell, for any other purpose than to secure her permanent abode. I most solemnly assure the committee, that, if I could be impelled by other motives—more especially, Sir, if I should attempt to unfix a column to promote party views or individual aggrandizement, I should deem myself an imitator—yes, Sir, an humble imitator of the wretch who applied the torch of destruction to the Ephesian temple to gain an execrable immortality.

It would be a vain regret, Sir, to express my sorrow, that I cannot spread before the committee the rich classical repast with which they have been so sumptuously regaled by the honorable gentleman from Massachusetts, (Mr. EVERETT.) It has not been my lot, like him, to breathe the inspiring zephyrs of the land of Homer; I have not had my imagination fired, and my heart exhilarated and enobled by treading the plains of Marathon and Platea; I have not mused amid the ruins of Athens, and gathered lessons of political wisdom from the silent, but impressive memorials of her departed greatness; nor has fair science, "rich with the spoils of time," unfolded to me those secret treasures which she could not conceal from that honorable gentleman.

I come not here, Sir, from the Lyceum or the Portico; I come, Sir, from the Court-yards and cotton fields of North Carolina; and I come, Sir, to proclaim the wishes and assert the rights of the People I have the honor to represent. My life, Sir, has been spent among the People of my native State; the most valued part of my political information has been derived from association and converse with my fellow-citizens. I know their wants, and I *feel* them too; I know, Sir, that they wish to participate in the election of the Chief Magistrate of this Union, and that they are dissatisfied with the present mode of expressing their voice—if expression it may be called.

In endeavoring to reply to the argument of the honorable gentleman from Massachusetts, I hope he will do me the justice to believe, that I do so in a spirit of kindness and respect. I should do violence to my own feelings were I to act otherwise: for, although I differ from him materially on some points, yet, when I can agree with him, I do so with lively satisfaction. He has told us, Sir, that it would be unconstitutional to make these amendments. Unconstitutional! Sir. This assertion is certainly contradictory to experience—to the Constitution itself; and the argument seems to move in a circle. We know, Sir, that amendments have been made; that one of these, the amendment of 1804, by confining the choice of the States, when the election devolves upon the House of Representatives, to three, instead of the five highest on the list of those voted for by the electors, has made a material change; it impaired, too, Sir, a federative power, and increased a popular one. Suppose, Sir, that it should be necessary to vest in the General Government powers which an emergency might render essential for the preservation of the Union. Cases might occur which I do not even wish to imagine. Must these powers be usurped at the hazard of revolution and bloodshed? Must we sit here like the Roman Senate? quietly fold our arms, and await our destruction with dignity? or must we not rather apply for these powers in the mode prescribed by the Constitution? Our ancestors well knew that they could not pierce the veil of futurity, and provide for events beyond the ken of mortal wisdom. They provided a *remedy*, Sir, for evils which might be disclosed by experience and practice; and they provided a security against amendments proposed from "light and transient causes" by the *mode* in which alone they can be effected. The honorable gentleman from Massachusetts has sought to draw an argument in support of his position from the proviso of the fifth article of the Constitution, "that no amendment which may be made prior to the year 1808, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate." Now, Sir, to my mind, this clause, so far from helping his argument, militates most strongly against it; it indicates, to my understanding, that this special exception was necessary to exempt from amendment, for a limited time, the first and fourth clauses mentioned in it, and to confine any amendment of the federative feature in the Senate, which should deprive a State of its equal right, to the special case of the States consenting to it. I should, therefore, Sir, most strongly infer, according to a very old and sound rule of construction, that the power of amendment in other cases was to be inferred. Self-preservation is the primary law of societies, as well as of individuals, and, if necessary, we must act upon it.

The honorable gentleman from Massachusetts seems to think that the powers of the President have been greatly magnified by my honorable friend from South Carolina (Mr. McDUFFIE); he deems them very limited, and not the proper object of much jealousy. I can assure him, Sir, that he thinks very differently from the fathers of the Revolution, and the framers of this Constitution, and the States who adopted it. The powers of this Executive Chief excited very lively apprehensions in the bosoms of some of the purest and wisest of our forefathers. Some thought they had an "awful squinting" at monarchy—

they imagined that they could discern "the diadem sparkling on his brow, and the imperial purple flowing in his train." And how, Sir, did the advocates of the Constitution endeavor to lull these apprehensions? Not, Sir, as that honorable gentleman has done, by endeavoring to persuade the People that his powers were not great; but that they were necessary to give proper consistency and strength to the system—that he was properly checked by the other departments—that he was elected for short periods, and liable to impeachment—but, above all, that he was dependent upon the People. Let us examine, Sir, a few of his constitutional attributes. He is the Representative of his Country, among the Nations of the earth. He originates treaties, and, with the advice of the Senate, confirms them; and they are the supreme law of the land. It is his prerogative to receive ambassadors, and, with the advice of the Senate, to send them. He is Commander-in-Chief of the Army and Navy of the United States. His qualified veto gives him an important agency in legislation itself. He can elevate to offices of the greatest dignity and emolument. His patronage embraces the distribution of millions. He operates upon the hopes and fears of thousands. Although he has not the constitutional power of making war, yet, by means of his other powers, he can at any time place his country in a belligerent state. Suppose he should refuse to receive the British or French Ambassador, or send him home with contumely and insult. Suppose, under the act for the suppression of the slave trade, he should order our cruisers to capture vessels in the Mediterranean, or upon some unfounded suspicion. Indeed, Sir, many cases might be supposed, when, by an undue exercise of a constitutional power, he might draw upon us the anger of a foreign nation. But, says the honorable gentleman from Massachusetts, the King of Great Britain can elevate to the peerage the humblest individual, and ennoble him and his posterity. Indeed, Sir, he seemed to describe the dazzling honors of a coronet with so much rapture, that those who did not know him might have suspected that, during his residence abroad, he had conceived an affection for what Chatham could not refuse.

Before I dismiss this brief examination, sir, lest I should be mistaken, I will take the liberty to say, that, although I believe the powers of the President to be great, yet I believe them to be necessary for the safety of the Republic. What the jealous statesmen of the Revolution, with Washington at their head, have given, I will not presume to impair. The stress or intent of my argument, sir, is to show, that the greater power, the greater necessity that the due dependency on the People should be preserved.

I will admit, sir, that, before any amendment is adopted, its adaptation to the genius and spirit of the Government ought to be satisfactorily ascertained: for it is obvious that maxims and political reasons, which would justly be entitled to great weight when applied to a consolidated Government, one and indivisible, such as Britain, or any of the ancient Republics, would be inapplicable to a Government compounded as ours is, of national and federative features. They too often serve to create false analogies, and lead us astray from the true point of inquiry. The checks and balances of the British Constitution are contrived and intended to protect and preserve the King, Lords, and Commons, who are all integral parts of the same State—different classes of the same political society. The checks and balances of our Constitution are intended to protect the Union, the *States*, and the People. The States, according to the theory of our Constitution, are independent members of a Confederacy, and are, themselves, in many respects, sovereign. We must, therefore, always keep in our mind's eye, this leading and animating principle, when we sit in judgment upon this great work of our fathers. In all human affairs, "self-love, the spring of action, moves the soul." This principle ever active and vigilant, and may be relied upon as a trusty sentinel for its own preservation.

The framers of the Constitution well knew that the States were the best guardians of State rights—the People of popular rights; it was only necessary, therefore, to give them, respectively, in this form of Government, adequate power, and their self-love and interest might be relied upon, for their exercise and preservation: if this could be done, and the political machine which was to be moved by these powers so adjusted, that they should have a harmonious and salutary action, the grand object of all Government was attained—they had then a self-creating political movement, whose object was the happiness of the governed. It would be collateral, Mr. Chairman, to the present inquiry, and would also be presumptuous in me to attempt to point out to the committee the many indications of these mixed principles. The subject before us regards solely the constitution of the President and Vice President. Was it to be supposed, that they should lose sight of these controlling principles in the mode of appointing this great officer—the Executive Chief of the confederated Republic—whose constitutional action was to have so important, so pervading an influence in the character of the Government—the policy and the destiny of the nation? No, sir, it was not to be expected, nor has it so occurred. The Constitution declares that "each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in Congress," &c. It then proceeds to *direct* that they shall meet in their respective States, and ballot for President and Vice President, and points out the mode of conducting the election by the Electoral Colleges.

It seems to me, Mr. Chairman, that the Constitution here, by the word "*State*," means the Commonwealth—the political society—the People, or at least that portion of them who exercise the elective franchise; and, therefore, that, whenever the State Legislatures have exercised the power of appointing the electors, instead of simply directing the mode in which the State should appoint them, they have violated the rights of the People. It would have been very easy, if the power was intended to be given to the Legislatures, to have used expressions plainly indicative of such an intent—and the inference that they would have done so, is rendered to my mind irresistible, by recurring to the first clause of the third section, which prescribes the mode of electing Senators. The expression there is, "The Senate of the United States shall be composed of two Senators from each State, chosen by *the Legislature* thereof," &c. But the honorable gentleman from Virginia, the second from that State who spoke in this debate, (Mr. STEVENSON) contends, and his argument is supported by the honorable gentleman who immediately preceded me, (Mr. EVERETT) that it is not only Constitutional for the Legislatures to exercise this power of appointing the electors, but that it was even expected they would do so. Sir, I do most conscientiously differ from these gentlemen, and I will endeavor, by the indulgence of the Committee, to shew, that, if the contemporary exposition of this part of the Constitution, by its advocates, is to be relied upon, that it was *not* so understood and explained. If Hamilton and Madison, combined, and agreeing upon this point, are entitled to credit, it was intended that the *People* should exercise this power of appointment.

I refer, sir, to the "Federalist," a series of essays written before the adoption of the Constitution, by Madison, Hamilton, and Jay, for the purpose of explaining and recommending it to the People of the United States, and which is now resorted to, by all parties, as the ablest and most authoritative exposition of its true intent and meaning. In No. LXVIII., Hamilton, speaking of the mode of

electing the President, says, "It was desirable that the sense of the People should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any pre-established body, but to men (electors) *chosen by the People*, for the special purpose, and at the particular conjuncture." "A small number of persons (electors) *chosen by their fellow citizens* from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation."

The language of Mr. Madison, in the Convention of Virginia, which assembled in 1788, for the purpose of considering whether they would adopt this Constitution, is equally, or more, clear and explicit. Instead of the People's voting immediately for President, which he thought the population and extent of our territory might render impracticable: "instead of this, (immediate suffrage) *the People* choose the electors—this can be done with ease and convenience, and the *choice* will be more select." If we examine the debates of this Convention, we shall find that it was so understood, also, by those who opposed the Constitution. This meaning was assumed as the basis of argument on both sides; and, if we reflect a moment on the very many able men who sat in that Convention, it would be most violent presumption to say, they were mistaken, with all their talents and all their lights.

If we assume, then, that this was the intention of the Constitution, let us see what has been its operation. Have the People chosen the electors? I ask this question, Mr. Chairman, in the name of my constituents, and I wish an explicit answer. From the omission in the Constitution to prescribe a specific mode, (which I think I shall be able to show, if my strength will permit, was done intentionally and wisely)—from this omission, I say, sir, a great latitude of construction and a great diversity of practice has originated. In some States the Legislatures appoint—in some the general ticket system prevails—in some few the district system—and in others a compound of some two or all of these modes. My honorable friend from South Carolina, (Mr. McDUFFIE) has depicted the mischiefs of this confused and unsettled system, in such strong and glowing colors, that I cannot presume to add any thing to their effect. It is true, sir, that, by the present mode, combinations may be, and have been, formed, which have prevented a fair expression of the popular will. The People are called upon to vote a ticket, (under the general ticket system,) containing 15, 24, or 36 names—to vote for, to *choose* persons, of whom they may never have heard before—of whose qualifications they have never had an opportunity of judging—whose integrity has never been tested—and if this ticket had dropped from the clouds, they must take it or lose their vote. Call you this *choice*, sir? I always thought, sir, that choice involved selection of one or more from others—"from the general mass"—that it involved knowledge, comparison, voluntary preference, and was a right of more or less value, according to the importance of its object. What temptation and opportunity is presented, by this system, for intrigue and management! What apathy and indifference are manifested by the People, for such a feeble and dubious exercise of this great Constitutional privilege! Even under the excitement of the late election, how many neglected the exercise of this right! And, should it not be, sir, the policy of every wise Government to interest its citizens in its organization? Under the present system, how many worthy citizens remain at home, under the paralyzing influence of a conviction that they can do no good—that the election is in the hands of the cunning few, and that it is a mere mockery for them singly—without concert; without the animation derived from a prospect of success, to pretend to withstand the disciplined cohorts opposed to them. This lethargy is almost worse than faction itself. It is more secret—more insidious in its approaches. It disguises itself under the name of moderation, and aversion to debate and strife, when it too often proceeds from a criminal indifference to those rights which our ancestors bled and died to secure. They are men of business—they can't lose the chance of turning a penny to promote any public measure. It would seem, sir, as if some of them had taken, in earnest, the sarcastic advice of the Roman satirist—

"Virtus post nummos."

Let any man look abroad—through the *Union*, I mean, and deny, if he can, that this is a faithful picture. Surely, sir, it requires no prophetic voice to warn us against so dangerous a delusion. Surely, sir, we will spare a little time to listen to the "Farewell Address" of the Father of his country.

I admit, sir, that it is not sufficient to show the existence of an evil, unless it can be remedied, either wholly or partially—but, I insist, sir, that the adoption of the District System, as proposed by the good old State I have the honor, in part to represent, so inadequately—and a direct vote, in Districts, for President and Vice President, will cure the most alarming of these evils. The Constitution, by interposing the electoral colleges, undoubtedly intended that they should exercise a sound discretion in the choice of a President—they were "to analyse his qualifications, and judiciously combine motives of choice." Fed. No. 68. But, sir, the People of this country, as has been shown in this debate and elsewhere, have not been content with simply the right of originating the Colleges, even when committed to them by their State Legislatures—they have always required a pledge, or some evidence, of the Elector or Electors, for whom they intended to give their ultimate vote, before they would give their vote to him or them. Here, then, sir, the intention of the Constitution has been manifestly defeated—this seems to be a case in which experience suggests amendment. The People, sir, although they will hear argument and reason, yet will finally judge for themselves. But even here I would lay my hands on this venerated instrument with great reluctance. The pure and enlightened views of its framers plead strongly in its behalf; and although we may not now discover the evils which may result from the change, yet time—time and casualty may disclose them. But, sir, as I believe that the design of its framers has been defeated, I would hazard this amendment.

It would have, sir, I think, the effect of rousing the People from their torpid quietism; it will make them feel that their voice is heard—that their vote is felt; and the voting directly and immediately for the man of their choice, will of itself be productive of a lively satisfaction. They will then know that their vote is given as they wished it should be, and is beyond the control of any political legerdemain. They will not be agitated by the merits of the several electoral candidates, but their eye will repose singly on the man of their ultimate choice. I understand a case has occurred in Maryland, where there were two electoral candidates for the same Presidential candidate, and one for another Presidential candidate, and although the district gave a large majority for the Presidential candidate who had two friends as electoral candidates, yet the third candidate obtained the greatest plurality, and thus the vote of the district was given to that candidate for the Presidency, against whom there was a large majority. This cannot happen when the People vote directly for the President. An honorable gentleman from New York, (Mr. STORRS) has asked those who contend for this expression of the popular will in this mode—why not extend the principle? and has alluded to a species of population which, without being citizens, is counted in estimating the ratio of representation from the Southern States. Sir, if he had shewn us that this amendment would have conferred any additional power on these States, the obser-

vation would have had some bearing; or if he had shewn that they would have derived any peculiar advantage, it would have been more plausibly introduced into debate; but as it is—whatever it may be—it is not an argument.

The honorable gentleman from Virginia, who spoke first, (Mr. ARCHER,) has discoursed with much State pride on the freehold—viva voce suffrage of Virginia. He has told us that the mode of voting by ballot is a sneaking way; that they "sneak up to the polls," and that he would exile himself if the freehold qualification was abolished in Virginia. Now, Mr. Chairman, I have understood that a large portion of the citizens of Virginia, particularly in the West, are very anxious to have their Constitution amended in order to be permitted to exercise the elective franchise; but, perhaps, after the honorable gentleman's threat to leave them if they do, they may desist. I imagine, sir, that it would be an easy matter for any other State to give her citizens the same independence as the citizens of Virginia have, by adopting the same mode—by making a freehold necessary to vote, and by protecting that freehold from the payment of debts; they might then, sir, be so independent as not only to tell a candidate viva voce, that they would not vote for him—but also, that they would not pay him a just debt—and that too "viva voce," sir. But, sir, with the right of suffrage, the Constitution has laudably omitted to interfere; nor does this amendment seek to interfere. The Constitution has omitted it, sir, as I said, for the wisest reasons.

The requisites to the right of suffrage are very different, in the different States, and even in adjoining States; in Virginia, as we have seen, none but freeholders can vote—in North Carolina, sir, it is the birthright of every freeman. If, therefore, the Constitution had attempted to fix an uniform rule on this subject, the strange anomaly might have been presented of a man's voting for the highest officer in the Union, who could not vote for the lowest State officer. It might also have interfered materially with the polity of a State. This amendment, therefore, sir, does not at all interfere with State rights: their quantity of power remains the same: its ratio of adjustment is not disturbed—and either with regard to the Union, or each other, they preserve the same relative rights. It will also prevent the arraying of State against State—as the supporters of the President will be diffused through the Union; unreasonable jealousies will thus be prevented, and sectional feelings and appellations, against which the Father of his Country entertained so much apprehension, will be deprived of one of their most powerfully exciting causes, and it may well be doubted, whether any citizen of any State, with an American feeling, would not greatly prefer that the candidate of his choice should be President, than that his State should give an undivided vote.

I will now pass, sir, to the other branch of the proposed amendment. Shall the power of electing the President and Vice President, in the last resort, be taken from the House of Representatives? Upon this amendment, I confess, sir, I have entertained great and serious doubts; and these, sir, have arisen from an investigation which I have endeavored to make of the genius and spirit of our Constitution, and the principles of compromise upon which it was founded. I came to the conclusion that I would abstain from this alteration—as far as I am concerned—at least until I have more lights and experience. By leaving it as it is, we leave it as it has existed and flourished for half a century, and as our ancestors bequeathed it to us. I will, however, sir, endeavor to disclose the reasons which have led me to this conclusion, which I must do in a brief and hurried manner, as my laboring breast has already repeatedly admonished me to cease.

The first General Government of American origin was composed of that illustrious body, the Old Continental Congress, which assembled for the first time at Carpenter's Hall, in Philadelphia, on the 5th September, 1774; its object was to provide for the emergency occasioned by the differences with the mother country; to unite the resources of all the English Colonies; and to adopt such common measures for the redress of their grievances and establishment of their rights, as their situation required and allowed. The Delegation of each Colony had one vote; and although their powers were enforced by no higher sanction than mere recommendation, yet never were imperial decrees more implicitly obeyed. They were, in fact, nothing more than a Congress of Ambassadors. It was, however, soon discovered, as the enthusiasm and zeal for liberty subsided, that all governments must depend, for support and obedience, upon power, and must be able to address its mandates to other passions and interests than those of patriotism and love of the public weal. As early as June, '76, measures were taken to form a Confederated Government, and in November, '77, Congress solemnly declared, that it could no longer be deferred, but was essential to their very existence as a free People. Hence originated the Articles of Confederation, which were not finally adopted by all the States till March, 1781. By these, each State had one vote—and that distinguishing feature of a confederate government, that it operated upon States, instead of individuals, was preserved. There were many other defects, unnecessary here to be enumerated—in a word, it was justly termed "a rope of sand," and a more energetic government was loudly demanded by the wants and wishes of the American People.

I will not impose upon the patience of the Committee by attempting to detail the occurrences which led to the convention of Delegates at Philadelphia, in May, 1787; but, sir, I deem it very material to a just conception of the nature of our Constitution, to view it in its rude outline and imperfect state—to examine it in its progress through the Convention—at least those features of it which are now under discussion. This Convention had several plans before them; one proposed by Edmund Randolph of Virginia, and called the Virginia plan; by this it was proposed that the President should be elected by the National Legislature. In the plan proposed by Charles Pinckney, of South Carolina, it was not stated in what manner he should be elected. The New Jersey plan, offered by Mr Paterson, proposed that he should be elected by the United States in Congress. Col. Hamilton's plan proposed that he should be elected by Electors, chosen by the People in Districts.

By the draft of a Constitution reported by a Committee of five, consisting of Messrs. Rutledge, Randolph, Gorham, Ellsworth, and Wilson, on the 6th August, he was to be elected by ballot by the Legislature. On the 4th September ensuing, a grand Committee of eleven, one from each State, to whom the subject had been referred, reported a plan by which the mode, as it originally stood in the Constitution, was recommended, viz: that, if no one of the candidates had a majority, then the Senate were to choose from the five highest on the list.

A motion was made in Convention to substitute the House of Representatives for the Senate, with the qualification of the Delegation from each State having an equal vote, (one.) For this proposition, sir, there were 7 States; and against it, but one—and that one, Mr. Chairman, was the State which has the honor to be represented by you, (Delaware) the smallest in the Confederacy. This brief survey will show that this adjustment was well thoroughly considered—

"Tantæ molis erat, condere gentem."

The proposition that the Senate should elect, was clearly to the *State* power; and this qualification was retained when it was transferred to the House of Re-

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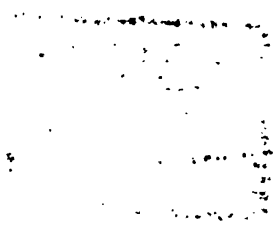

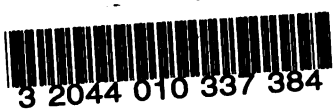

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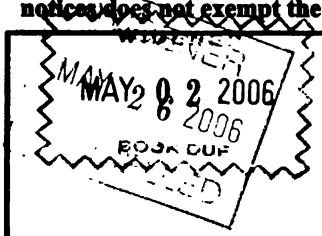

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